

SCHEDULE 1

Regulation 22(14)

“SCHEDULE 2C

Regulation 7(1)(a)

Date from which change of circumstances takes effect where
a claimant is entitled to employment and support allowance

1. Subject to paragraphs 2 to 7, where the amount of an employment and support allowance payable under an award is changed by a superseding decision made on the ground of a change of circumstances, that superseding decision shall take effect from the first day of the benefit week in which the relevant change of circumstances occurs or is expected to occur.

2. In the cases set out in paragraph 3, the superseding decision shall take effect from the day on which the relevant change of circumstances occurs or is expected to occur.

3. The cases referred to in paragraph 2 are where—

- (a) entitlement ends, or is expected to end, for a reason other than that the claimant no longer satisfies the provisions of paragraph 6(1)(a) of Schedule 1 to the Welfare Reform Act;
- (b) a child or young person referred to in regulation 156(6)(d) or (g) of the Employment and Support Allowance Regulations lives, or is expected to live, with the claimant for part only of the benefit week;
- (c) a person referred to in paragraph 12 of Schedule 5 to the Employment and Support Allowance Regulations—
 - (i) ceases, or is expected to cease, to be a patient, or
 - (ii) a member of the person’s family ceases, or is expected to cease, to be a patient,in either case for a period of less than a week;
- (d) a person referred to in paragraph 3 of Schedule 5 to the Employment and Support Allowance Regulations—
 - (i) becomes a prisoner, or
 - (ii) ceases to be a prisoner;
- (e) during the currency of the claim a claimant makes a claim for a relevant social security benefit—
 - (i) the result of which is that his benefit week changes, or
 - (ii) in accordance with regulation 13 of the Claims and Payments Regulations and an award of that benefit on the relevant day for the purposes of that regulation means that his benefit week is expected to change.

4. A superseding decision made in consequence of a payment of income being treated as paid on a particular day under regulation 93 of the Employment and Support Allowance Regulations shall take effect from the day on which that payment is treated as paid.

5. Where—

- (a) it is decided upon supersession on the ground of a relevant change of circumstances or change specified in paragraphs 9 and 10 that the amount of an employment and support allowance is, or is to be, reduced; and
- (b) the Department certifies that it is impracticable for a superseding decision to take effect from the day prescribed in paragraph 9 or the preceding paragraphs (other than where paragraph 3(e) or 4 applies),

that superseding decision shall take effect—

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- (i) where the relevant change has occurred, from the first day of the benefit week following that in which that superseding decision is made, or
- (ii) 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.

6. Where—

- (a) a superseding decision (“the former supersession”) was made on the ground of a relevant change of circumstances in the cases set out in paragraph 3(b) to (e); and
- (b) that superseding decision is itself superseded by a subsequent decision because the circumstances which gave rise to the former supersession cease to apply (“the second change”),

that subsequent decision shall take effect from the date of the second change.

7. In the case of an employment and support allowance decision where there has been a limited capability for work determination, where—

- (a) the Department is satisfied that, in relation to a limited capability for work determination, the claimant or payee failed to notify an appropriate office of a change of circumstances which regulations under the Administration Act required him to notify; and
- (b) the claimant or payee, as the case may be, 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 or payee, as the case may be, 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.

8. Where—

- (a) the Department supersedes a decision made by an appeal tribunal or a Commissioner on the grounds specified in regulation 6(2)(c)(i);
- (b) the decision to be superseded was more advantageous to the claimant because of the ignorance or mistake than it would otherwise have been; and
- (c) the material fact—
 - (i) does not relate to the limited capability for work determination embodied in or necessary to the decision, or
 - (ii) relates to a limited capability for work determination embodied in or necessary to the decision and the Department is satisfied that at the time the decision was made the claimant or payee, as the case may be, knew or could reasonably have been expected to know of it and that it was relevant,

the superseding decision shall take effect from the first day of the benefit week in which the decision of the appeal tribunal or the Commissioner took effect or was to take effect.

9. Where an amount of an employment and support allowance payable under an award is changed by a superseding decision specified in paragraph 10 the superseding decision shall take effect from the day specified in paragraph 1 for a change of circumstances.

10. The following are superseding decisions for the purposes of paragraph 9—

- (a) a decision which supersedes a decision specified in regulation 6(2)(b) and (d) to (ee); and

- (b) a superseding decision which would, but for paragraph 9, take effect from a date specified in regulation 7(6), (7), (12), (13), (17D) to (17F) and (32).”