

SCHEDULE 1

EFFECTIVE DATES FOR SUPERSEDING DECISIONS MADE ON THE GROUND OF A CHANGE OF CIRCUMSTANCES

PART 1

EMPLOYMENT AND SUPPORT ALLOWANCE AND JOBSEEKER'S ALLOWANCE

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

2. Paragraph 1 does not apply where—

- (a) the superseding decision is not advantageous to the claimant; and
- (b) there has been an employment and support allowance decision where the Secretary of State is satisfied that, in relation to a limited capability for work determination, the claimant—
 - (i) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify; and
 - (ii) could not reasonably have been expected to know that the change of circumstances should have been notified.

3. 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 set out in paragraph 1, that superseding decision takes 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.

4. Where entitlement ends, or is expected to end, as the result of a change of circumstances, the superseding decision takes effect from the day on which the relevant change of circumstances occurs or is expected to occur.

5. In the case of an employment and support allowance where a person who is subject to—

- (a) section 45A or 47 of the Mental Health Act 1983 (power of higher courts to direct hospital admission; removal to hospital of persons serving sentences of imprisonment etc.)(1);
- (b) section 59A (hospital direction) of the Criminal Procedure (Scotland) Act 1995(2); or
- (c) section 136 (transfer of prisoners for treatment for mental disorder) of the Mental Health (Care and Treatment) (Scotland) Act 2003(3),

(1) 1983. c. 20. Section 45A was inserted by section 46 of the Crime (Sentences) Act 1997 (c.43). Section 45A was amended by paragraph 39 of Schedule 37 to the Criminal Justice Act 2003 (c.44) and sections 4 and 10 of, and paragraph 9 of Schedule 1 and Schedule 11 to, the Mental Health Act 2007 (c.12). Section 47 was amended by section 4 of, and paragraph 10 of Schedule 1 and Schedule 11 to, the Mental Health Act 2007, paragraphs 97 and 98 of Schedule 16 to the Armed Forces Act 2006 (c.52), paragraph 18 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c.28) and Schedule 6 to the Crime (Sentences) Act 1997. S.I. 1999/672 transferred functions under sections 45A and 47 to the National Assembly for Wales.

(2) 1995 c. 46. Section 59A was inserted by section 6(1) of the Crime and Punishment (Scotland) Act 1997 (c.48) and substituted by paragraph 8(6) of Schedule 4 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

(3) 2003 asp 13.

Status: This is the original version (as it was originally made).

ceases, or is expected to cease, to be detained in a hospital (as defined in the Act, or the Act of the Scottish Parliament, to which the person is subject) for a period of less than a week, a superseding decision related to that person's departure from, or return to, hospital takes effect from the day on which that change of circumstances occurs or is expected to occur.

6. Where the superseding decision is advantageous to the claimant and the change of circumstances was notified to an appropriate office more than one month after the change occurred or after the expiry of such longer period as may be allowed under regulation 36 (effective dates for superseding decisions where changes notified late), the superseding decision takes effect from the beginning of the benefit week in which the notification was given.

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

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

the superseding decision takes effect in accordance with paragraph 8.

8. The superseding decision takes effect—

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

9. In the case of a claimant who makes an application for a supersession which contains an express statement that they are terminally ill, the superseding decision takes effect from the date on which the claimant became terminally ill.

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

11. In this Part—

“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 the claimant has, or is to be treated as having, limited capability for work;

“week” means a period of 7 days, beginning with midnight between Saturday and Sunday.