

**Draft Regulations laid before Parliament under section 80(1) of the Social Security Act 1998,
for approval by resolution of each House of Parliament.**

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2012 No. []

SOCIAL SECURITY

**The Universal Credit, Personal Independence Payment and
Working-age Benefits (Decisions and Appeals) Regulations
2012**

Made - - - - - ***
Coming into force - - - - - ***

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The Secretary of State, in exercise of the powers conferred by the provisions set out in Schedule 1, makes the following Regulations.

A draft of this instrument was laid before and approved by a resolution of each House of Parliament in accordance with section 80(1) of the Social Security Act 1998.(a)

[In accordance with section 172(1) of the Social Security Administration Act 1992(b), the Secretary of State has referred the proposals in respect of these Regulations to the Social Security Advisory Committee.]

[The Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it.](c)

PART 1 GENERAL

Citation, commencement and effect [DA1]

1.—(1) These Regulations may be cited as the Universal Credit, Personal Independence Payment and Working-age Benefits (Decisions and Appeals) Regulations 2012 and they come into force on [April 2013].

(2) These Regulations have effect in relation to—

(a) 1998 c. 14.

(b) 1992 c.5 (“the Administration Act”).

(c) See section 173(b) of the Administration Act.

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- (a) an employment and support allowance as provided for in Part 1 of the 2012 Act;
- (b) a jobseeker's allowance as provided for in Part 1 of the 2012 Act;
- (c) personal independence payment; and
- (d) universal credit.

Interpretation [DA2]

2. In these Regulations—

“the 2007 Act” means the Welfare Reform Act 2007; **(a)**

“the 2012 Act” means the Welfare Reform Act 2012**(b)**.

“the Act” means the Social Security Act 1998**(c)**;

“the Administration Act” means the Social Security Administration Act 1992**(d)**;

“appeal” means an appeal to the First-tier Tribunal established under the Courts, Tribunals and Enforcement Act 2007**(e)**;

“assessment period” is to be construed in accordance with regulation [AW1] of the Universal Credit Regulations 2012;

“benefit” means a benefit to which these Regulations apply;

“benefit week” has the same meaning as in—

- (a) regulation [[ESA2] of the Employment and Support Allowance Regulations in the case of an employment and support allowance;
- (b) regulation [JSA3] of the Jobseeker's Allowance, in the case of a jobseeker's allowance.

“claimant” means—

- (a) any person who is a claimant for the purposes of—
 - (i) section 35(1) of the Jobseekers Act 1995 (interpretation)**(f)**;
 - (ii) section 24(1) of the 2007 Act (interpretation)**(g)**;
 - (iii) section 40 (interpretation) of the 2012 Act **(h)**;
 - (iv) Part 4 (personal independent payment) of that Act; and
- (b) any other person from whom a benefit is alleged to be recoverable;

“the Claims and Payments Regulations 2012” means the Universal Credit, Personal Independence Payment and Working- age Benefits (Claims and Payments) Regulations 2012;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992**(i)**;

“the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2012;

“designated authority” means—

- (a) the Secretary of State;
- (b) a person providing services to the Secretary of State.

“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000**(j)**;

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- (a) 2007 c. 5.
 - (b) 2012 c. 5.
 - (c) 1998 c. 14.
 - (d) 1992 c. 5.
 - (e) 2007. c. 15.
 - (f) 1995 c. 18.
 - (g) 2007 c. 5.
 - (h) 2012 c. 5.
 - (i) 1992 c. 4.
 - (j) 2000 c. 7.

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“HMRC” means the Commissioners for Her Majesty’s Revenue and Customs;

“the Jobseekers Act” means the Jobseeker’s Act 1995(a);

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 2012;

“limited capability for work”—

(a) in the case of an employment and support allowance has the same meaning as in section 1(4) of the 2007 Act ;

(b) in the case of universal credit, has the same meaning as in section 37(1) of the 2012 Act.

“official error” means an error made by—

(a) an officer of the Department for Work and Pensions acting as such to which no person outside the Department or the Inland Revenue caused or to which no person outside the Department or the Inland Revenue materially contributed;

(b) a person employed by, and acting on behalf of, a designated authority, which no person outside that authority caused or to which no person outside that authority materially contributed,

but excluding any error which is shown by a subsequent decision of the Upper Tribunal or the court to have been an error of law;

“relevant office” means—

(a) an office of the Department for Work and Pensions, the address of which is indicated in the notice of the original decision; or

(b) in the case of a person who is authorised to use an electronic communication for any purpose under these Regulations, an address to which such communications may be sent in accordance with Schedule [2] to the Claims and Payments Regulations 2012;

“terminally ill”, in relation to a claimant, means that the claimant is suffering from a progressive disease and death in consequence of that disease can reasonably be expected within 6 months;

“the Universal Credit Regulations” means the Universal Credit Regulations 2012;

“writing” includes writing produced by electronic communications used in accordance with regulation [DA4];

Service of documents [DA3]

3.—(1) Where, under any provision of these Regulations—

(a) any notice or other document is given or sent by post to the Secretary of State, it is to be treated as having been given or sent on the day that it is received by the Secretary of State;

(b) the Secretary of State sends a notice or other document by post to a person’s last known address, it is to be treated as having been given or sent on the day that it was posted.

(2) In these Regulations, “the date of notification”, in relation to a decision of the Secretary of State, means the date on which the notification of the decision is treated as having been given or sent in accordance with—

(a) paragraph (1)(b); or

(b) where the notification is given or sent using an electronic communication, Schedule [2] to the Claims and Payments Regulations 2012.

Electronic communications [DA4]

4. Schedule [2] to the Claims and Payments Regulations 2012 (use of electronic communications) applies to the delivery of electronic communications to or by the Secretary of State for the purposes

(a) 1995 c. 18.

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of these Regulations in the same manner as it applies to the delivery of electronic communications for the purpose of the Claims and Payments Regulations 2012.

PART 2

REVISION

CHAPTER 1

REVISION ON ANY GROUNDS

Revision on any grounds [DA5]

5.—(1) Any decision under section 8 or 10 of the Act (“the original decision”) may be revised by the Secretary of State if—

- (a) the Secretary of State commences action leading to the revision within one month of the date of notification of the original decision; or
- (b) an application for a revision is made to the relevant office within—
 - (i) one month of the date of notification of the original decision (but subject to regulation [DA25]) (correction of accidental errors);
 - (ii) 14 days of the expiry of that period if a written statement of the reasons for the decision is requested under regulation [DA8] or regulation [DA37] and provided within the period specified in paragraph (i);
 - (iii) 14 days of the date on which the statement was provided if the statement was provided after the period specified in paragraph (i); or
 - (iv) such longer period as may be allowed under regulation [DA6].

(2) This regulation does not apply—

- (a) to a relevant change of circumstances since the decision had effect or, in the case of an advance award under regulation [CP32], [CP33] or [CP34] of the Claims and Payments Regulations, since the decision was made;
- (b) where it is expected that a relevant change of circumstances will occur;
- (c) where the claimant is terminally ill, unless the application for revision contains an express statement that the claimant is terminally ill, and where such an application is made, the decision may be revised.

Late application for a revision [DA6]

6.—(1) The Secretary of State may extend the time limits specified in regulation [DA5] for making an application for a revision if the first and second conditions are satisfied.

(2) The first condition is that the person wishing to apply for the revision has applied to the Secretary of State for an extension of time.

(3) The second condition is that that application—

- (a) contains particulars of the grounds on which the extension is sought;
- (b) contains sufficient details of the decision which it is sought to have revised so as to enable it to be identified; and
- (c) is made within 13 months of the latest date by which the application for revision should have been received by the Secretary of State in accordance with regulation [DA5(b)(i)] to (iii)].

(4) An application for an extension of time may be granted if the Secretary of State is satisfied that—

- (a) it is reasonable to grant it; and

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- (b) special circumstances are relevant to the application because of which it was not practicable for the application for revision to be made within the time limits specified in regulation [DA5(1)(b)(i) to (iii)].

(5) In determining whether it is reasonable to grant an application for an extension of time, 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 time limits specified in those provisions and the making of the application, the more compelling should be the special circumstances on which the application is based.

- (6) An application for an extension of time which has been refused may not be renewed.

Procedure for making an application for a revision [DA7]

7.—(1) The Secretary of State may treat an application for a supersession under section 10 of the Act as an application for a revision under section 9 of that Act.

(2) The following paragraph applies where the Secretary of State requires further evidence or information from the applicant in order to consider all the issues raised by an application for revision.

(3) The Secretary of State must notify the applicant that further evidence or information is required and that—

- (a) if the applicant provides the relevant evidence or information within one month of the date of notification or such longer period of time as the Secretary of State may allow, the decision may be revised taking that into account; or
- (b) if the applicant does not provide such evidence or information within that period, the decision may be revised on the basis of the original application.

Consideration of revision before appeal [DA8]

8.—(1) This regulation applies in a case where—

- (a) the Secretary of State gives a person written notice of a decision; and
- (b) that notice includes a statement to the effect that an appeal lies to the First-tier Tribunal in relation to the decision only if the Secretary of State has first considered an application for a revision of the decision.

(2) In a case to which this regulation applies, a person has a right of appeal under section 12(2) of the Act in relation to the decision only if the Secretary of State has considered on an application whether to revise the decision under section 9 of that Act.

(3) The notice referred to in paragraph (1) must inform the person—

- (a) of the time limit for making an application for a revision; and
- (b) that, where the notice does not include a statement of the reasons for the decision, the person may, within one month of the date of notification of the decision, request that the Secretary of State provide a written statement of the reasons for the decision.

(4) Where a written statement of the reasons for a decision is requested under paragraph (3)(b), the Secretary of State must provide that statement within 14 days of receipt of the request or as soon as practicable afterwards.

(5) Where, as the result of the application of this regulation, there is no right of appeal against a decision, the Secretary of State may treat any purported appeal as an application for a revision under section 9 of the Act.

CHAPTER 2

REVISION ON SPECIFIC GROUNDS

Revision of decisions arising from official error, mistake etc. [DA9]

9. A decision of the Secretary of State under section 8 or 10 of the Act may be revised at any time by the Secretary of State where the decision—

- (a) arose from official error; or
- (b) was made in ignorance of, or was based on a mistake as to, some material fact and as a result of that ignorance of, or mistake as to, that fact, is more advantageous to a claimant than it would otherwise have been.

Revision of decisions against which no appeal lies [DA10]

10. A decision of the Secretary of State which—

- (a) is specified in Schedule 2 to the Act;
- (b) is prescribed in regulation [DA39(2)] and Schedule [DAS4] (decisions against which no appeal lies)

may be revised at any time.

Revision of decisions where there is an appeal [DA11]

11.—(1) A decision may be revised at any time where there is an appeal against the decision to the First-tier Tribunal within the time prescribed by the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules (“the Tribunal Procedure Rules”)(a) but the appeal has not been determined.

(2) Where—

- (a) the Secretary of State makes a decision (“decision A”) under section 8 or 10 of the Act or revises such a decision under section 9(1);
- (b) the claimant appeals against decision A;
- (c) after the appeal has been made, but before it results in a decision by the First-tier Tribunal (“decision C”), the Secretary of State makes another decision (“decision B”) which—
 - (i) supersedes decision A; or
 - (ii) decides a further claim by the claimant; and
- (d) the Secretary of State would have made decision B differently if, at the time, he had been aware of decision C,

decision B may be revised at any time.

Revision in connection with an award of another benefit [DA12]

12. Where—

- (a) the Secretary of State makes a decision under section 8 or 10 of the Act to award a benefit to a claimant (“the original award”); and
- (b) an award of another relevant benefit(b) or of an increase in the rate of another relevant benefit is made to the claimant or a member of their family for a period which includes the date on which the original award took effect,

the Secretary of State may revise the original award.

(a) S.I. 2008/2685.

(b) See section 8 of the Act for the meaning of “relevant benefit”.

Revision in the case of advance awards etc. [DA12A]

13. A decision pursuant to regulation [CP32], [CP33] or [CP34] of the Claims and Payments Regulations 2012 to make an advance award of benefit may be revised under section 9 of the Act if the conditions for entitlement are found not to have been satisfied when the benefit becomes payable.

Revision in sanctions cases etc. [DA13]

14.—(1) A decision of the Secretary of State under section 8 or 10 of the Act that—

- (a) an employment and support allowance awarded to a claimant is to be reduced by virtue of section [11J] of the 2007 Act;
- (b) a jobseeker's allowance awarded to a claimant is to be reduced by virtue of section [6J or 6K] of the Jobseekers Act;
- (c) universal credit awarded to a claimant is to be reduced by virtue of [section 26 or 27] of the 2012 Act,

may be revised at any time by the Secretary of State.

(2) Where—

- (a) a restriction is imposed on a person under section 6B, 7, 8 or 9 of the Social Security Fraud Act 2001 (loss of benefit provisions) as result of the person—
 - (i) being convicted of an offence by a court; or
 - (ii) agreeing to pay a penalty as an alternative to prosecution under section 115A of the Administration Act or section 109A of the Social Security Administration (Northern Ireland) Act 1992, and
- (b) that conviction is quashed or set aside by that or any other court, or the person withdraws the agreement to pay a penalty,

a decision of the Secretary of State made under section 8(1)(a) or made under section 10 of the Act or a superseding decision under regulation [DA18] that benefit ceases to be payable or falls to be reduced under section 6B, 7, 8 or 9 of the Social Security Fraud Act 2001 (loss of benefit provisions) may be revised at any time.

Revision of decisions relating to an employment and support allowance [DA14]

15.—(1) A decision under section 8 or 10 awarding an employment and support allowance may be revised if—

- (a) the decision of the Secretary of State awarding an employment and support allowance was made on the basis that the claimant had made and was pursuing an appeal against a decision of the Secretary of State that the claimant did not have limited capability for work (“the original decision”); and
- (b) the appeal to the First-tier Tribunal in relation to the original decision is successful.

(2) A decision by the Secretary of State under section 8 or 10 of the Act awarding an employment and support allowance may be revised at any time if—

- (a) the decision—
 - (i) incorporates a determination that the conditions in regulation [ESA26] of the Employment and Support Allowance Regulations are satisfied;
 - (ii) sub-paragraph (i) was not satisfied when the claim was made; and
 - (iii) there is a period before the award which falls to be decided; or
- (b) the person's current period of limited capability for work is treated as a continuation of another such period under regulation [ESA83] of the Employment and Support Allowance Regulations where regulation [ESA7(1)(b)] of those regulations applies.

(3) Where—

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- (a) a decision to terminate a person's entitlement to an employment and support allowance is made because of section 1A of the 2007 Act (duration of contributory allowance); and
- (b) it is subsequently determined, in relation to the period of entitlement before that decision, that the person had or is treated as having had limited capability for work-related activity, the decision to terminate that entitlement may be revised.

Revision of decisions relating to a jobseeker's allowance [DA15]

16. A decision to award a jobseeker's allowance may be revised at any time if—

- (a) the Secretary of State makes a conversion decision ("decision A") (within the meaning of regulation 5(2)(b) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (deciding whether an existing award qualifies for conversion in respect of a person); or
- (b) a person's entitlement to an employment and support allowance is terminated because of a decision ("decision B") which embodies a determination that the person does not have limited capability for work; and
- (c) decision A or decision B is appealed to the First-tier Tribunal;
- (d) the person claims at any time and there is a decision to award a jobseeker's allowance; and
- (e) decision A or B is successfully appealed.

Revision in contributions cases [DA16]

17.—(1) A decision made under section 8 or 10 of the Act ("the original decision") may be revised at any time—

- (a) where, on or after the date of that decision,—
 - (i) a late paid contribution is treated as paid under 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;
 - (ii) a direction is given under regulation 6 of those Regulations (treatment of contributions paid late through ignorance or error) that a late contribution shall be treated as paid on a date which falls on or before the date on which the original decision was made; or
 - (iii) an unpaid contribution is treated as paid under 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; and
- (b) where any of paragraphs (i), (ii) or (iii) apply, either an award of benefit would have been made or the amount of benefit awarded would have been different.

(2) A decision made under section 8 or 10 of the Act may be revised at any time where, by virtue of regulation 6C (treatment of Class 3 contributions paid under section 13A of the Act) of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001, a contribution is treated as paid on a date which falls on or before the date on which the decision was made.

Revision: Personal independence payment [DA16A]

18.—(1) A decision to award a personal independence payment following the expiry of a fixed period award pursuant to regulation [CP33] of the Claims and Payments Regulations 2012 may be revised at any time under section 9 of the Act if the requirements for entitlement are found not to have been met on the renewal date.

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(2) A decision that a personal independent payment is not payable for any period may be revised at any time where—

- (a) the Secretary of State makes a determination that the person meets the condition in section 85(2) of the 2012 Act (care home residents where the costs of qualifying services are borne out of local or public funds) on incomplete evidence in accordance with regulation [DA26] ; and
- (b) after that payment decision is made, any of the costs of the qualifying services are recovered from the person for whom they are provided.

(3) A decision of the Secretary of State under section 10 of the Act made in consequence of a negative determination^(a) may be revised at any time if it contains an error to which the claimant did not materially contribute.

Revision: universal credit [DA16B]

19. A decision to apply a benefit cap to universal credit by virtue of section 96 of the 2012 Act may be revised at any time.

- (1) [A decision which adopts—
 - (a) a rent officer’s determination;
 - (b) a broad rental market area determination; or
 - (c) a local housing allowance determination,

may be revised at any time in consequence of a rent officer’s redetermination, substitute determination, substitute redetermination, amended broad rental market area determination or amended local housing allowance determination made under the [Rent Officers (Housing Benefit Functions) Order 1997 or the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997] which resulted in an increase in the amount which represents rent for the purposes of calculating the housing costs element in universal credit.]

CHAPTER 3

DATE FROM WHICH REVISION TAKES EFFECT

Effective date of a revision [DA17]

20. Where, on a revision under section 9 of the Act, the Secretary of State decides that the date from which the decision under section 8 or 10 of that Act took effect was wrong, the revision is to take effect from the date from which the decision would have taken effect had the error not been made.

PART 3

SUPERSESIONS

CHAPTER 1

GROUND FOR SUPERSESSION

(a) See section 80(6) for the meaning of “negative determination”.

Grounds for supersession [DA18]

21.—(1) The Secretary of State may, subject to regulation [DA19], make a decision under section 10 (“a superseding decision”), either on an application or on his own initiative, in the following cases and circumstances.

(2) A decision may be superseded where—

- (a) there has been a relevant change of circumstances since the decision had effect or, in the case of an advance award under regulation [CP32], [CP33] or [CP34] of the Claims and Payments Regulations 2012, since the decision was made; or
- (b) it is expected that a relevant change of circumstances will occur.

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

(4) A superseding decision may also be made where the decision to be superseded is—

- (a) a decision of the Secretary of State (other than one to which sub-paragraph [(4)(b)] refers)—
 - (i) which was wrong in law, or was made in ignorance of, or was based on a mistake as to, some material fact; and
 - (ii) an application for supersession was received, or a decision taken by the Secretary of State to act on his 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 [DA6];
- (b) a decision specified in Schedule 2 to the Act or which is prescribed in regulation [DA36(2)] and Schedule [DAS3] (decisions against which no appeal lies);
- (c) a sanction decision;
- (d) a decision (other than a jobseeker’s allowance decision) where, since the decision was made the Secretary of State has received medical evidence (whether or not as the result of a face-to-face examination) from a healthcare professional or other person approved by the Secretary of State;
- (e) a decision where, since the decision was made, the Secretary of State made a determination that the claimant is to be treated as having limited capability for work in accordance with—
 - (i) regulation [ESA16], [ESA21], [ESA22] or [ESA29] of the Employment and Support Allowance Regulations;
 - (ii) Part 5 of the Universal Credit Regulations;
- (f) a decision, subsequent to which, a late or an unpaid contribution is treated as paid in the circumstances mentioned in regulation [DA16(1)(a)(i) to (iii)];
- (g) a decision which adopts—
 - (i) a rent officer’s determination;
 - (ii) a broad rental market area determination; or
 - (iii) a local housing allowance determination,
where in consequence of a rent officer’s redetermination, substitute determination, substitute redetermination, amended broad rental market area determination or amended local housing allowance determination made under the [Rent Officers (Housing Benefit Functions) Order 1997 or the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997] the amount which represents rent for the purposes of calculating the housing costs element in universal credit is reduced;
- (h) a decision awarding a personal independence payment where there has been a negative determination;
- (i) a decision of the First-tier Tribunal or Upper Tribunal which—

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- (i) was made in ignorance of, or was based upon a mistake as to, some material fact; or
- (ii) in a case where section 26(5) applies, was made in accordance with section 26(4)(b).

(5) In this regulation—

“healthcare professional” means—

- (a) a registered medical practitioner;
- (b) a registered nurse; or
- (c) an occupational therapist or physiotherapist with a regulatory body established by an Order in Council under section 60 of the Health Act 1999^(a).

“a sanction decision” means any of the following decisions—

- (a) [a decision awarding an employment and support allowance where that allowance is to be reduced by virtue of section [11J] of the 2007 Act;
- (b) a decision awarding a jobseeker’s allowance where that award is to be reduced by virtue of section [6J or 6K] of the Jobseekers Act;
- (c) a decision awarding universal credit where that award is to be reduced by virtue of [section 26 or 27] of the 2012 Act;
- (d) a decision reducing an award under any of the provisions referred to in sub-paragraphs (a) to (c) where the reduction ceases to have effect, is terminated or is suspended; and
- (e) a decision that a benefit is payable to a claimant where that benefit ceases to be payable or falls to be reduced under section 6B, 7 or 9 of the Social Security Fraud Act 2001 (loss of benefit provisions)^(b).

Decisions which may not be superseded [DA19]

22. A decision which may be revised under section 9 of the Act may not be superseded under regulation [DA18] except where further circumstances arise in relation to that decision which are not specified that Part 2 of these Regulations but which are specified in regulation [DA18] or [DA 20(2) and (3)].

Procedure for making an application for a supersession [DA20]

23.—(1) The Secretary of State may treat an application for a revision or a notification of a change of circumstances as an application for a supersession.

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

(3) The Secretary of State must notify the applicant that further evidence or information is required and that—

- (a) if the applicant provides the relevant evidence or information within one month of the date of notification or such longer period of time as the Secretary of State may allow, the decision may be superseded taking that into account; or
- (b) if the applicant does not provide such evidence or information within that period, the decision to be superseded may be superseded on the basis of the original application.

(a) 1999, c.8.
(b) 2001 c. 11.

CHAPTER 2

EFFECTIVE DATES FOR SUPERSESIONS

Effective dates for superseding decisions: introduction [DA21]

24. This Chapter contains exceptions to the provisions of section 10(5) of the Act as to the date from which a decision under section 10 of that Act which supersedes an earlier decision is to take effect.

Effective dates: Secretary of State decisions [DA22]

25.—(1) Schedule [DAS2], which 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 decision, has effect.

(2) If the Secretary of State supersedes a decision of his which does not relate to personal independence payment—

- (a) on the grounds that the decision was wrong in law, made in ignorance of, or was based on a mistake as to, some material fact in accordance with regulation [DA18(4)(a)]; or
- (b) under regulation [DA18(4)(b)] (decisions against which no appeal lies),

the superseding decision is to take effect—

- (c) in the case of a jobseeker's allowance or an employment and support allowance, from the first day of the benefit week;
- (d) in the case of a universal credit, the first day of the assessment period,

in which the superseding decision, or where applicable, the application for supersession, was made.

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

(4) A decision made in accordance with regulation [DA18(4)(d)], following an application by the claimant, that embodies a determination that the claimant has limited capability for work-related activity is to take effect—

- (a) in the case of universal credit, and except in a case to which regulation [AW9] of the Universal Credit Regulations applies, from first day of the assessment period in which the application is made; or
- (b) in the case of an employment and support allowance, from the date of the application.

(5) In the case of an employment and support allowance, a decision made in accordance with regulation [DA18(4)(d)] 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,

which is the first such determination is to take effect in the case of an employment and support allowance from the beginning of the 14th week of entitlement.

(6) In the case of universal credit, a decision made in accordance with regulation [DA18(4)(d)] 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,

is to take effect from—

- (i) the beginning of the assessment period in which the decision or, as the case may be, the application was made; or

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- (ii) in a case to which regulation [AW9] of the Universal Credit Regulations applies, the beginning of the assessment period specified in that regulation.
- (7) In the case of a sanction decision, the superseding decision is to take effect—
- (a) in the case of an employment and support allowance, from the beginning of the period provided for in Chapter 3 of Part 7 [regulation [51], [57] and [58]] (as the case may be) of the Employment and Support Allowance Regulations;
 - (b) in the case of a jobseeker's allowance, from the beginning of the period provided for in Chapter 2 of Part 2 [regulation [SA13 or [SA14]]] (as the case may be) of the Jobseeker's Allowance Regulations;
 - (c) in the case of universal credit, as from the from the beginning of the period provided for in Chapter 1 of Part 8 [regulation [SA22] or [SA14]] (as the case may be) of the Universal Credit Regulations;
 - (d) in the case of a decision under section 6B, 7 or 9 of the Social Security Fraud Act 2001 (loss of benefit provisions), from the first day of the disqualification period prescribed for the purposes of section 6B or 7 of that Act.
- (8) Where a decision is superseded in accordance with regulation [DA18(4)(f)], the superseding decision shall take effect from the date on which the late or unpaid contribution is treated as paid.
- (9) A superseding decision made in consequence of a determination or redetermination referred to in regulation DA18(4)(g) is to take effect on the first day of the assessment period in which the determination or re-determination took place.

Effective dates: tribunal cases [DA23]

26.—(1) Where—

- (a) the Secretary of State supersedes a decision made by the First-tier Tribunal or the Upper Tribunal on the grounds of ignorance of, or mistake as to, a material fact in accordance with regulation [DA18(4)(i)(i)]), 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,

the superseding decision is to take effect—

- (i) in the case of personal independent payment, from the date on which the decision of the First-tier Tribunal or the Upper Tribunal took, or was to take, effect;
- (ii) in the case of an employment and support allowance, from the first day of the benefit week in which the Tribunal's decision took, or was to take, effect;
- (iii) in the case of universal credit, from the first day of the assessment period in which in the Tribunal's decision took, or was to, take effect.

(2) Where the Secretary of State supersedes a decision made by the First-tier Tribunal or the Upper Tribunal in accordance with regulation [DA18(4)(i)(ii)], the decision is to take effect—

- (a) in the case of personal independent payment, from the date on which the First-tier Tribunal or the Upper Tribunal's decision would have taken effect;
- (b) in the case of a jobseeker's allowance or an employment and support allowance, from the first day of the benefit week in the Tribunal's decision would have taken effect;
- (c) in the case of a universal credit, the first day of the assessment period in which in the Tribunal's decision 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).

(3) Where—

- (a) the Upper Tribunal or the court (within the meaning of section 27) determines an appeal as mentioned paragraph (1)(a) of that section (“the relevant determination”) and the Secretary of State makes a decision of the kind specified in section 27(1)(b);

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- (b) there is an appeal against the relevant determination;
- (c) after the Secretary of State's decision, payment is suspended in accordance with [DA30];
- (d) on appeal a court, within the meaning of section 27, reverses the relevant determination in whole or part,

a consequential decision by the Secretary of State under section 10 which supersedes his earlier decision under sub-paragraph (a) is to take effect from the date on which the earlier decision took effect.

(4) In this regulation, "limited capability for work determination" has the meaning given in Schedule [DAS2].

Effective dates for superseding decisions where changes notified late [DA24]

27.—(1) For the purposes of regulation [DA22], a longer period of time may be allowed for the notification of a change of circumstances in so far as it affects the effective date of the change where the following conditions are satisfied.

(2) The first condition is that an application for that purpose must be made by the claimant or a person acting on that person's behalf.

(3) The second condition is that the application must—

- (a) contain particulars of the relevant change of circumstances and the reasons for the failure to notify the change of circumstances on an earlier date; and
- (b) be made—
 - (i) within 13 months of the date the change occurred; or
 - (ii) in the case of a personal independence payment where a notification is given under paragraph 3 of Part 2 of Schedule [DAS2] (effective dates for changes in circumstances), within 13 months of the date on which the claimant first satisfied the conditions of entitlement to the particular rate of benefit.

(4) An application under this regulation must not be granted unless the Secretary of State is satisfied that—

- (a) it is reasonable to grant the application;
- (b) the change of circumstances notified by the applicant is relevant to the decision which is to be superseded; and
- (c) special circumstances are relevant to the application and as a result of those special circumstances it was not practicable for the applicant to notify the change of circumstances sooner.

(5) In determining whether it is reasonable to grant an application, no account shall be taken of the following—

- (a) 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); or
- (b) that the Upper Tribunal or a court has taken a different view of the law from that previously understood and applied.

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

PART 4

OTHER MATTERS RELATING TO DECISION MAKING

Correction of accidental errors [DA25]

28.—(1) Accidental errors in a decision of the Secretary of State or in any record of such a decision, may be corrected by the Secretary of State at any time.

(2) Such a correction is to be deemed to be part of the decision or of that record and the Secretary of State must give a written notice of the correction as soon as practicable to the person to whom the decision was sent.

(3) In calculating the time within which an application may be made under regulation [DA5] for a decision to be revised, no account is to be taken of any day falling before the day on which notice of the correction was given.

Determinations on incomplete evidence [DA26]

29.—(1) Where, for the purpose of a decision under section 8 or 10 of the Act—

- (a) a determination falls to be made by the Secretary of State concerning a matter mentioned in paragraph (2); and
- (b) it appears to the Secretary of State that he is not in possession of all of the evidence or information which is relevant for the purposes of such a determination,

he shall make the determination on the assumption that the relevant evidence or information which is not in his possession is adverse to the claimant.

(2) The matters are whether—

- (a) in relation to any person, the applicable amount falls to be reduced or disregarded to any extent by virtue of section 15 of the Jobseekers Act (persons affected by trade disputes);
- (b) for the purposes of regulation [JSA59(2) to (4)] of the Jobseeker's Allowance Regulations (relevant education), a person is by virtue of that regulation, to be treated as receiving relevant education.

(3) Where, for the purpose of a decision under section 8 or 10 of the Act—

- (a) a determination falls to be made by the Secretary of State as to what costs are to be included in the housing costs element of universal credit; and
- (b) it appears to the Secretary of State that he is not in possession of all of the evidence or information which is relevant for the purposes of the determination,

he may make the determination on the assumption that the housing costs to be included in the claimant's award are those that can be immediately determined.

(4) Where, in the case of a personal independence payment, for the purpose of making a decision under section 8 or 10 of the Act—

- (a) a determination falls to be made by the Secretary of State as to whether a person meets the condition in section 85(2) of the 2012 Act (care home residents where the costs of qualifying services are borne out of local or public funds); and
- (b) it appears to the Secretary of State that, having made reasonable enquiries, he is not in possession of all of the evidence and information which is or could be relevant for the purposes of such a determination,

he may make the determination on the basis of the information and evidence that can be immediately determined.

Determinations as to capability for work [DA27]

30.—(1) Paragraph (2) applies in relation to an employment and support allowance.

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(2) Where the Secretary of State makes a determination (including a determination made following a change of circumstances) whether a person—

- (a) has or does not have limited capability for work;
- (b) is to be treated as having or not having limited capability for work,

which is embodied in or necessary to a decision under Chapter II of Part I of the Act (decisions and appeals) or on which such a decision is based is conclusive for the purposes of any further decision to which this paragraph applies.

(3) Paragraph (2) applies to universal credit as it applies in the case of an employment and support allowance.

(4) Where, in relation to a determination for any purpose to which Part 1 of the 2007 Act or 2012 applies—

- (a) whether a person is, or is to be treated as, having or not having limited capability for work; or
- (b) is terminally ill,

that issue is to be determined by the Secretary of State, notwithstanding any other matters that fall to be determined by another authority.

Effect of alterations affecting universal credit [DA28]

31.—(1) Subject to paragraph (3), an alteration in the amount of a person's employed earnings for the purposes of an award of universal credit made in accordance with regulation [IC20] of the Universal Credit Regulations in consequence of information provided to the Secretary of State by HMRC is prescribed for the purposes of section 159D(1)(b)(vi) and (6) (effect of alterations affecting universal credit) of the Administration Act.

(2) For the purposes of this paragraph, "alteration" means an increase or decrease in such earnings.

(3) Where the person disputes the figure used in accordance with regulation [IC20] of the Universal Credit Regulations to calculate employed earnings in relation to any assessment period, the Secretary of State must—

- (a) inform the person that they may request that the Secretary of State gives a decision in relation to the amount of universal credit payable in relation to that assessment period; and
- (b) where such a decision is requested, provide it within 14 days of receiving the request or as soon as practicable afterwards.

(4) Paragraph (3) does not affect the validity of anything done under section 159D(2) or (3) of the Administration Act in relation to the person's award.

(5) A decision made in accordance with this regulation takes effect from the date on which the alteration in the recipient's award made in accordance with that section took effect.

Issues for HMRC [DA29]

32.—(1) Where, on consideration of any claim or other matter, it appears to the Secretary of State that an issue arises which, by virtue of section 8 of the Transfer Act, falls to be decided by an officer of HMRC, he shall refer that issue to HMRC.

(2) Where—

- (a) the Secretary of State has decided any claim or other matter on an assumption of facts—
 - (i) which appeared to him not to be in dispute, but
 - (ii) concerning which, had an issue arisen, that issue would have fallen, by virtue of section 8 of the Transfer Act, to be decided by an officer of HMRC; and
- (b) an application for revision, an application for supersession or an appeal is made in relation to the decision of that claim or other matter; and

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- (c) it appears to the Secretary of State on receipt of the application or appeal that such an issue arises,

he shall refer that issue to HMRC.

(3) Pending the final decision of any issue which has been referred to HMRC in accordance with paragraph (1) or (2), the Secretary of State may—

- (a) determine any other issue arising on consideration of the claim or other matter or, as the case may be, of the application,
- (b) seek a preliminary opinion of HMRC on the issue referred and decide the claim or other matter or, as the case may be, the application in accordance with that opinion on that issue; or
- (c) defer making any decision on the claim or other matter or, as the case may be, the application.

(4) On receipt by the Secretary of State of the final decision of an issue which has been referred to HMRC under paragraph (1) or (2), the Secretary of State must—

- (a) in a case to which paragraph (3)(b) applies, consider whether the decision ought to be revised under section 9 of the Act or superseded under section 10 and if so, revise it or make a further decision which supersedes it;
- (b) in a case to which paragraph (3)(a) or (c) applies, decide the claim, application or other matter in accordance with the final decision of the issue so referred.

(5) In this regulation—

- (a) “final decision” means the decision of HMRC under section 8 of the Transfer Act or the determination of any appeal in relation to that decision; and
- (b) “the Transfer Act” means the Social Security Contributions (Transfer of Functions, etc.) Act 1999(a).

PART 5

SUSPENSION

Suspension in prescribed cases [DA30]

33.—(1) The Secretary of State may suspend benefit payments, in whole or part, in the circumstances described in paragraph (3).

(2) The Secretary of State must suspend payment of a jobseeker's allowance in the circumstances prescribed in paragraph (3)(a)(i) or (ii) where the issue or one of the issues is whether a person, who has claimed a jobseeker's allowance, is or was available for employment or whether he is or was actively seeking employment.

(3) The circumstances are where—

- (a) it appears to the Secretary of State that—
 - (i) an issue arises whether the conditions for entitlement to the benefit are or were fulfilled;
 - (ii) an issue arises whether a decision relating to an award of benefit should be revised under section 9 or superseded under section 10 of the Act;
 - (iii) an issue arises whether any amount of benefit paid or payable to a person is recoverable under or by virtue of section 71, 71ZB, 71ZG or 71ZH of the Administration Act;

(a) 1999 c.2.

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- (iv) the last address notified to the Secretary of State of a person who is in receipt of benefit is not the address at which that person resides;
 - (b) an appeal is pending against a decision of the First-tier Tribunal, the Upper Tribunal or a court; or
 - (c) an appeal is pending against a decision given in a different case by the Upper Tribunal or a court and it appears to the Secretary of State that, if the appeal were to be determined in a different way, an issue would arise as to whether the award (whether the same benefit or not) in the case itself ought to be revised or superseded.
- (4) For the purposes of section 21(3)(c), where an appeal against the decision has not been brought or an application for permission to appeal against the decision has not been made but the time for doing so has not yet expired, an appeal is pending where a decision the First-tier Tribunal, the Upper Tribunal or a court has been made and the Secretary of State—
- (a) is waiting receipt of that decision; or
 - (b) in the case of a decision of the First-tier Tribunal, is considering whether to apply for a statement of reasons for the decision or has applied for such a statement and is awaiting receipt; or
 - (c) has received that decision or, if it is a decision of the First-tier Tribunal has received the statement of reasons for it, and is considering whether to appeal.
- (5) The Secretary of State must give written notice of a proposal to request a statement of the reasons for a tribunal decision, to apply for permission to appeal or to appeal as soon as reasonably practicable.

Provision of information or evidence [DA31]

- 34.**—(1) This regulation applies where the Secretary of State requires information or evidence from a person mentioned in paragraph (2) for a determination whether a decision awarding a benefit should be—
- (a) revised under section 9 of the Act; or
 - (b) superseded under section 10 of that Act.
- (2) The persons are—
- (a) a person in respect of whom benefit has been suspended in the circumstances set out in regulation [DA30(3)(a)];
 - (b) a person who has made an application for a decision of the Secretary of State to be revised or superseded;
 - (c) a person who fails to comply with the provisions of regulation [CP32] of the Claims and Payments Regulations 2012 in so far as they relate to documents, information, or facts required by the Secretary of State;
 - (d) a person whose entitlement to an employment and support allowance or universal credit is conditional on their having, or being treated as having, limited capability for work..
- (3) The Secretary of State must notify a person to whom this regulation applies of the requirements of this regulation.
- (4) A person to whom this regulation applies must either—
- (a) supply the information or evidence within—
 - (i) a period of 14 days beginning with the date on which the notification under paragraph (3) was sent to that person or such longer period as the Secretary of State allows in that notification;
 - (ii) such longer period as the person satisfies the Secretary of State is necessary in order to be able to comply with the requirement; or
 - (b) satisfy the Secretary of State within the period specified in sub-paragraph (a)(i) that either—

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- (i) the information or evidence does not exist; or
- (ii) that it is not possible for the person to obtain it.

(5) In relation to a person to whom paragraph (2)(c) refers, paragraph (4)(a)(i) has effect as if for “14 days” there were substituted “7 days”.

(6) The Secretary of State may suspend the payment of a benefit, in whole or part, to any person to whom paragraph (2)(b) to (e) applies who fails to satisfy the requirements of paragraph (4).

(7) In this regulation, “evidence” includes evidence which a person is required to provide in accordance with regulation 2 of the Social Security (Medical Evidence) Regulations 1976(a)

Resuming payments which have been suspended [DA32]

35. The Secretary of State must resume payment of a benefit which has been suspended where—

- (a) in a case to which regulation [DA30(1)(a) or regulation DA31(6)] applies, the Secretary of State is satisfied that the benefit is properly payable and that there are no outstanding issues to be resolved.
- (b) in a case to where regulation [DA30(1)(b)] applies, the Secretary of State—
 - (i) does not, in the case of a decision of the First-tier Tribunal, apply for a statement of the reasons for that decision within the period specified under Tribunal Procedure Rules;
 - (ii) does not, in the case of a decision of the First-tier Tribunal, the Upper Tribunal or a court, make an application for permission to appeal and (where permission to appeal is granted) make the appeal within the time prescribed for the making of such applications and appeals;
 - (iii) withdraws an application for permission to appeal or the appeal; or
 - (iv) is refused permission to appeal, in circumstances where it is not open to him to renew the application for permission or to make a further application for permission to appeal.
- (c) in a case to which regulation [DA30(1)(c)] applies, the Secretary of State, in relation to the decision of the Upper Tribunal or a court in a different case—
 - (i) does not make an application for permission to appeal and (where permission to appeal is granted) make the appeal within the time prescribed for the making of such applications and appeals;
 - (ii) withdraws an application for permission to appeal or the appeal;
 - (iii) is refused permission to appeal, in circumstances where it is not open to him to renew the application for permission or to make a further application for permission to appeal.

PART 6

TERMINATION

Termination for failure to furnish information or evidence [DA33]

36.—(1) This regulation applies where—

- (a) a person whose benefit has been suspended under regulation [DA30] subsequently fails to comply with a requirement for information or evidence under regulation [DA31] and more than one month has elapsed since the requirement was made]; or

(a) Text

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- (b) a person's benefit has been suspended under regulation [DA31(6)] and more than one month has elapsed since the first payment was suspended.

(2) In a case to which this regulation applies, except where entitlement ceases on an earlier date other than under this regulation, the Secretary of State must decide that the person ceases to be entitled to that benefit with effect—

- (a) from the date on which, where the benefit is not universal credit, the payment was suspended,
- (b) in the case of universal credit, from the beginning of the assessment period in which payment was suspended.

(3) This regulation does not apply where benefit has been suspended in part under regulation [DA30] or regulation [DA31].

Termination in the case of entitlement to alternative benefits [DA34]

37.—(1) This regulation applies where an award of a jobseeker's allowance or an employment and support allowance ("the existing benefit") exists in favour of a person and, if that award did not exist and a claim was made by that person or their partner for an employment and support allowance or a jobseeker's allowance ("the alternative benefit"), an award of the alternative benefit would be made on that claim.

(2) In a case to which this regulation applies, if a claim for the alternative benefit is made the Secretary of State may bring to an end the award of the existing benefit if he is satisfied that an award of the alternative benefit will be made on that claim.

(3) Where, under paragraph (2), the Secretary of State brings an award of the existing benefit to an end he must do so with effect from the day immediately preceding the first day on which an award of the alternative benefit takes effect.

(4) Where an award of a jobseeker's allowance is made in accordance with the provisions of this regulation, paragraph 4 of Schedule 1 to the Jobseekers Act (waiting days) is not to apply.

(5) Where an award of an employment and support allowance is made in accordance with the provisions of this regulation, paragraph 2 of Schedule 2 to the 2007 Act (waiting days) is not to apply.

PART 7

APPEALS

Other persons with a right of appeal [DA35]

38. In addition to the claimant, but subject to the provisions of regulation [DA8] (consideration of revision before appeal), the following persons have a right of appeal to the First-tier Tribunal under section 12(2) of the Act—

- (a) any person appointed by the Secretary of State under regulation [CP54] (persons unable to act) of the Claims and Payments Regulations to act on behalf of another who is unable to act;
- (b) any person so appointed to proceed with the claim of a person who claimed benefit and subsequently died; and
- (c) any person claiming a personal independence payment on behalf of another under section 82(5) of the 2012 Act (terminal illness); and
- (d) any other person from whom the Secretary of State determines that a benefit is recoverable under section 71, 71ZB, 71ZG or 71ZH of the Administration Act but only if their rights, duties or obligations are affected by a decision.

Appeal Decisions [DA36]

39.—(1) An appeal lies to the First-tier Tribunal against a decision set out in Schedule [DAS3] (decisions against which an appeal lies).

(2) No appeal lies to the First-tier Tribunal against a decision set out in Schedule [DAS4] (decisions against which no appeal lies).

(3) In this regulation and Schedule [DAS4], “decision” includes a determination embodied in or necessary to a decision.

Notice of a decision against which an appeal lies [DA37]

40.—(1) A person with a right of appeal under the Act or these Regulations against any decision of the Secretary of State must be—

- (a) given written notice of the decision and of the right to appeal against that decision; and
- (b) informed that, where that notice does not include a statement of the reasons for the decision, the person may, within one month of the date of notification of that decision, request that the Secretary of State provide a written statement of the reasons for that decision.

(2) If the Secretary of State is requested under paragraph (1)(b) to provide a written statement of reasons, it must be provided within 14 days of request of the request or as soon as practicable afterwards.

Appeals against decisions which have been revised [DA38]

41.—(1) An appeal against a decision of the Secretary of State does not lapse where—

- (a) the decision is revised under section 9 of the Act before the appeal is determined; and
- (b) the decision as revised is not more advantageous to the appellant than the decision before it was revised.

(2) In a case to which paragraph (1) applies, the appeal must be treated as though it had been brought against the decision as revised.

(3) The appellant has one month from the date of notification of the decision as revised to make further representations as to the appeal.

(4) After the end of that period, or within that period if the appellant consents in writing, the appeal to the First-tier Tribunal must proceed, except where—

- (a) the Secretary of State further revises the decision in light of further representations from the appellant; and
- (b) that decision is more advantageous to the appellant than the decision before it was revised.

(5) Decisions which are more advantageous for the purpose of this regulation include those where—

- (a) any benefit paid to the appellant is greater or is awarded for a longer period as a result of a decision made under regulation 9 of the Act;
- (b) it would have resulted in the amount of benefit in payment being greater but for the operation of any provision of the Administration Act or the Contributions and Benefits Act restricting or suspending the payment of, or disqualifying a claimant from receiving, some or all of the benefit;
- (c) as a result of the decision, a denial or disqualification for the receiving of any benefit, is lifted, wholly or in part;
- (d) it reverses a decision to pay benefit to a third party;
- (e) in consequence of the revised decision, benefit paid is not recoverable under section 71, 71ZB, 71ZG or 71ZH of the Administration Act or regulations made under any of those sections, or the amount so recoverable is reduced; or

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- (f) a financial gain accrued or will accrue to the appellant in consequence of the decision.

Decisions involving issues that arise on appeal in other cases [DA39]

42.—(1) For the purposes of section 25(3)(b) of the Act (prescribed cases and circumstances in which a decision may be made on a prescribed basis)—

- (a) a prescribed case is a case in which the claimant would be entitled to the benefit to which the decision relates, even if the other appeal referred to in section 25(1)(b) of the Act were decided in a way which is the most unfavourable to the claimant; and
- (b) the prescribed basis on which the Secretary of State make the decision is as if—
 - (i) the other appeal referred to in section 25(1)(b) of the Act had already been determined; and
 - (ii) that appeal had been decided in a way which is the most unfavourable to the claimant.

(2) The circumstances prescribed under section 25(5)(c) of the Act, where an appeal is treated as pending against a decision given in a different case, even though an appeal against the decision has not been brought or an application for permission to appeal against the decision has not been made but the time for doing so has not yet expired, is where the Secretary of State—

- (a) certifies in writing that he is considering appealing against that decision; and
- (b) considers that, if such an appeal were to be determined in a particular way—
 - (i) there would be no entitlement to benefit that case; or
 - (ii) the appeal would affect the decision in that case in some other way.

Appeals involving issues that arise in other cases [DA40]

43. The circumstances prescribed under section 26(6)(c) of the Act, where an appeal is treated as pending against a decision in a different case even though an appeal against the decision has not been brought or an application for permission to appeal has not been made but the time for doing so has not yet expired, is where the Secretary of State—

- (a) certifies in writing that he is considering appealing against that decision; and
- (b) considers that, if such an appeal were already determined, it would affect the determination of the undermined appeal described in section 26(1)(a) of the Act.

Date

Name
Parliamentary Under-Secretary of State
Department for Work and Pensions

SCHEDULE 1[DAS1]

Ref [DA1]

Powers Exercised in Making These Regulations

1. The following sections of the Administration Act—

- (a) section 5(1A);
- (b) section 159D(1) and (6)
- (c) section 189
- (d) section 191 .

2. The following provisions of the 1998 Act—

- (a) section 9(1), (4) and (6);
- (b) section 10(3) and (6);

- (c) section 11(1);
- (d) section 12(2), (3), (3A) and (6);
- (e) section 16(1) and Schedule 5;
- (f) section 17;
- (g) section 18(1);
- (h) section 21(1) to (3);
- (i) sections 22 to 23;
- (j) sections 25(3)(b) and (5)(c);
- (k) section 26(6)(c);
- (l) section 28(1);
- (m) section 31(2);
- (n) section 79(1) and (4) to (7);
- (o) section 84;
- (p) Schedule 2, paragraph 9;
- (q) Schedule 3, paragraphs 1, 4 and 9.

SCHEDULE 2 [DAS2]

Ref [DA18]

EFFECTIVE DATES FOR CHANGES OF CIRCUMSTANCES

PART 1

EMPLOYMENT AND SUPPORT ALLOWANCE AND A JOBSEEKER'S ALLOWANCE

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

2. 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 prescribed above, that superseding decision is to take 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.

3. Where the decision is advantageous to the claimant and was notified to a relevant office more than one month after the change occurred or after the expiry of such longer period as may be allowed under regulation [DA24], the decision is to take effect from the beginning of the benefit week in which the notification was made.

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

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

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

the superseding decision shall take effect—

- (i) from the date on which the claimant ought to have notified the change of circumstances; or
- (ii) 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.

6. In the case of a claimant who makes an application which contains an express statement that they are terminally ill, the superseding decision is to take effect from the date the claimant became terminally ill.

7. In this Part—

- (a) “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 a person has or is to be treated as having limited capability for work under Part 1 of the 2007 Act;
- (b) “limited capability for work determination” means a determination whether a person has limited capability for work by applying the test of limited capability for work or whether a person is to be treated as having limited capability for work in accordance with regulation [ESA16] of the Employment and Support Allowance Regulations.

PART 2

PERSONAL INDEPENDENCE PAYMENT

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

2. Except where paragraph 3 applies, where the superseding decision is advantageous to the claimant and was notified to a relevant office more than one month after the change occurred or after the expiry of such longer period as may be allowed under regulation [DA24], the decision is to take effect from the date of notification of the change.

3. Where—

- (a) the change is relevant to entitlement to a particular rate of personal independent payment; and
- (b) the claimant notifies a relevant office of the change no later than one month after the date on which they first satisfy the conditions of entitlement to that rate or within such longer period as may be allowed by regulation [DA24],

the superseding decision is to take effect from the date on which the claimant first satisfied those conditions.

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

SSAC version

5. Where the Secretary of State is satisfied that in relation to a decision to award a personal independence payment embodied in or necessary to which is a decision whether the person satisfies any of the conditions in section 78(1) and (2) (daily living component) or section 79(1) and (2) (mobility component) of the 2012 Act, the claimant—

- (a) failed to notify the relevant office of a change of circumstances which the Claims and Payments Regulations 2012 required that person to notify; and
- (b) could reasonably have been expected to know that the change of circumstances should have been notified,

the superseding decision shall take effect—

- (i) from the date on which the claimant ought to have notified the change of circumstances; or
- (ii) 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.

PART 3

UNIVERSAL CREDIT

1. 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 is to take effect from the first day of the assessment period in which that change occurred or is expected to occur.

2. Except in a case to which paragraph 3 below applies, where the change is advantageous to the claimant and is notified to a relevant 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 [DA24], the change is to take effect from the first day of the assessment period in which the notification was made.

3. In the case of a person to whom regulation [IC20(2)] of the Universal Credit Regulations applies where—

- (a) the relevant change of circumstances is that the person's employed earnings reduce; 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 change is to take effect from the first day of the assessment period in which that change occurred.

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

5. In the case of an applicable universal credit decision where there has been a limited capability for work determination where the Secretary of State is satisfied that, in relation to such a determination the claimant—

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

the superseding decision shall take effect—

- (i) from the first day of the assessment period in which the claimant ought to have notified the change of circumstances; or
- (ii) 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,

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from the first day of the assessment period in which the first change ought to have been notified.

6. Where—

- (a) a claimant reaches the qualifying age for state pension credit in any assessment period; and
- (b) made an advance claim for an award of state pension credit,

a change of circumstances is to take effect on the date on which the relevant change of circumstances occurs or is expected to occur.

7. A decision that a claimant is in hardship is to take effect from the beginning of the period specified in regulation [SA16] of the Universal Credit Regulations.

8. In the case of a claimant who makes an application which contains an express statement that they are terminally ill, the superseding decision is to take effect from the first day of the assessment period in which the claimant became terminally ill.

9. In this Part—

- (a) “an applicable universal credit decision” means a decision to award universal credit embodied in or necessary is a determination that a person has or is to be treated as having limited capability for work under Part 1 of the 2012 Act; and
- (b) “limited capability for work determination” means a determination whether a person has limited capability for work by applying the test of limited capability for work or whether a person is to be treated as having limited capability for work in accordance with regulation [WCA2(4)]of the Universal Credit Regulations.

PART 4

COMMON PROVISIONS

1. Where—

- (a) the change of circumstances is that a claimant has been awarded entitlement to a benefit; and
- (b) subsequent to the first day of the period to which that entitlement relates, the claimant or a member of their family becomes entitled to another relevant benefit^(a) or to an increase in the rate of another relevant benefit, the superseding decision is to take effect from—
 - (i) in the case of universal credit, the first day of the assessment period in which entitlement arises to the other benefit referred above or to an increase in the rate of that other benefit;
 - (ii) in the case of an employment and support allowance or a jobseeker’s allowance, the first day of the benefit week in which entitlement arises to the other benefit referred above or to an increase in the rate of that other benefit;
 - (iii) in the case of a personal independence payment, the date on which entitlement arises to the other relevant benefit or to an increase in the rate of that other benefit.

2. Where the relevant change of circumstances is that there has been a change in the legislation, the superseding decision is to take effect from the date on which that change in the legislation had effect.

(a) See section 8 of the Act for the meaning of “relevant benefit”.

3. Where the relevant change of circumstances is the coming into force of a change in the legislation, the superseding decision is to take effect from the date on which that change in the legislation takes effect.

SCHEDULE 3 [DAS3]

Ref [DA36]

DECISIONS AGAINST WHICH AN APPEAL LIES

1. A decision as to whether a person is entitled to a benefit for which no claim is required by virtue of regulation [CP7, CP8 or CP10(5) and (6)] of the Claims and Payments Regulations 2012.

SCHEDULE 4 [DAS4]

Ref [DA36]

DECISIONS AGAINST WHICH NO APPEAL LIES

Claims and Payments

1. The following decisions of the Secretary of State made under the Claims and Payments Regulations—

- (a) regulation [CP 15] (a decision treating a claim for maternity allowance as a claim to an employment and support allowance);
- (b) regulation [CP 21] (a decision as to the interchange of claims with claims for other benefits);
- (c) regulation [CP36] (a decision as to information and information);
- (d) regulation [CP 43] (payment by direct credit transfer);
- (e) regulation [CP 44] (time, intervals and manner of payment of universal credit);
- (f) regulation [CP45] and [CP46] (time and intervals of payment of personal independence payment);
- (g) regulation [CP 47] (intervals of payment of a personal independence payment when the person is excepted to return to hospital);
- (h) regulation [CP 48] (manner and time of payment of an employment and support allowance);
- (i) regulation [CP 49] (time and intervals of payment of a jobseeker's allowance);
- (j) regulation [CP 53] (a decision as to payments after the death);
- (k) regulation [CP 54] (appointments by the Secretary of State where the person is unable to act);
- (l) regulation [CP52] (decisions as to the extinguishment of the right to payment of sums by way of benefit where payment is not obtained within the prescribed period), except a decision under paragraph (4);
- (m) regulation [CP55] (decision as to paying another person on the beneficiary's behalf);
- (n) regulation [CP55A] (direct payment to lender of mortgage interest);
- (o) regulations 52 to 55 (mobility component of personal independence payment).

Other Jobseeker's Allowance Decisions

2. A decision—

- (a) under regulation [36] as to the day and the time a claimant is to attend;
- (b) as to the day on which the claimant is required to provide a signed declaration under regulation [37(5)] of the Jobseeker's Allowance Regulations;

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- (c) made in accordance with regulation [DA26(2)] (jobseeker's allowance determinations on incomplete evidence).

Other Decisions relating to Universal Credit

3. A decision to apply the minimum income floor in accordance with regulation [IC19] of the Universal Credit Regulations.

4. A decision under regulation [IC25] (evidence and information) of the Universal Credit Regulations 2012 as to the day, time and place a claimant is to attend for the purposes of determining whether they are in gainful self-employment or meet the conditions in regulation [IC24] (start-up period).

5. A decision in default of an election under regulation [AW10(3)] (award to include the carer element) of the Universal Credit Regulations.

6. A decision as to the amount of universal credit to which a person is entitled, where it appears to the Secretary of State that the amount is determined by the claimant's entitlement to an increased amount of universal credit in the circumstances referred to in section 160C(2) (implementation of increases in universal credit due to attainment of a particular age) of the Administration Act.

7. So much of a decision as adopts a decision of a rent officer under an order made by virtue of section 122 of the Housing Act 1996 (decisions of rent officers for the purposes of universal credit).

Suspension

8. A decision of the Secretary of State relating to the suspension of a benefit or to the payment of such a benefit which has been suspended under Part [5].

Decisions Depending on Other Cases

9. A decision of the Secretary of State under section 25 or 26 of the Act (decisions and appeals depending on other cases).

Expenses

10. A decision of the Secretary of State whether to pay travelling expenses under section 180 of the Administration Act.

Deductions

11. A decision of the Secretary of State under the Fines (Deductions from Income Support) Regulations 1992, other than a decision whether benefit is sufficient for a deduction to be made.

12. Any decision of the Secretary of State under the Community Charges (Deductions from Income Support) (No. 2) Regulations 1990, the Community Charges (Deductions from Income Support) (Scotland) Regulations 1989 or the Council Tax (Deductions from Income Support) Regulations 1993, except a decision—

- (a) whether there is an outstanding sum due of the amount sought to be deducted;
- (b) whether benefit is sufficient for the deduction to be made; and
- (c) on the priority of the deductions.

Loss of Benefit

13. In the circumstances referred to in sub-paragraph (2), a decision of the Secretary of State that a sanctionable benefit as defined in section 6A(1) of the Social Security Fraud Act 2001 is not payable (or is to be reduced) pursuant to section 6B, 7, 8 or 9 of that Act as a result of—

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- (a) a conviction for one or more benefit offences in one set of proceedings;
- (b) an agreement to pay a penalty under section 115A of the Administration Act (penalty as alternative to prosecution) or section 109A of the Social Security Administration (Northern Ireland) Act 1992 (the corresponding provision for Northern Ireland) in relation to a benefit offence;
- (c) a caution in respect of one or more benefit offences; or
- (d) a conviction for one or more benefit offences in each of two sets of proceedings, the later offence or offences being committed within the period of 5 years after the date of any of the convictions for a benefit offence in the earlier proceedings.

(2) The circumstances are that the only ground of appeal is that any of the convictions was erroneous, or that the offender (as defined in section 6B(1) of the Social Security Fraud Act 2001) did not commit the benefit offence in respect of which there has been an agreement to pay a penalty or a caution has been accepted.

Payments on Account, Overpayments and Recovery

14. In the case of a personal independence payment, a decision of the Secretary of State under the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988, except a decision of the Secretary of State under the following provisions of those Regulations—

- (a) regulation 5 as to the offsetting of a prior payment against a subsequent award;
- (b) regulation 11(1) as to whether a payment in excess of entitlement has been credited to a bank or other account;
- (c) regulation 13 as to the sums to be deducted in calculating recoverable amounts;
- (d) regulation 14(1) as to the treatment of capital to be reduced;
- (e) regulation 19 determining a claimant's protected earnings; and
- (f) regulation 24 whether a determination as to a claimant's protected earnings is revised or superseded.

15. A decision of the Secretary of State under the Social Security (Short-term Advances and Budgeting Advances) Regulations 2012, except a decision under regulation 10 of those Regulations.

16. A decision of the Secretary of State under the Social Security (Recovery of Benefit) Regulations 2012, except a decision of the Secretary of State under the following provisions of those Regulations—

- (a) regulation 3(4) as to whether a short-term advance has been overpaid;
- (b) regulation 4(3) as to the person from whom an overpayment of a housing payment is recoverable;
- (c) regulation 6 as to the treatment of capital to be reduced;
- (d) regulation 7 as to the sums to be deducted in calculating recoverable amounts;
- (e) regulation 12 to offset any short-term advance made in anticipation of an award of benefit.

Reciprocal Agreements

17. A decision of the Secretary of State made in accordance with an Order made under section 179 of the Administration Act (reciprocal agreements with countries outside the United Kingdom).

European Community Regulations

18. An authorisation given by the Secretary of State in accordance with article 22(1) or 55(1) of Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed

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persons, to self-employed persons and to members of their families moving within the European Union.

Up-rating

19. A decision of the Secretary of State relating to the up-rating of benefits under Part X of the Administration Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about decision making and appeals in the case of universal credit, personal independence payment and in the case of persons who become entitled to an employment and support allowance and a jobseeker's allowance after the introduction of universal credit.

Part 1 contains provisions relating to commencement, citation, effect and interpretation. It also contains provisions relating to the service of notices or documents and the use of electronic communications.

Part 2 and Part 3 and Schedule [DAS2] provide for the circumstances in which the Secretary of State may revise or supersede decisions, when such decisions take effect and related procedural rules. Part 2 also makes provision for persons to be required to apply for a decision to be revised before they may be permitted to appeal (regulation [DA8]).

Part 4 contains miscellaneous provisions relating to decisions of the Secretary of State. This includes correcting accidental errors, determinations on incomplete evidence and additional cases where no superseding decisions needs to be made in the case of alterations affecting universal credit (regulation [DA28]).

Part 5 of the Regulations makes provision for the suspension of benefit and Part 6 deals with termination of benefit.

Part 7 concerns appeals. It makes provision for additional persons to have a right of appeal, for decisions (additional to those listed in the Act) against which there is no right of appeal and decisions where there is a right of appeal. It also makes provision in relation to decisions and appeals involving issues that arise on appeal in other cases.

A full impact assessment has not been produced for this instrument as it has no impact on the private sector or civil society organisations.