
STATUTORY INSTRUMENTS

2013 No. 381

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

PART 3

SUPERSESIONS

CHAPTER 3

EFFECTIVE DATES FOR SUPERSESIONS

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)(1) 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;
- (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;

(1) 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](#).

- (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(2).
- (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.

(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—

(2) 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.

- (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.