
DRAFT STATUTORY INSTRUMENTS

2013 No.

The Universal Credit, Personal Independence Payment,
Jobseeker's Allowance and Employment and Support
Allowance (Decisions and Appeals) Regulations 2013

PART 3

SUPERSESIONS

CHAPTER 1

GROUNDINGS FOR SUPERSESSION

Introduction

22. Subject to regulation 32 (decisions which may not be superseded), the Secretary of State may make a decision under section 10 ("a superseding decision") of the 1998 Act in any of the cases and circumstances set out in this Chapter.

Changes of circumstances

23.—(1) The Secretary of State may supersede a decision in respect of which—

- (a) there has been a relevant change of circumstances since the decision to be superseded had effect or, in the case of an advance award under regulation 32, 33 or 34 of the Claims and Payments Regulations 2013, since it was made; or
- (b) it is expected that a relevant change of circumstances will occur.

(2) The fact that a person has become terminally ill is not a relevant change of circumstances for the purposes of paragraph (1) unless an application for supersession is made which contains an express statement that the person is terminally ill.

Error of law, ignorance, mistake etc.

24. A decision of the Secretary of State, other than one to which regulation 25 (decisions against which no appeal lies) refers, may be superseded where—

- (a) the decision was wrong in law, or was made in ignorance of, or was based on a mistake as to, some material fact; and
- (b) an application for a supersession was received, or a decision was taken by the Secretary of State to act on the Secretary of State's own initiative, more than one month after the date of notification of the decision to be superseded or after the expiry of such longer period as may have been allowed under regulation 6 (late application for a revision).

Decisions against which no appeal lies

25. A decision specified in Schedule 2 (decisions against which no appeal lies) to the 1998 Act or prescribed in regulation 50(2) (decisions which may or may not be appealed) may be superseded.

Medical evidence and limited capability for work etc.

26.—(1) An employment and support allowance decision, a personal independence payment decision or universal credit decision may be superseded where, since the decision was made, the Secretary of State has—

- (a) received medical evidence from a healthcare professional or other person approved by the Secretary of State; or
- (b) made a determination that the claimant is to be treated as having limited capability for work in accordance with regulation 16, 21, 22 or 29 of the Employment and Support Allowance Regulations 2013 or Part 5 (capability for work or work-related activity) of the Universal Credit Regulations.

(2) The decision awarding personal independence payment may be superseded where there has been a negative determination.

(3) In this regulation—

“an employment and support allowance decision”, “personal independence payment decision” and “universal credit decision” each has the meaning given in Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances);

“healthcare professional” means—

- (a) a registered medical practitioner;
- (b) a registered nurse; or
- (c) an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 (regulation of health professions, social workers, other care workers etc.) of the Health Act 1999⁽¹⁾.

Sanctions cases

27.—(1) A decision as to the amount of an award of benefit may be superseded where the amount of that award is to be reduced by virtue of—

- (a) section 11J(1) (sanctions)⁽²⁾ of the 2007 Act;
- (b) section 6J(1) (higher-level sanctions) or 6K(1) (other sanctions)⁽³⁾ of the Jobseekers Act; or
- (c) section 26(1) (higher-level sanctions) or 27(1) (other sanctions) of the 2012 Act.

(2) A decision reducing an award of benefit by virtue of any of those provisions may be superseded where the reduction falls to be suspended or terminated.

(1) 1999 c. 8. Section 60(1) was amended by section 26(9) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17), by sections 111 and 127 of, and paragraph 1 of Schedule 8 and paragraph 10 of Schedule 10 to, the Health and Social Care Act 2008 (c. 14) (“the 2008 Act”), by sections 209, 210, 230 and 231 of, and paragraph 16 of Schedule 15 to, the Health and Social Care Act 2012 (c. 7) (“the Social Care Act 2012”), by article 48(3) of, and paragraph 8(a) of Schedule 4 to, S.I. 2002/254. Subsection (2) was amended by sections 111 and 116 of, and paragraphs 1 and 3 of Schedule 8 and Schedule 15 to, the 2008 Act, by S.I. 2010/1621 and by the Social Care Act 2012, section 209. Subsections (2ZA) to (2ZF) were inserted by section 209 of the Social Care Act 2012, section 209. Subsections (2A) and (2B) were inserted by section 111 of, and paragraph 1 of Schedule 8 to, the 2008 Act.

(2) Section 11J was inserted by section 57 of the 2012 Act.

(3) Sections 6J and 6K were inserted by section 49 of the 2012 Act.

Loss of benefit cases

28. A decision that a benefit is payable to a claimant may be superseded where that benefit ceases to be payable or falls to be reduced by virtue of section 6B, 7 or 9 of the Fraud Act (loss of benefit provisions)(4).

Contributions cases

29. The Secretary of State may supersede a decision (“the original decision”) where, on or after the date on which the decision is made, a late or an unpaid contribution is treated as paid under—

- (a) regulation 5 of the Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001 (treatment of late paid contributions where no consent, connivance or negligence by the primary contributor) on a date which falls on or before the date on which the original decision was made;
- (b) regulation 6 of those Regulations (treatment of contributions paid late through ignorance or error) on a date which falls on or before the date on which the original decision was made; or
- (c) regulation 60 of the Social Security (Contributions) Regulations 2001 (treatment of unpaid contributions where no consent, connivance or negligence by the primary contributor) on a date which falls on or before the date on which the original decision was made.

Housing costs: universal credit

30.—(1) A decision in relation to universal credit which adopts a determination made under the Rent Officers Order 2013 may be superseded where, in consequence of a rent officer's redetermination made in under that Order, the amount which represents rent for the purposes of calculating the housing costs element in universal credit is reduced.

Tribunal decisions

31. The Secretary of State may supersede a decision of the First-tier Tribunal or Upper Tribunal which—

- (a) was made in ignorance of, or was based upon a mistake as to, some material fact; or
- (b) in a case where section 26(5) (appeals involving issues that arise in other cases) of the 1998 Act applies, was made in accordance with section 26(4)(b) of that Act(5).

CHAPTER 2

SUPERSEDING DECISIONS: LIMITATIONS AND PROCEDURE

Decisions which may not be superseded

32. A decision which may be revised under section 9 of the 1998 Act may not be superseded under Chapter 1 of this Part unless—

- (a) circumstances arise in which the Secretary of State may revise the decision under Part 2; and

(4) Section 6B was inserted by section 24(1) of the 2009 Act. Section 6B was amended by section 113(8) of the 2012 Act and by the 2009 and 2012 Acts, from a date to be appointed. Section 7 was amended by paragraph 45 of Schedule 2 to the 2002 Act, by Schedule 6 to the Tax Credits Act, by section 49 of, and paragraph 23 to Schedule 3 to, the 2007 Act and by paragraph 2 of Schedule 4 to the 2009 Act. Section 7(4A) was inserted by paragraph 45(2) of Schedule 2 to the 2002 Act. Section 7(4B) was inserted by paragraph 23(2) of Schedule 3 to the 2007 Act. Section 9(4A) was inserted by paragraph 46(3) of Schedule 2 to the 2002 Act. Section 9(4B) was inserted by paragraph 23(5) of Schedule 3 to 2007 Act.

(5) Section 26(4) and (5) were amended by [S.I. 2008/2833](#).

- (b) further circumstances arise in relation to that decision which—
 - (i) are not set out in that Part; but
 - (ii) are set out in Chapter 1 of this Part or are ones where a superseding decision may be made in accordance with regulation 33(3).

Procedure for making an application for a supersession

33.—(1) The Secretary of State may treat an application for a revision under section 9 of the 1998 Act, or a notification of a change of circumstances, as an application for a supersession under section 10 of that Act.

(2) The following paragraph applies where the Secretary of State, in order to consider all the issues raised by the application, requires further evidence or information from a person who has applied for a supersession (“the applicant”).

(3) The Secretary of State must notify the applicant that—

- (a) the further evidence or information specified in the notification is required;
- (b) if the applicant provides the relevant evidence or information within one month of the date of notification or such longer period as the Secretary of State may allow, the decision may be superseded taking such information or evidence into account; and
- (c) if the applicant does not provide such evidence or information within that period, the decision to be superseded may be superseded taking into account only such evidence or information as was submitted with the application for a supersession.

CHAPTER 3

EFFECTIVE DATES FOR SUPERSESSIONS

Introduction

34. This Chapter and Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances) contains exceptions to the provisions of section 10(5) of the 1998 Act as to the date from which a decision under section 10 of that Act which supersedes an earlier decision takes effect.

Effective dates: Secretary of State decisions

35.—(1) Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances) makes provision for the date from which a superseding decision takes effect where there has been, or it is anticipated that there will be, a relevant change of circumstances since the earlier decision took effect.

(2) This paragraph applies where the Secretary of State supersedes a decision—

- (a) on the ground that the decision was wrong in law, or was made in ignorance of, or was based on a mistake as to, some material fact, in accordance with regulation 24 (error of law, ignorance, mistake etc.); or
- (b) under regulation 25 (decisions against which no appeal lies).

(3) In a case where paragraph (2) applies and the superseding decision relates to a jobseeker's allowance or an employment and support allowance, the superseding decision takes effect from the first day of the benefit week in which the superseding decision, or where applicable, the application for supersession, was made.

(4) In a case where paragraph (2) applies and the superseding decision relates to universal credit, the superseding decision takes effect from the first day of the assessment period in which the superseding decision, or where applicable, the application for supersession, was made.

(5) A superseding decision made in consequence of a decision which is a relevant determination for the purposes of section 27 of the 1998 Act (restrictions on entitlement to benefit in certain cases of error)(6) takes effect from the date of the relevant determination.

(6) In the case of an employment and support allowance, a superseding decision made in accordance with regulation 26(1) (medical evidence and limited capability for work etc.), following an application by the claimant, that embodies a determination that the claimant has limited capability for work-related activity, takes effect from the date of the application.

(7) In the case of an employment and support allowance, a superseding decision made on the Secretary of State's own initiative in accordance with regulation 26(1) that embodies a determination that the claimant has—

- (a) limited capability for work; or
- (b) limited capability for work-related activity; or
- (c) limited capability for work and limited capability for work-related activity,

takes effect from the beginning of the 14th week of entitlement where the determination is the first such determination.

(8) In the case of an employment and support allowance where regulation 6 of the Employment and Support Allowance Regulations 2013 (assessment phase – previous claimants) applies, a superseding decision made in accordance with regulation 26(1) of these Regulations that embodies a determination that the claimant has—

- (a) limited capability for work; or
- (b) limited capability for work-related activity; or
- (c) limited capability for work and limited capability for work-related activity,

takes effect from the beginning of the 14th week of the claimant's continuous period of limited capability for work.

(9) In the case of universal credit, a superseding decision made in accordance with regulation 26(1) that embodies a determination that the claimant has limited capability for work or limited capability for work and work-related activity takes effect—

- (a) in a case to which regulation 28(1) (period for which the LCW or LCWRA element is not to be included) of the Universal Credit Regulations applies, from the beginning of the assessment period specified in that paragraph; or
- (b) in any other case, from the beginning of the assessment period in which the decision (if made on the Secretary of State's own initiative) or the application for a supersession was made.

(10) A superseding decision to which regulation 27(1) (sanctions cases: reduction in an award) applies takes effect from the beginning of the period specified in—

- (a) regulation 54 of the Employment and Support Allowance Regulations 2013, where the decision relates to the start of a reduction in the amount of an employment and support allowance;

(6) 1998 c. 14. Section 27(1) and (3) was amended by S.I. 2008/2833. Section 27(7) was amended by the 2002 Act, section 11, Schedule 1, Part 2, by the Constitutional Reform Act 2005 (c. 4), section 40(4) and Schedule 9, paragraph 64, by the 2007 Act, section 28 and by Schedule 3, paragraph 17, by the 2012 Act, sections 31 and 91 and Schedule 2, paragraphs 43 and 47, Schedule 9, paragraphs 37 and 41 and by S.I. 2011/1043. Section 27(10) was amended by S.I. 2008/2833.

- (b) regulation 56 of the Employment and Support Allowance Regulations 2013, where the decision relates to ending the suspension of a such a reduction where a fraud penalty ceases to apply;
 - (c) regulation 22 of the Jobseeker's Allowance Regulations 2013, where the decision relates to the start of a reduction in the amount of a jobseeker's allowance;
 - (d) regulation 24 of the Jobseeker's Allowance Regulations 2013, where the decision relates to ending the suspension of such a reduction where a fraud penalty ceases to apply;
 - (e) regulation 106 of the Universal Credit Regulations, where the decision relates to the start of a reduction in the amount of universal credit;
 - (f) regulation 108 of the Universal Credit Regulations, where the decision relates to ending the suspension of such a reduction where a fraud penalty ceases to apply.
- (11) A superseding decision to which regulation 27(2) (sanctions cases: suspension and termination of a reduction) applies takes effect from the beginning of the period specified in—
- (a) regulation 56 of the Employment and Support Allowance Regulations 2013, where the decision relates to the start of a suspension where a fraud penalty applies;
 - (b) regulation 57 of the Employment and Support Allowance Regulations 2013, where the decision relates to the termination of a reduction in the amount of an employment and support allowance;
 - (c) regulation 24 of the Jobseeker's Allowance Regulations 2013, where the decision relates to the start of a suspension where a fraud penalty applies;
 - (d) regulation 25 of the Jobseeker's Allowance Regulations 2013, where the decision relates to the termination of a reduction in the amount of a jobseeker's allowance;
 - (e) regulation 108 of the Universal Credit Regulations, where the decision relates to the start of a suspension where a fraud penalty applies;
 - (f) regulation 109 of the Universal Credit Regulations, where the decision relates to the termination of a reduction in the amount of an award of universal credit.
- (12) A superseding decision to which regulation 28 (loss of benefit provisions) applies takes effect from the date prescribed for the purposes of section 6B or 7 of the Fraud Act(7).
- (13) Where a decision is superseded in accordance with regulation 29 (contributions cases), the superseding decision takes effect from the date referred to in regulation 29(a), (b) or (c) on which the late or unpaid contribution is treated as paid.
- (14) A superseding decision made in consequence of a redetermination in accordance with regulation 30 (housing costs: universal credit) takes effect on the first day of the first assessment period following the day on which that redetermination is received by Secretary of State.

Effective dates for superseding decisions where changes notified late

36.—(1) For the purposes of regulation 35(1) (effective dates: Secretary of State decisions) and paragraphs 6, 14 and 21 of Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances), the Secretary of State may extend the time allowed for a person (“the applicant”) to give notice of a change of circumstances in so far as it affects the effective date of the change if all of the following conditions are met.

(7) Section 6B was inserted by section 24(1) of the 2009 Act. Section 6B is amended by section 113(8) of the 2012 Act and by the 2009 and 2012 Acts, from a date to be appointed. Section 7 was amended by paragraph 45 of Schedule 2 to the 2002 Act, by Schedule 6 to the Tax Credits, by section 49 of, and paragraph 23 to Schedule 3 to, the 2007 Act and by paragraph 2 of Schedule 4 to the 2009 Act. Section 7(4A) was inserted by paragraph 45(2) of Schedule 2 to the 2002 Act. Section 7(4B) was inserted by paragraph 23(2) of Schedule 3 to the 2007 Act.

(2) The first condition is that an application is made to the Secretary of State at an appropriate office for an extension of time.

(3) The second condition is that the application—

(a) contains particulars of the change of circumstances and the reasons for the failure to give notice of the change of circumstances on an earlier date; and

(b) is made—

(i) within 13 months of the date on which the change occurred; or

(ii) in the case of personal independence payment where a notification is given under paragraph 15 of Part 2 of Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances), within 13 months of the date on which the claimant first satisfied the conditions of entitlement to the particular rate of personal independence payment.

(4) The third condition is that the Secretary of State is satisfied that it is reasonable to grant the extension.

(5) The fourth condition is that the change of circumstances notified by the applicant is relevant to the decision which is to be superseded.

(6) The fifth condition is that the Secretary of State is satisfied that, due to special circumstances, it was not practicable for the applicant to give notice of the change of circumstances within the relevant notification period.

(7) In determining whether it is reasonable to grant an extension of time—

(a) the Secretary of State must have regard to the principle that the greater the amount of time that has elapsed between the end of the relevant notification period and the date of the application, the more compelling should be the special circumstances on which the application is based;

(b) no account must be taken of the fact that the applicant or any person acting for them was unaware of, or misunderstood, the law applicable to the case (including ignorance or misunderstanding of the time limits imposed by these Regulations); and

(c) no account must be taken of the fact that the Upper Tribunal or a court has taken a different view of the law from that previously understood and applied.

(8) An application under this regulation which has been refused may not be renewed.

(9) In this regulation, “the relevant notification period” means—

(a) in the case of universal credit, the assessment period in which the change of circumstances occurs; or

(b) in any other case, a period of one month, beginning with the date on which the change of circumstances occurred.

Effective dates: tribunal cases

37.—(1) This paragraph applies where—

(a) the Secretary of State supersedes a decision of the First-tier Tribunal or the Upper Tribunal on the ground that it is made in ignorance of, or based on a mistake as to, a material fact in accordance with regulation 31(a) (tribunal decisions), and

(b) as a result of that ignorance or mistake, the decision to be superseded was more advantageous to the claimant than it would otherwise have been.

(2) In a case where paragraph (1) applies where the decision relates to—

(a) a jobseeker's allowance;

- (b) personal independence payment,

the superseding decision takes effect from the date on which the decision of the First-tier Tribunal or the Upper Tribunal took, or was to take, effect.

(3) In a case where paragraph (1) applies and the decision relates to an employment and support allowance or universal credit where—

- (a) the material fact does not relate to a limited capability for work determination embodied in or necessary to the decision; or
- (b) the material fact does relate to such a determination and the Secretary of State is satisfied that at the time the decision was made the claimant knew or could reasonably be expected to know of it and that it was relevant,

the superseding decision takes effect from the first day of the benefit week or (as the case may be) the assessment period in which in the Tribunal's decision took or was to take effect.

(4) Where the Secretary of State supersedes a decision of the First-tier Tribunal or the Upper Tribunal in accordance with regulation 31(b) (tribunal decisions), the decision takes effect—

- (a) if the decision relates to personal independence payment, from the date on which the decision of the First-tier Tribunal or the Upper Tribunal would have taken effect had it been decided in accordance with the determination of the Upper Tribunal or the court in the appeal referred to in section 26(1)(b) of the 1998 Act;
- (b) if the decision relates to a jobseeker's allowance or an employment and support allowance, from the first day of the benefit week in which the Tribunal's decision would have taken effect had it been so decided;
- (c) if the decision relates to universal credit, from the first day of the assessment period in which the Tribunal's decision would have taken effect had it been so decided.

(5) Paragraph (6) applies where—

- (a) the Upper Tribunal, or the court as defined in section 27(7) (restrictions on entitlement to benefit in certain cases of error) of the 1998 Act, determines an appeal as mentioned in subsection (1)(a) of that section ("the relevant determination");
- (b) the Secretary of State makes a decision of the kind specified in subsection (1)(b) of that section;
- (c) there is an appeal against the relevant determination;
- (d) after the Secretary of State's decision, payment is suspended in accordance with regulation 44 (suspension in prescribed cases); and
- (e) on appeal a court, within the meaning of section 27, reverses the relevant determination in whole or part.

(6) A consequential decision by the Secretary of State under section 10 of the 1998 Act which supersedes an earlier decision of the Secretary of State under paragraph (5)(b) takes effect from the date on which the earlier decision took effect.