
STATUTORY INSTRUMENTS

2013 No. 381

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

PART 7

APPEALS

Other persons with a right of appeal

49. In addition to the claimant, but subject to regulation 7 (consideration of revision before appeal), the following persons have the right of appeal under section 12(2) of the 1998 Act—

- (a) any person appointed by the Secretary of State under regulation 56 (payments on death) of the Claims and Payments Regulations 2013 to proceed with the claim of a person who claimed benefit and subsequently died;
- (b) any person appointed by the Secretary of State under regulation 57 (persons unable to act) of those Regulations to act on behalf of another;
- (c) any person claiming personal independence payment on behalf of another under section 82(5) of the 2012 Act (terminal illness); and
- (d) in the case of a decision under section 71ZB, 71ZG or 71ZH of the Administration Act to recover any amount paid by way of benefit, any person from whom such an amount is recoverable, but only if their rights, duties or obligations are affected by that decision.

Decisions which may or may not be appealed

50.—(1) An appeal lies against a decision set out in Schedule 2 (decisions against which an appeal lies).

(2) No appeal lies against a decision set out in Schedule 3 (decisions against which no appeal lies).

(3) In paragraph (2) and Schedule 3, “decision” includes a determination embodied in or necessary to a decision.

Notice of a decision against which an appeal lies

51.—(1) This regulation applies in the case of a person (“P”) who has a right of appeal under the 1998 Act or these Regulations.

(2) The Secretary of State must—

- (a) give P written notice of the decision and of the right to appeal against that decision; and
- (b) inform P that, where that notice does not include a statement of the reasons for the decision, P 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.

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

Appeals against decisions which have been revised

52.—(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 1998 Act before the appeal is decided; and
- (b) the decision of the Secretary of State 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 Secretary of State must inform the appellant that they may, within one month of the date of notification of the decision as revised, 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) the amount of any benefit payable to the appellant is greater, or any benefit is awarded for a longer period, as a result of the decision;
- (b) the decision 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 receipt of any benefit is lifted, wholly or in part;
- (d) the decision reverses a decision to pay benefit to a third party instead of to the appellant;
- (e) in consequence of the decision, benefit paid is not recoverable under section 71ZB, 71ZG or 71ZH of the Administration Act(1) or regulations made under any of those sections, or the amount so recoverable is reduced; or
- (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

53.—(1) For the purposes of section 25(3)(b) of the 1998 Act (prescribed cases and circumstances in which a decision may be made on a prescribed basis)(2)—

- (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 1998 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 may make the decision is as if—
 - (i) the other appeal referred to in section 25(1)(b) of the 1998 Act had already been decided; and

(1) Sections 71ZB, 71ZG and 71ZH were inserted by section 105 of the 2012 Act.

(2) Section 25 was amended by S.I. 2008/2833.

(ii) that appeal had been decided in a way which is the most unfavourable to the claimant.

(2) For the purposes of section 25(5)(c) of the 1998 Act (appeal 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 against the decision has not been made but the time for doing so has not yet expired), the prescribed circumstances are that the Secretary of State—

- (a) certifies in writing that the Secretary of State is considering appealing against that decision; and
- (b) considers that, if such an appeal were to be decided in a particular way—
 - (i) there would be no entitlement to benefit in 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

54. For the purposes of section 26(6)(c) of the 1998 Act (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) the prescribed circumstances are that the Secretary of State—

- (a) certifies in writing that the Secretary of State is considering appealing against that decision; and
- (b) considers that, if such an appeal were already decided, it would affect the determination of the appeal referred to in section 26(1)(a) of the 1998 Act.

Consequential amendments

55.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999(3) are amended as follows.

(2) In the heading to regulation 1 (citation, commencement and interpretation) for “and interpretation”, substitute “, application and interpretation”.

(3) After regulation 1(2), insert—

“(2A) In so far as these Regulations relate to—

- (a) an employment and support allowance payable under the Welfare Reform Act, they apply only in so far as the Act has effect apart from the amendments made by Schedule 3 and Part 1 of Schedule 14 to the Welfare Reform Act 2012 (“the 2012 Act”) (removing references to an income-related allowance);
- (b) a jobseeker’s allowance payable under the Jobseekers Act 1995, they apply only in so far as the Act has effect apart from the amendments made by Part 1 of Schedule 14 to the 2012 Act (removing references to an income-based allowance).

(2B) These Regulations do not apply to universal credit (within the meaning of Part 1 of the Welfare Reform Act 2012) or personal independence payment (within the meaning of Part 4 of that Act).”.