

SCHEDULE 1

Regulation 35

EFFECTIVE DATES FOR SUPERSEDING DECISIONS MADE ON THE GROUND OF A CHANGE OF CIRCUMSTANCES

PART 1

EMPLOYMENT AND SUPPORT ALLOWANCE AND JOBSEEKER'S ALLOWANCE

1. Subject to the following provisions of this Part and to Part 4, in the case of an employment and support allowance or a jobseeker's allowance, a superseding decision made on the ground of a change of circumstances takes effect from the first day of the benefit week in which the relevant change of circumstances occurs or is expected to occur.

2. Paragraph 1 does not apply where—

- (a) the superseding decision is not advantageous to the claimant; and
- (b) there has been an employment and support allowance decision where the Secretary of State is satisfied that, in relation to a limited capability for work determination, the claimant—
 - (i) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify; and
 - (ii) could not reasonably have been expected to know that the change of circumstances should have been notified.

3. Where a relevant change of circumstances results, or is expected to result, in a reduced award and the Secretary of State is of the opinion that it is impracticable for a superseding decision to take effect from the day set out in paragraph 1, that superseding decision takes effect—

- (a) where the relevant change has occurred, from the first day of the benefit week following that in which that superseding decision is made; or
- (b) where the relevant change is expected to occur, from the first day of the benefit week following that in which that change of circumstances is expected to occur.

4. Where entitlement ends, or is expected to end, as the result of a change of circumstances, the superseding decision takes effect from the day on which the relevant change of circumstances occurs or is expected to occur.

5. In the case of an employment and support allowance where a person who is subject to—

- (a) section 45A or 47 of the Mental Health Act 1983 (power of higher courts to direct hospital admission; removal to hospital of persons serving sentences of imprisonment etc.)(1) ;
- (b) section 59A (hospital direction) of the Criminal Procedure (Scotland) Act 1995(2); or
- (c) section 136 (transfer of prisoners for treatment for mental disorder) of the Mental Health (Care and Treatment) (Scotland) Act 2003(3),

(1) 1983. c. 20. Section 45A was inserted by section 46 of the Crime (Sentences) Act 1997 (c.43). Section 45A was amended by paragraph 39 of Schedule 37 to the Criminal Justice Act 2003 (c.44) and sections 4 and 10 of, and paragraph 9 of Schedule 1 and Schedule 11 to, the Mental Health Act 2007 (c.12). Section 47 was amended by section 4 of, and paragraph 10 of Schedule 1 and Schedule 11 to, the Mental Health Act 2007, paragraphs 97 and 98 of Schedule 16 to the Armed Forces Act 2006 (c.52), paragraph 18 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c.28) and Schedule 6 to the Crime (Sentences) Act 1997. S.I. 1999/672 transferred functions under sections 45A and 47 to the National Assembly for Wales.

(2) 1995 c. 46. Section 59A was inserted by section 6(1) of the Crime and Punishment (Scotland) Act 1997 (c.48) and substituted by paragraph 8(6) of Schedule 4 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

(3) 2003 asp 13.

ceases, or is expected to cease, to be detained in a hospital (as defined in the Act, or the Act of the Scottish Parliament, to which the person is subject) for a period of less than a week, a superseding decision related to that person's departure from, or return to, hospital takes effect from the day on which that change of circumstances occurs or is expected to occur.

6. Where the superseding decision is advantageous to the claimant and the change of circumstances was notified to an appropriate office more than one month after the change occurred or after the expiry of such longer period as may be allowed under regulation 36 (effective dates for superseding decisions where changes notified late), the superseding decision takes effect from the beginning of the benefit week in which the notification was given.

7. In the case of an employment and support allowance decision where the Secretary of State is satisfied that, in relation a limited capability for work determination, the claimant—

- (a) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify; and
- (b) could reasonably have been expected to know that the change of circumstances should have been notified,

the superseding decision takes effect in accordance with paragraph 8.

8. The superseding decision takes effect—

- (a) from the date on which the claimant ought to have notified the change of circumstances; or
- (b) if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision, from the date on which the first change ought to have been notified.

9. In the case of a claimant who makes an application for a supersession which contains an express statement that they are terminally ill, the superseding decision takes effect from the date on which the claimant became terminally ill.

10. Where the superseding decision is advantageous to the claimant and is made on the Secretary of State's own initiative, the decision takes effect from the beginning of the benefit week in which the Secretary of State commenced action with a view to supersession.

11. In this Part—

“employment and support allowance decision” means a decision to award an employment and support allowance embodied in or necessary to which is a determination that the claimant has, or is to be treated as having, limited capability for work;

“week” means a period of 7 days, beginning with midnight between Saturday and Sunday.

PART 2

PERSONAL INDEPENDENCE PAYMENT

12. Subject to the following provisions of this Part and to Part 4, in the case of personal independence payment, a superseding decision made on the ground of a change of circumstances takes effect on the date on which the relevant change of circumstances occurs or is expected to occur.

13. Paragraph 12 does not apply where—

- (a) the superseding decision is not advantageous to the claimant; and
- (b) there has been a personal independence payment decision where the Secretary of State is satisfied that, in relation to such a decision, the claimant—

- (i) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify; and
- (ii) could not reasonably have been expected to know that the change of circumstances should have been notified.

14. Except in a case where paragraph 15 or 31 applies, where the superseding decision is advantageous to the claimant and the change of circumstances was notified to an appropriate office more than one month after the change occurred or after the expiry of such longer period as may be allowed under regulation 36 (effective dates for superseding decisions where changes notified late), the superseding decision takes effect from the date of notification of the change.

15. Where—

- (a) the change is relevant to entitlement to a particular rate of personal independence payment; and
- (b) the claimant notifies an appropriate office of the change no later than one month after the date on which they first satisfied the conditions of entitlement to that rate or within such longer period as may be allowed by regulation 36 (effective dates for superseding decisions where changes notified late),

the superseding decision takes effect from the date on which the claimant first satisfied those conditions.

16. Where the Secretary of State is satisfied that, in relation to a personal independence payment decision, the claimant—

- (a) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify; and
- (b) could reasonably have been expected to know that the change of circumstances should have been notified,

the superseding decision takes effect in accordance with paragraph 17.

17. The superseding decision takes effect—

- (a) from the date on which the claimant ought to have notified the change of circumstances; or
- (b) if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision, from the date on which the first change ought to have been notified.

18. Where the superseding decision is advantageous to the claimant and is made on the Secretary of State's own initiative, the decision takes effect from the date on which the Secretary of State commenced action with a view to supersession.

19. In paragraphs 13 and 16, "personal independence payment decision" means a decision to award personal independence payment, embodied in or necessary to which is a determination whether the claimant satisfies any of the requirements in section 78(1) and (2) (daily living component) or section 79(1) and (2) (mobility component) of the 2012 Act.

PART 3

UNIVERSAL CREDIT

20. Subject to the following paragraphs and to Part 4, in the case of universal credit, a superseding decision made on the ground of a change of circumstances takes effect from the first day of the assessment period in which that change occurred or is expected to occur.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 No. 381*

21. Except in a case to which paragraph 22 or 31 applies, where the superseding decision is advantageous to the claimant and the change of circumstances was notified to an appropriate office after the end of the assessment period in which the change occurred or after the expiry of such longer period as may be allowed under regulation 36 (effective dates for superseding decisions where changes notified late), the superseding decision takes effect from the first day of the assessment period in which the notification was given.

22. In the case of a person to whom regulation 61 (information for calculating earned income) of the Universal Credit Regulations applies, where—

- (a) the relevant change of circumstances is that the person's employed earnings are reduced; and
- (b) the person provides such information for the purposes of calculating those earnings at such times as the Secretary of State may require,

the superseding decision takes effect from the first day of the assessment period in which that change occurred.

23. In the case of a universal credit decision where the Secretary of State is satisfied that, in relation to a limited capability for work determination, the claimant—

- (a) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify; and
- (b) could reasonably have been expected to know that the change of circumstances should have been notified,

the superseding decision takes effect in accordance with paragraph 24.

24. The superseding decision takes effect—

- (a) from the first day of the assessment period in which the claimant ought to have notified the change of circumstances; or
- (b) if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision, from the first day of the assessment period in which the first change ought to have been notified.

25. Where—

- (a) the superseding decision is not advantageous to the claimant; and
- (b) there has been a universal credit decision where the Secretary of State is satisfied that, in relation to a limited capability for work determination, the claimant—
 - (i) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify; and
 - (ii) could not reasonably have been expected to know that the change of circumstances should have been notified,

the superseding decision takes effect on the first day of the assessment period in which the Secretary of State makes that decision.

26. Where, in any assessment period, a claimant—

- (a) reaches the qualifying age for state pension credit under the State Pension Credit Act 2002(4); and
- (b) has made an advance claim for an award of state pension credit,

(4) 2002 c. 16.

a superseding decision made in consequence of the person reaching that age takes effect on the date on which that change of circumstances occurs or is expected to occur.

27. A superseding decision of the Secretary of State to make or to cease making a hardship payment takes effect in accordance with regulation 117 (period of hardship payments) of the Universal Credit Regulations.

28. In the case of a claimant who makes an application for a supersession which contains an express statement that they are terminally ill, the superseding decision takes effect from the first day of the assessment period in which the claimant became terminally ill.

29. Where the superseding decision is advantageous to a claimant and is made on the Secretary of State's own initiative, it takes effect from the first day of the assessment period in which the Secretary of State commenced action with a view to supersession.

30. In this Part, "a universal credit decision" means a decision to award universal credit embodied in or necessary to which is a determination that the claimant has or is to be treated as having limited capability for work.

PART 4

COMMON PROVISIONS

31.—(1) This paragraph applies in relation to an award of personal independence payment or universal credit where the change of circumstances is that the claimant or, in the case of universal credit, a member of their family, becomes entitled to another relevant benefit, ceases so to be entitled or the rate of another such benefit alters.

(2) Where this paragraph applies, the superseding decision takes effect from—

(a) where the superseding decision concerns universal credit, the first day of the assessment period in which—

- (i) the entitlement to the other benefit arises;
- (ii) the entitlement to the other benefit ends; or
- (iii) entitlement to a different rate of the other benefit arises;

(b) where the superseding decision concerns personal independence payment, the date on which—

- (i) the entitlement to the other benefit arises;
- (ii) the entitlement to the other benefit ends; or
- (iii) entitlement to a different rate of the other benefit arises.

(3) For the purpose of sub-paragraph (1), where the superseding decision relates to personal independence payment, "relevant benefit" includes any payment made under any of the provisions mentioned in regulation 61(1) (cases where mobility component of personal independence payment not payable) of the Claims and Payments Regulations 2013.

32. Where the change of circumstances is that there has been a change in the legislation in relation to any benefit, the superseding decision takes effect from the date on which that change in the legislation had effect.

33. Where the change of circumstances is the expected coming into force of a change in the legislation in relation to any benefit, the superseding decision takes effect from the date on which that change in the legislation takes effect.

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