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## STATUTORY INSTRUMENTS

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# 2001 No. 1002

## The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001

### PART II

#### REVISIONS AND SUPERSESSIONS

##### Revision of decisions

4.—(1) Subject to the provisions in this regulation, a relevant decision (“the original decision”) may be revised or further revised by the relevant authority which made the decision where—

- (a) the person affected makes an application for a revision within—
  - (i) one month of the date of notification of the original decision; or
  - (ii) such extended time as the relevant authority may allow under regulation 5;
- (b) within one month of the date of notification of the original decision that authority has information which is sufficient to show that the original decision was made in ignorance of, or was based upon a mistake as to, some material fact; or
- (c) an appeal is made under paragraph 6 of Schedule 7 to the Act against the original decision within the time prescribed in regulation 18 or, in a case to which regulation 19 applies the time prescribed in that regulation, but the appeal has not been determined.

(2) An original decision may be revised or further revised by the relevant authority which made the decision, at any time by that authority, where that decision—

- (a) arose from an official error; or
- (b) was made in ignorance of, or was based upon a mistake as to, some material fact and as a result of that ignorance of or mistake as to that fact, the decision was more advantageous to the person affected than it would otherwise have been but for that ignorance or mistake.

(3) Notwithstanding the provisions in paragraph (1), a relevant decision which adopts a rent officer’s determination may be revised or further revised by the relevant authority which made the decision at any time in consequence of a rent officer’s redetermination, substitute determination or substitute redetermination made under the Rent Officers (Housing Benefit Functions) Order 1997<sup>M1</sup> or the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997<sup>M2</sup> which resulted in an increase in the amount which represents the rent for the purposes of calculating entitlement to benefit.

(4) For the purposes of calculating the period in paragraph (1)(a)(i), where a written statement is requested under regulation 10, no account shall be taken of any period beginning with the day on which the relevant authority received the request for a statement and ending with the day on which that statement was provided to that person.

(5) Where the relevant authority requires further evidence or information in order to consider all the issues raised by an application under paragraph (1)(a) (“the original application”), that authority shall notify the applicant that further evidence or information is required and, if it does so, the decision may be revised—

*Status: Point in time view as at 01/04/2002.*

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- (a) where the evidence or information so requested is provided within one month of the date of the notification or such longer period as the relevant authority may allow; or
  - (b) where such evidence or information is not provided within the period referred to in subparagraph (a), on the basis of the original application.
- (6) A relevant decision that is prescribed under paragraph 6(2)(e) or (4)(a) of Schedule 7 to the Act may be revised at any time.
- (7) A relevant decision made in respect of a claim or an award may be revised where—
- (a) a decision in respect of that claim or that award is given by an appeal tribunal, Commissioner or court on appeal against a decision (“decision A”);
  - (b) the relevant decision was made after decision A; and
  - (c) the relevant decision would have been made differently had the relevant authority been aware of that appeal decision at the time it made the relevant decision.
- [<sup>F1</sup>(7A) Where a court convicts a person of an offence, that conviction results in a restriction being imposed under section 7, 8 or 9 of the Social Security Fraud Act 2001 (loss of benefit provisions) and that conviction is quashed or set aside by that or any other court, a decision of the relevant authority made in accordance with regulation 7(2)(g) or (h) may be revised at any time.]
- (8) An application for a revision shall be made in writing and delivered, by whatever means, to the relevant authority or, in a case to which the Work-focused Interviews Regulations apply, either to the relevant authority or to an office of a designated authority which displays the ONE logo <sup>M3</sup>.
- (9) The relevant authority may treat an application for a supersession as an application for a revision.
- (10) Paragraph (1) shall not apply in respect of a change of circumstances which occurred since the decision was made or where the relevant authority has evidence or information which indicates that a relevant change of circumstances will occur.

#### Textual Amendments

- F1** Reg. 4(7A) inserted (1.4.2002) by [Social Security \(Loss of Benefit\) \(Consequential Amendments\) Regulations 2002 \(S.I. 2002/490\)](#), regs. 1(1), **9(a)**

#### Modifications etc. (not altering text)

- C1** Reg. 4(1)(a) excluded (2.7.2001) by [The Housing Benefit and Council Tax Benefit \(Decisions and Appeals\) \(Transitional and Savings\) Regulations 2001 \(S.I. 2001/1264\)](#), regs. 1(1), **2(1)**

#### Marginal Citations

- M1** [S.I. 1997/1984](#), amended by [S.I. 2000/1](#).
- M2** [S.I. 1997/1995](#), amended by [S.I. 2000/3](#).
- M3** Offices displaying the “ONE” logo are identified in a list entitled “ONE sites – a complete list” available from the Department of Social Security, WtWs, 2nd Floor, Adelphi, London WC2N 6HT.

### Late application for a revision

**5.—(1)** The time limit for making an application for a revision specified in regulation 4 may be extended where the conditions specified in the following paragraphs of this regulation are satisfied.

(2) An application for an extension of time (“the application”) shall be made in writing by the person affected by a relevant decision.

(3) The application shall—

- (a) contain particulars of the grounds on which the extension of time is sought and shall contain sufficient details of the decision which it is sought to have revised to enable that decision to be identified;
  - (b) be made within 13 months of the date of notification of the decision which it is sought to have revised; and
  - (c) be delivered, by whatever means, to the relevant authority or, in a case to which the Work-focused Interviews Regulations apply<sup>M4</sup> either to the relevant authority or to an office of a designated authority which displays the ONE logo.
- (4) The application shall not be granted unless the person affected satisfies the relevant authority that—
- (a) it is reasonable to grant the application;
  - (b) the application for revision has merit; and
  - (c) special circumstances are relevant to the application and as a result of those special circumstances it was not practicable for the application to be made within the time limit specified in regulation 4.
- (5) In determining whether it is reasonable to grant the application for an extension of time, no account shall be taken of the following—
- (a) that the person affected was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or
  - (b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied.
- (6) In determining whether it is reasonable to grant an application, the relevant authority shall have regard to the principle that the greater the amount of time that has elapsed between the expiration of the time specified in regulation 4 for applying for a revision and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.
- (7) An application under this regulation for an extension of time which has been refused may not be renewed.

#### **Marginal Citations**

**M4** The Work-focused Interviews Regulations apply to unemployed persons under the age of 60 living in an area identified in Schedule 1 to those Regulations who make a claim for income support, housing benefit, council tax benefit, bereavement benefit, incapacity benefit, severe disablement allowance or invalid care allowance.

#### **Date from which a revision takes effect**

6. Where, on a revision under paragraph 3 of Schedule 7 to the Act, the relevant authority decides that the date from which a relevant decision (“the original decision”) took effect was erroneous, the decision under that paragraph shall take effect on the date the original decision would have taken effect had the error not been made.

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*Status: Point in time view as at 01/04/2002.*

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### **Decisions superseding earlier decisions**

7.—(1) Subject to the provisions in this regulation, the prescribed cases and circumstances in which a decision may be made under paragraph 4 of Schedule 7 to the Act (decisions superseding earlier decisions) are as set out in paragraph (2).

(2) The appropriate relevant authority may make a decision under paragraph 4 of Schedule 7 to the Act upon its own initiative or on an application made for the purpose on the basis that the decision to be superseded is a decision—

- (a) in respect of which—
  - (i) there has been a change of circumstances; or
  - (ii) it is anticipated that a change of circumstances will occur;
- (b) which is erroneous in point of law or made in ignorance of, or was based upon a mistake as to, some material fact provided that the decision—
  - (i) cannot be revised on the basis of that error, ignorance or mistake; and
  - (ii) is not a decision prescribed in regulations under paragraph 6(2)(e) or (4)(a) of Schedule 7 to the Act;
- (c) which adopts a rent officer's determination and in consequence of a rent officer's redetermination, substitute determination or substitute redetermination made under the Rent Officers (Housing Benefit Functions) Order 1997 or the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 the amount which represents the rent for the purposes of calculating entitlement to benefit is reduced;
- (d) of an appeal tribunal or of a Commissioner that was made in ignorance of, or was based upon a mistake as to, some material fact;
- (e) which is prescribed in regulations made under paragraph 6(2)(e) or (4)(a) of Schedule 7 to the Act;
- (f) in respect of a person who—
  - (i) is subsequently the subject of a separate decision or determination as to whether or not he took part in a work-focused interview; or
  - (ii) had been held not to have taken part in a work-focused interview, but who had, subsequent to the decision to be superseded, attained the age of 60 or ceased to reside in an area in which there is a requirement to take part in a work-focused interview.
- [<sup>F2</sup>(g) which is affected by a decision of the Secretary of State that a sanctionable benefit payable to a claimant ceases to be payable or falls to be reduced under section 7 or 9 of the Social Security Fraud Act 2001 and for this purpose "sanctionable benefit" has the same meaning as in section 7 of that Act; or
- (h) which is affected by a decision of the Secretary of State that a joint-claim jobseeker's allowance ceases to be payable or falls to be reduced under section 8 of the Social Security Fraud Act 2001.]

(3) The reference to a change of circumstances in paragraph (2)(a) shall include changes of circumstances specified in regulation 75(2) of the Housing Benefit Regulations<sup>M5</sup> or regulation 65(2) of the Council Tax Benefit Regulations<sup>M6</sup> (changes of circumstances which do not need to be notified).

(4) A decision which may be revised under regulation 4 may not be superseded under this regulation except where—

- (a) circumstances arise in which the appropriate relevant authority may revise that decision under regulation 4; and

- (b) further circumstances arise in relation to that decision which are not specified in regulation 4 but are specified in paragraph (2) or (5).
- (5) Where the appropriate relevant authority requires further evidence or information from the applicant in order to consider all the issues raised by an application under paragraph (2) (“the original application”), the authority shall notify the applicant that further evidence or information is required and, if it does so, the decision may be superseded—
- (a) where the applicant provides further relevant evidence or information within one month of the date of notification or such longer period of time as the appropriate relevant authority may allow; or
- (b) where the applicant does not provide such evidence or information within the time allowed under sub-paragraph (a), on the basis of the original application.
- (6) The appropriate relevant authority may treat an application for a revision or a notification of a change of circumstances as an application for a supersession.
- (7) An application under this regulation shall be made in writing and delivered, by whatever means, to the relevant authority or, in a case to which the Work-focused Interviews Regulations apply, either to the relevant authority or to an office of a designated authority which displays the ONE logo.

#### Textual Amendments

- F2** Reg. 7(2)(g)(h) added (1.4.2002) by [Social Security \(Loss of Benefit\) \(Consequential Amendments\) Regulations 2002 \(S.I. 2002/490\)](#), regs. 1(1), **9(b)**

#### Marginal Citations

- M5** Relevant amending instruments are [S.I. 1990/546](#) and 1996/1510.
- M6** Relevant amending instrument is [S.I. 1996/1510](#).

### Date from which a decision superseding an earlier decision takes effect

**8.—(1)** A decision made by virtue of paragraph 4 of Schedule 7 to the Act (“the superseding decision”) shall take effect on a date other than the date on which it is made or the date on which the application was made in the cases or circumstances prescribed in paragraphs (2) to (7).

(2) Subject to paragraphs (3) and (6), where the superseding decision is made on the ground that there has been, or it is anticipated that there will be, a change of circumstances, the superseding decision shall take effect on the date on which the change of circumstances is to take effect in accordance with regulations 68 and 68A of the Housing Benefit Regulations<sup>M7</sup> or, as the case may be, regulations 59 and 59A of the Council Tax Benefit Regulations<sup>M8</sup>.

(3) For the purposes of determining the date on which a superseding decision is to take effect in accordance with paragraph (2), in a case where—

- (a) the change of circumstances is a change of circumstances that is required by regulations to be notified, other than any change of circumstances to which regulation 68A of the Housing Benefit Regulations or regulation 59A of the Council Tax Benefit Regulations applies; and
- (b) that change of circumstances is notified more than one month after it occurs, or such longer period as may be allowed under regulation 9; and
- (c) the superseding decision is advantageous to the claimant,

the date of notification of the change of circumstances shall be treated as the date on which the change of circumstances occurred.

*Status: Point in time view as at 01/04/2002.*

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(4) Where the superseding decision is advantageous to the claimant and is made on the ground that the superseded decision was made in ignorance of, or was based upon a mistake as to, some material fact, the superseding decision shall take effect from the first day of the benefit week in which—

- (a) except where sub-paragraph (b) applies, the appropriate relevant authority first has information which is sufficient to show that the superseded decision was made in ignorance of, or was based upon a mistake as to, some material fact;
- (b) where the superseding decision was made pursuant to an application, that application was received by the appropriate relevant authority.

(5) For the purpose of paragraphs (3)(c) and (4), the reference to the decision which is advantageous to the claimant includes a decision specified in regulation 17(2).

(6) A superseding decision made in consequence of a rent officer's redetermination, substitute determination or substitute redetermination under the Rent Officers (Housing Benefit Functions) Order 1997 or the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 shall take effect on the date on which a change of circumstances is to take effect in accordance with regulation 68 of the Housing Benefit Regulations as if that determination or redetermination were the relevant change of circumstances.

(7) Where a decision is made superseding a decision of an appeal tribunal or of a Commissioner ("the appeal decision") which—

- (a) was made in ignorance of, or was based upon a mistake as to, some material fact; and
- (b) was more advantageous to the claimant than it would otherwise have been but for that ignorance or mistake,

that superseding decision shall take effect on the date on which the appeal decision took or was to take effect.

(8) A superseding decision made as a consequence of a determination which is a relevant determination for the purposes of paragraph 18 of Schedule 7 to the Act (restrictions on entitlement to benefit in certain cases of error) shall take effect from the date of the relevant determination.

[<sup>F3</sup>(9) A decision to which regulation 7(2)(g) or (h) applies shall take effect from the first day of the disqualification period prescribed for the purposes of section 7 of the Social Security Fraud Act 2001.]

#### Textual Amendments

- F3** Reg. 8(9) added (1.4.2002) by [Social Security \(Loss of Benefit\) \(Consequential Amendments\) Regulations 2002 \(S.I. 2002/490\)](#), regs. 1(1), **9(c)**

#### Marginal Citations

- M7** Regulation 68 was amended by [S.I. 1990/546](#), 1992/432, 1994/578, 1995/511, 1999/2734 and 2000/897. Regulation 68A was inserted by [S.I. 2000/897](#) and amended by [S.I. 2000/1926](#).
- M8** Regulation 59 was amended by [S.I. 1993/688](#), 1994/578, 1995/511 and 2000/897. Regulation 59A was inserted by [S.I. 2000/897](#) and amended by [S.I. 2000/1926](#).

### Effective date for late notification of change of circumstances

9.—(1) For the purposes of making a decision under paragraph 4 of Schedule 7 to the Act 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 conditions specified in the following provisions of this regulation are satisfied.

- (2) An application for the purposes of paragraph (1) shall—

- (a) include particulars of the change of circumstances and the reasons for the failure to notify the change of circumstances on an earlier date; and
  - (b) be made within 13 months of the date on which the change occurred.
- (3) An application for the purposes of paragraph (1) shall not be granted unless the appropriate relevant authority 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 and as a result of those special circumstances it was not practicable for the applicant to notify the change of circumstances within one month of the change occurring.
- (4) In determining whether it is reasonable to grant the application, the appropriate relevant authority shall have regard to the principle that the greater the amount of time that has elapsed between the date one month after the change of circumstances occurred and the date the application for a superseding decision is made, the more compelling should be the special circumstances on which the application is based.
- (5) In determining whether it is reasonable to grant an application, no account shall be taken of the following—
- (a) that the applicant was unaware of, or misunderstood, the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or
  - (b) that a Commissioner 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.

#### **Notice of a decision against which an appeal lies**

**10.**—(1) A person affected who has a right of appeal against a relevant decision shall be given written notice—

- (a) of the decision against which the appeal lies;
- (b) in a case where that notice does not include a statement of reasons for the decision, that he may request the relevant authority to provide him with a written statement of the reasons for that decision; and
- (c) of his right of appeal against that decision.

(2) Where a written statement of the reasons for the decision is not included in the written notice of the decision and is requested under paragraph (1)(b), the relevant authority shall, so far as practicable, provide that statement within 14 days.

**Status:**

Point in time view as at 01/04/2002.

**Changes to legislation:**

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