

## Social Security Act 1998

### Section 10 Decisions superseding earlier decisions

(1) Subject to subsections (3) and (4) and section 36(3) below, the following, namely—

(a) any decision of the Secretary of State under section 8 above or this section, whether as originally made or as revised under section 9 above; and

(b) any decision under this Chapter of an appeal tribunal or a Commissioner,

may be superseded by a decision made by the Secretary of State, either on an application made for the purpose or on his own initiative.

(2) In making a decision under subsection (1) above, the Secretary of State need not consider any issue that is not raised by the application or, as the case may be, did not cause him to act on his own initiative.

(3) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this section.

(4) Subsection (1)(a) above does not apply in the case of a decision of the Secretary of State under subsection (1)(c) of section 8 above where the relevant enactment within the meaning of that section is section 121C or 121D of the Administration Act (liability of directors etc. for company's contributions).

(5) Subject to subsection (6) and section 27 below, a decision under this section shall take effect as from the date on which it is made or, where applicable, the date on which the application was made.

(6) Regulations may provide that, in prescribed cases or circumstances, a decision under this section shall take effect as from such other date as may be prescribed.

## Social Security Act 1998

### Section 12 Appeal to appeal tribunal

(1) This section applies to any decision of the Secretary of State under section 8 or 10 above (whether as originally made or as revised under section 9 above) which—

(a) is made on a claim for, or on an award of, a relevant benefit, and does not fall within Schedule 2 to this Act;

(b) is made otherwise than on such a claim or award, and falls within Schedule 3 to this Act; or

(c) relates to statutory sick pay or statutory maternity pay.

(2) In the case of a decision to which this section applies—

(a) if it relates to statutory sick pay or statutory maternity pay, the employee and employer concerned shall each have a right to appeal to an appeal tribunal; and

(b) in any other case, the claimant and such other person as may be prescribed shall have a right to do so;

but nothing in this subsection shall confer a right of appeal in relation to a prescribed decision, or a prescribed determination embodied in or necessary to a decision.

(3) Regulations under subsection (2) above shall not prescribe any decision or determination that relates to the conditions of entitlement to a relevant benefit for which a claim has been validly made or for which no claim is required.

(4) Where the Secretary of State has determined that any amount is recoverable under or by virtue of section 71 or 74 of the Administration Act, any person from whom he has determined that it is recoverable shall have the same right of appeal to an appeal tribunal as a claimant.

(5) In any case where—

(a) the Secretary of State has made a decision in relation to a claim under Part V of the Contributions and Benefits Act; and

(b) the entitlement to benefit under that Part of that Act of any person other than the claimant is or may be, under Part VI of Schedule 7 to that Act, affected by that decision,

that other person shall have the same right of appeal to an appeal tribunal as the claimant.

(6) A person with a right of appeal under this section shall be given such notice of a decision to which this section applies and of that right as may be prescribed.

(7) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought.

(8) In deciding an appeal under this section, an appeal tribunal—

(a) need not consider any issue that is not raised by the appeal; and

(b) shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.

(9) The reference in subsection (1) above to a decision under section 10 above is a reference to a decision superseding any such decision as is mentioned in paragraph (a) or (b) of subsection (1) of that section.

**Social Security (Incapacity for Work) (General) Regulations 1995**

**Person may be called for a medical examination**

8.—(1) Where a question arises as to whether a person is capable of work, he may be called by or on behalf of a doctor approved by the Secretary of State to attend for a medical examination.

(2) Subject to paragraph (3) where a person fails without good cause to attend for or submit himself to such an examination, he shall be treated as capable of work.

(3) A person shall not be treated as capable of work under paragraph (2) unless written notice of the time and place for the examination was sent to him at least 7 days beforehand, or unless he agreed to accept a shorter period of notice.

## Social Security (Incapacity for Work) (General) Regulations 1995

### [ Incapacity under the personal capability assessment

25. – (1) For the purposes of section 171 C (2) (b) of the Contributions and Benefits Act a person is incapable of work in accordance with the personal capability assessment when one or more of the descriptors in Part I or Part II apply to him if, by adding the points listed in column (3) of the Schedule against the descriptor, he obtains a total score of at least –

- (a) 15 points in respect of descriptors specified in Part I; or
- (b) 10 points in respect of descriptors specified in Part II; or
- (c) 15 points in respect of descriptors specified in Parts I and II.]

(2) – omitted.

(3) in determining the extent of a person's incapacity to perform any activity listed in part I or Part II, it shall be a condition that the persons' incapacity arises –

- (a) in respect of a disability listed in Part I, from a specific bodily disease or disablement, or
- (b) in respect of a disability listed in Part II, from a specific mental disease or disablement.

### Calculation of scores

26. – (1) in determining a person's score for the purposes of regulations 25 (1) (c) –

(a) [an aggregate score] of between 6 and 9 points in respect of those descriptors specified in Part II shall be treated as a score of 9 points when added to a score in respect of descriptors specified in Part I:

(b) [an aggregate score] of less than 6 points in respect of [the descriptors] specified in Part II shall be disregarded.

(2) In determining a person's score where descriptors specified for the activities 1 and 2 in Part I apply to him, only one descriptor shall be counted and that shall be the descriptor with the highest score in respect of which either activity which applies to him.

(3) In determining a person's score in respect of descriptors specified in Part I where more than one descriptor specified for any activity applies to him, only one descriptor shall be counted and that shall be the descriptor with the highest score in respect of which either activity which applies to him.

(4) In determining a person's score in respect of descriptors specified in Part II the score in respect of each descriptor which applies to him shall be counted.

**Social Security (Incapacity for Work) (General) Regulations 1995**

**SCHEDULE 1  
DISABILITIES WHICH MAY MAKE A PERSON INCAPABLE OF WORK**

Part 1

PHYSICAL DISABILITIES

(1)		(2)	(3)
Activity		Descriptor	Points
1. Walking on level ground with a walking stick or other aid if such aid is normally used.	1(a)	Cannot walk at all.	15
	(b)	Cannot walk more than a few steps without stopping or severe discomfort.	15
	(c)	Cannot walk more than 50 metres without stopping or severe discomfort.	15
	(d)	Cannot walk more than 200 metres without stopping or severe discomfort.	7
	(e)	Cannot walk more than 400 metres without stopping or severe discomfort.	3
	(f)	Cannot walk more than 800 metres without stopping or severe discomfort.	0
	(g)	No walking problem.	0
2. Walking up and down stairs.	2(a)	Cannot walk up and down one stair.	15
	(b)	Cannot walk up and down a flight of 12 stairs.	15
	(c)	Cannot walk up and down a flight of 12 stairs without holding on and taking a rest.	7
	(d)	Cannot walk up and down a flight of 12 stairs without holding on.	3
	(e)	Can only walk up and down a flight of 12 stairs if he goes sideways or one step at a time.	3
	(f)	No problem in walking up and down stairs.	0
3. Sitting in an upright chair with a back, but no arms.	3(a)	Cannot sit comfortably.	15
	(b)	Cannot sit comfortably for more than 10 minutes without having to move from the chair.	15
	(c)	Cannot sit comfortably for more than 30 minutes without having to move from the chair.	7
	(d)	Cannot sit comfortably for more than 1 hour without having to move from the chair.	3
	(e)	Cannot sit comfortably for more than 2 hours without having to move from the chair.	0

(1)		(2)	(3)
Activity		Descriptor	Points
	(f)	No problem with sitting.	0
4. Standing without the support of another person or the use of an aid except a walking stick.	4(a)	Cannot stand unassisted.	15
	(b)	Cannot stand for more than a minute before needing to sit down.	15
	(c)	Cannot stand for more than 10 minutes before needing to sit down.	15
	(d)	Cannot stand for more than 30 minutes before needing to sit down.	7
	(e)	Cannot stand for more than 10 minutes before needing to move around.	7
	(f)	Cannot stand for more than 30 minutes before needing to move around.	3
	(g)	No problem standing.	0
5. Rising from sitting in an upright chair with a back but no arms without the help of another person.	5(a)	Cannot rise from sitting to standing.	15
	(b)	Cannot rise from sitting to standing without holding on to something.	7
	(c)	Sometimes cannot rise from sitting to standing without holding on to something.	3
	(d)	No problem with rising from sitting to standing.	0
6. Bending and kneeling.	6(a)	Cannot bend to touch his knees and straighten up again.	15
	(b)	Cannot bend or kneel as if to pick up a piece of paper from the floor and straighten up again.	15
	(c)	Sometimes cannot bend or kneel as if to pick up a piece of paper from the floor and straighten up again.	3
	(d)	No problem with bending or kneeling.	0
7. Manual dexterity.	7(a)	Cannot turn the pages of a book with either hand.	15
	(b)	Cannot turn a tap or control knobs on a cooker with either hand.	15
	(c)	Cannot pick up a coin which is 2.5 centimetres or less in diameter with either hand.	15
	(d)	Cannot use a pen or pencil.	15
	(e)	Cannot tie a bow in laces or string.	10
	(f)	Cannot turn a tap or control knobs on a cooker with one hand.	6
	(g)	Cannot pick up a coin which is 2.5 centimetres or less in diameter with one hand.	6
	(h)	No problem with manual dexterity.	0

(1)		(2)	(3)
Activity		Descriptor	Points
8. Lifting and carrying.	8(a)	Cannot pick up a paper-back book with either hand.	15
	(b)	Cannot pick up and carry a 0.5 litre carton of milk with either hand.	15
	(c)	Cannot pick up and pour from a full saucepan or kettle of 1.7 litre capacity with either hand.	15
	(d)	Cannot pick up and carry a 2.5 kilogramme bag of potatoes with either hand.	8
	(e)	Cannot pick up and carry a 0.5 litre carton of milk with one hand.	6
	(f)	Cannot pick up and carry a 2.5 kilogramme bag of potatoes with one hand.	0
	(g)	No problem with lifting and carrying.	0
9. Reaching.	9(a)	Cannot raise either arm to put something in the top pocket of a coat or jacket.	15
	(b)	Cannot raise either arm to his head to put on a hat.	15
	(c)	Cannot put either arm behind back to put on a coat or jacket.	15
	(d)	Cannot raise either arm above his head to reach for something.	15
	(e)	Cannot raise one arm to his head to put on a hat.	6
	(f)	Cannot raise one arm above his head to reach for something.	0
	(g)	No problem with reaching.	0
10. Speech.	10(a)	Cannot speak.	15
	(b)	Speech cannot be understood by family or friends.	15
	(c)	Speech cannot be understood by strangers.	15
	(d)	Strangers have great difficulty understanding speech.	10
	(e)	Strangers have some difficulty understanding speech.	8
	(f)	No problems with speech.	0
11. Hearing with a hearing aid or other aid if normally worn.	11(a)	Cannot hear sounds at all.	15
	(b)	Cannot hear well enough to follow a television programme with the volume turned up.	15
	(c)	Cannot hear well enough to understand someone talking in a loud voice in a quiet room.	15
	(d)	Cannot hear well enough to understand someone talking in a normal voice in a quiet room.	10
	(e)	Cannot hear well enough to understand someone talking in a normal voice on a busy street.	8
	(f)	No problem with hearing.	0
12. Vision in normal	12(a)	Cannot tell light from dark.	15

(1)		(2)	(3)
Activity		Descriptor	Points
daylight or bright electric light with glasses or other aid to vision if such aid is normally worn.			
	(b)	Cannot see the shape of furniture in the room.	15
	(c)	Cannot see well enough to read 16 point print at a distance greater than 20 centimetres.	15
	(d)	Cannot see well enough to recognise a friend across the room.	12
	(e)	Cannot see well enough to recognise a friend across the road.	8
	(f)	No problem with vision.	0
13. Continence.	13(a)	No voluntary control over bowels.	15
	(b)	No voluntary control over bladder.	15
	(c)	Loses control of bowels at least once a week.	15
	(d)	Loses control of bowels at least once a month.	15
	(e)	Loses control of bowels occasionally.	9
	(f)	Loses control of bladder at least once a month.	3
	(g)	Loses control of bladder occasionally.	0
	(h)	No problem with continence.	0
14. Remaining conscious other than for normal periods of sleep.	14(a)	Has an involuntary episode of lost or altered consciousness at least once a day.	15
	(b)	Has an involuntary episode of lost or altered consciousness at least once a week.	15
	(c)	Has an involuntary episode of lost or altered consciousness at least once a month.	15
	(d)	Has had an involuntary episode of lost or altered consciousness at least twice in the 6 months before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	12
	(e)	Has had an involuntary episode of lost or altered consciousness once in the 6 months before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	8
	(f)	Has had an involuntary episode of lost or altered consciousness once in the 3 years before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	0
	(g)	Has no problems with consciousness.	0



## Social Security and Child Support (Decisions and Appeals) Regulations 1999

### 6 Supersession of decisions

(1) Subject to the following provisions of this regulation, for the purposes of section 10, the cases and circumstances in which a decision may be superseded under that section are set out in paragraphs (2) to (4).

(2) A decision under section 10 may be made on the Secretary of State's [or the Board's] own initiative or on an application made for the purpose on the basis that the decision to be superseded--

(a) is one in respect of which--

(i) there has been a relevant change of circumstances since the decision [had effect] [or, in the case of an advance award under regulation 13, 13A or 13C of the Claims and Payments Regulations [or regulation 146 of the Employment and Support Allowance Regulations], since the decision was made]; or

(ii) it is anticipated that a relevant change of circumstances will occur;

(b) is a decision of the Secretary of State [or the Board or an officer of the Board] other than a decision to which sub-paragraph (d) refers and--

(i) the decision was erroneous in point of law, or it was made in ignorance of, or was based upon a mistake as to, some material fact; and

(ii) an application for a supersession was received by the Secretary of State [or the Board], or the decision by the Secretary of State [or the Board] to act on his [or their] own initiative was taken, more than one month after the date of notification of the decision which is to be superseded or after the expiry of such longer period of time as may have been allowed under regulation 4;

[(c) is a decision of [the First-tier Tribunal or of the Upper Tribunal]--

(i) that was made in ignorance of, or was based upon a mistake as to, some material fact; or

(ii) that was made in accordance with section 26(4)(b), in a case where section 26(5) applies;]

(d) is a decision which is specified in Schedule 2 to the Act or is prescribed in regulation 27 (decisions against which no appeal lies); . . .

[(e) is a decision where--

(i) the claimant has been awarded entitlement to a relevant benefit; and

(ii) [subsequent to the first day of the period to which that entitlement relates], the claimant or a member of his family becomes entitled to . . . another relevant benefit or an increase in the rate of another relevant benefit;]

[(ee) is an original award within the meaning of regulation 3(7ZA) and sub-paragraphs (a) to (c) and (d)(ii) of regulation 3(7ZA) apply but not sub-paragraph (d)(i);]

[(f) is a decision that a jobseeker's allowance is payable to a claimant where that allowance ceases to be payable by virtue of section 19(1) of the Jobseekers Act [[or ceases to be payable or is reduced by virtue of section 20A(5) of that Act];]

(g) is an incapacity benefit decision where there has been an incapacity determination (whether before or after the decision) and where, since the decision was made, the Secretary of State has received medical evidence following an examination in accordance with regulation 8 of the Social Security (Incapacity for Work) (General) Regulations 1995 from a [health care professional] referred to in paragraph (1) of that regulation] [; . . .

(h) is one 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;

(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 [or, in the case of a partner who was required to take part in a work-focused interview [in accordance with regulations made under section 2AA of the Administration Act, ceased to be a partner for the purposes of those regulations or is no longer a partner to whom the requirement to take part in a work-focused interview under those regulations applies]]];

[(i) is a decision of the Secretary of State that a jobseeker's allowance[, income support or an employment and support allowance] is payable to a claimant where the Secretary of State is notified that a court has made a determination which results in a restriction being imposed pursuant to section 62 or 63 of the Child Support, Pensions and Social Security Act 2000];

[(j) is a decision of the Secretary of State that a sanctionable benefit is payable to a claimant where that benefit 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;

(k) is a decision of the Secretary of State that a joint-claim jobseeker's allowance is payable where that allowance ceases to be payable or falls to be reduced under section 8 of the Social Security Fraud Act 2001]

[(l) is a relevant decision for the purposes of section 6 of the State Pension Credit Act and--

(i) on making that decision, the Secretary of State specified a period as the assessed income period; and

(ii) that period has ended or is about to end];

[(m) is a relevant decision for the purposes of section 6 of the State Pension Credit Act in a case where--

(i) the information and evidence required under regulation 32(6)(a) of the Claims and Payments Regulations has not been provided in accordance with the time limits set out in regulation 32(6)(c) of those Regulations;

(ii) the Secretary of State was prevented from specifying a new assessed income period under regulation 10(1) of the State Pension Credit Regulations; and

(iii) the information and evidence required under regulation 32(6)(a) of the Claims and Payments Regulations has since been provided];

[(n) is a decision by [the First-tier Tribunal] confirming a decision by the Secretary of State terminating a claimant's entitlement to income support because he no longer falls within the category of person specified in paragraph 7 of Schedule 1B to the Income Support

Regulations (persons incapable of work) and a further [decision of the First-tier Tribunal] subsequently determines that he is incapable of work];

[(o) is a decision that a person is entitled to state pension credit and--

(i) the person or his partner makes, or is treated as having made, an election for a lump sum in accordance with--

(aa) paragraph A1 or 3C of Schedule 5 to the Contributions and Benefits Act;

(bb) paragraph 1 of Schedule 5A to that Act; or, as the case may be,

(cc) paragraph 12 or 17 of Schedule 1 to the Graduated Retirement Benefit Regulations;

or

(ii) such a lump sum is repaid in consequence of an application to change an election for a lump sum in accordance with regulation 5 of the Deferral of Retirement Pensions etc Regulations or, as the case may be, paragraph 20D of Schedule 1 to the Graduated Retirement Benefit Regulations];

[(p) is a decision awarding employment and support allowance where there has been a failure determination;

(q) is a decision made in consequence of a failure determination where the reduction ceases to have effect under of regulation 64 of the Employment and Support Allowance Regulations;

(r) is an employment and support allowance decision where, since the decision was made, the Secretary of State has received medical evidence from a health care professional approved by the Secretary of State for the purposes of regulation 23 or 38 of the Employment and Support Allowance Regulations]

[(s) is a decision where on or after the date on which the decision was made, a late or unpaid contribution is treated as paid under--

(i) 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) regulation 6 of those Regulations (treatment of contributions paid late through ignorance or error) on a date which falls on or before the date on which the original decision was made; or

(iii) 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].

[rest of regulation omitted]

## Social Security and Child Support (Decisions and Appeals) Regulations 1999

### 31 Time within which an appeal is to be brought

(1) Where an appeal lies from a decision of the Secretary of State to an appeal tribunal, except in the case of a decision of the Secretary of State under section 3 or 3A of the Vaccine Damage Payments Act, the time within which that appeal must be brought is, subject to the following provisions of this Part -

(a) within one month of the date of notification of the decision against which the appeal is brought; or

(b) where a written statement of reasons for that decision is requested, within 14 days of the expiry of the period specified in sub-paragraph (a).

(2) Where the Secretary of State -

(a) revises, or following an application for a revision under regulation 3(1) or (3) does not revise, a decision under section 16 of the Child Support Act or under section 9, or

(b) supersedes a decision under section 17 of the Child Support Act or under section 10,

the period of one month specified in paragraph (1) shall begin to run from the date of notification of the revision or supersession of the decision, or following an application for a revision under regulation 3(1) or (3), the date the Secretary of State issues a notice that he is not revising the decision.

(3) An appeal against a certificate of recoverable benefits must be brought -

(a) not later than one month after the date a person making a compensation payment discharges his liability under section 6 of the 1997 Act;

(b) where the certificate is reviewed by the Secretary of State in accordance with regulations made under section 11(5)(c) of the 1997 Act, not later than one month after the date the certificate is confirmed, or, as the case may be, a fresh certificate is issued; or

(c) where an agreement is made under which an earlier compensation payment is treated as having been made in final discharge of a claim made by or in respect of an injured person and arising out of the accident, injury or disease, not later than one month after the date of that agreement.

(4) Where a dispute arises as to whether an appeal was brought within the time limit specified in this regulation, the dispute shall be referred to, and be determined by, a legally qualified panel member.

(5) The time limit specified in this regulation for bringing an appeal may be extended in accordance with regulation 32.

## Social Security and Child Support (Decisions and Appeals) Regulations 1999

### 32 Late appeals

(1) The time within which an appeal must be brought may be extended where the conditions specified in paragraphs (2) to (8) are satisfied, but no appeal shall in any event be brought more than one year after the expiration of the last day for appealing under regulation 31.

(2) An application for an extension of time under this regulation shall be made in accordance with regulation 33 and shall be determined by a legally qualified panel member.

(3) An application under this regulation shall contain particulars of the grounds on which the extension of time is sought, including details of any relevant special circumstances for the purposes of paragraph (4).

(4) An application for an extension of time shall not be granted unless the panel member is satisfied that -

a) if the application is granted there are reasonable prospects that the appeal will be successful;

(b) it is in the interests of justice for the application to be granted.

(5) For the purposes of paragraph (4) it is not in the interests of justice to grant an application unless the panel member is satisfied that -

(a) the special circumstances specified in paragraph (6) are relevant to the application; or

(b) some other special circumstances exist which are wholly exceptional and 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 31.

(6) For the purposes of paragraph (5)(a), the special circumstances are that -

(a) the applicant or a spouse or dependant of the applicant has died or suffered serious illness;

(b) the applicant is not resident in the United Kingdom; or

(c) normal postal services were disrupted.

(7) In determining whether it is in the interests of justice to grant the application, the panel member shall have regard to the principle that the greater the amount of time that has elapsed between the expiration of the time within which the appeal is to be brought under regulation 31 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.

(8) In determining whether it is in the interests of justice to grant an application, no account shall be taken of the following -

(a) that the applicant or any person acting for him 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.

(9) An application under this regulation for an extension of time which has been refused may not be renewed.

(10) The panel member who determines an application under this regulation shall record a summary of his decision in such written form as has been approved by the President.

(11) As soon as practicable after the decision is made a copy of the decision shall be sent or given to every party to the proceedings.