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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 221**

The Universal Credit, Personal Independence  
Payment, Jobseeker's Allowance and Employment  
and Support Allowance (Decisions and  
Appeals) Regulations (Northern Ireland) 2016

PART 4

Other matters relating to decision-making

**Correction of accidental errors**

**38.**—(1) An accidental error in a decision of the Department, or in any record of such a decision, may be corrected by the Department at any time.

(2) Such a correction is to be treated as part of that decision or of that record.

(3) The Department must give written notice of the correction as soon as practicable to the person to whom the decision was given.

(4) In calculating the time within which an application may be made under regulation 5 (revision on any grounds) for a decision to be revised, no account is to be taken of any day falling before the day on which notice of the correction was given.

**Determinations on incomplete evidence**

**39.**—(1) The following provisions of this regulation apply for the purposes of a decision under Article 9 or 11 of the 1998 Order.

(2) Where—

(a) a determination falls to be made by the Department concerning the matter mentioned in paragraph (3); and

(b) it appears to the Department that it is not in possession of all of the information or evidence which is relevant for the purposes of the determination,

the Department must make the determination on the assumption that the relevant information or evidence which is not in the Department's possession is adverse to the claimant.

(3) The matter is whether, for the purposes of regulation 44 of the Jobseeker's Allowance Regulations (relevant education) a person is by virtue of that regulation to be treated as receiving relevant education.

(4) Where—

(a) a determination falls to be made by the Department as to what costs are to be included in the claimant's award of universal credit under Article 16 of the 2015 Order (housing costs); and

- (b) it appears to the Department that it is not in possession of all of the information or evidence which is relevant for the purposes of the determination,

the Department may make the determination on the assumption that the costs to be included in the claimant's award under that Article are those that the Department is able to determine using such information or evidence as is in its possession.

- (5) Where, in the case of personal independence payment—
  - (a) a determination falls to be made by the Department as to whether a person meets the condition in Article 90(2) of the 2015 Order (care home residents); and
  - (b) it appears to the Department that, having made reasonable enquiries, it is not in possession of all of the information or evidence which is or could be relevant for the purposes of the determination,

the Department may make the determination using such information or evidence as is in its possession.

### **Determinations as to limited capability for work**

**40.**—(1) Where, in relation to an award of an employment and support allowance, the Department makes a determination (including a determination made following a change of circumstances) whether a person—

- (a) has or does not have limited capability for work; or
- (b) is to be treated as having or not having limited capability for work,

which is embodied in or necessary to a decision under Chapter II of Part II of the 1998 Order (social security decisions and appeals) or on which such a decision is based, that determination is to be conclusive for the purposes of any further decision relating to such an allowance.

(2) Paragraph (1) applies to determinations made in relation to universal credit as it applies in the case of an employment and support allowance.

(3) Where, in relation to any purpose for which Part 1 of the 2007 Act (employment and support allowance) or Part 2 of the 2015 Order (universal credit) applies, a determination falls to be made as to whether a person—

- (a) has, or is to be treated as, having or not having, limited capability for work; or
- (b) is terminally ill,

that issue is to be determined by the Department, notwithstanding the fact that any other matter falls to be determined by another authority.

### **Effect of alterations affecting universal credit**

**41.**—(1) Subject to paragraph (3), an alteration in the amount of a person's employed earnings (within the meaning of regulation 55(1) of the Universal Credit Regulations) made in accordance with Chapter 2 of Part 6 (earned income) of those Regulations in consequence of information provided to the Department by HMRC is prescribed for the purposes of section 139D(1)(b)(vi) of the Administration Act(1).

(2) For the purposes of this regulation "alteration" means an increase or decrease in such earnings.

(3) Where the person disputes the figure used in accordance with regulation 55 of the Universal Credit Regulations (employed earnings) to calculate employed earnings in relation to any assessment period, the Department must—

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(1) Section 139D is inserted by paragraph 19 of Schedule 2 to the Welfare Reform (Northern Ireland) Order 2015.

- (a) inform the person that the person may request that the Department gives a decision in relation to the amount of universal credit payable in relation to that assessment period; and
- (b) where such a decision is requested, give it within 14 days of receiving the request or as soon as practicable afterwards.

(4) Paragraph (3) does not affect the validity of anything done under section 139D(2) or (3) of the Administration Act in relation to the person's award.

(5) A decision made in accordance with paragraph (3) takes effect on the date on which the alteration under section 139D(2) or (3) of the Administration Act came into force in relation to the person.

### Issues for HMRC

**42.**—(1) Where, on consideration of any claim or other matter, it appears to the Department that an issue arises which, by virtue of Article 7 of the Transfer of Functions Order(2), falls to be decided by an officer of HMRC, it must refer the issue to HMRC.

(2) Where—

- (a) the Department has decided any claim or other matter on an assumption of facts—
  - (i) which appeared to it not to be in dispute, but
  - (ii) concerning which, had an issue arisen, that issue would have fallen, by virtue of Article 7 of the Transfer of Functions Order, to be decided by HMRC;
- (b) an application for a revision or supersession is made, or an appeal is brought, in relation to that claim or other matter; and
- (c) it appears to the Department on receipt of that application or appeal that such an issue arises,

the Department must refer that issue to HMRC.

(3) Pending the final decision of any issue which has been referred to HMRC in accordance with paragraph (1) or (2), the Department may—

- (a) determine any other issue arising on consideration of the claim, application or other matter;
- (b) seek a preliminary opinion from HMRC on the issue referred and decide the claim, application or other matter in accordance with that opinion; or
- (c) defer making any decision on the claim, application or other matter.

(4) On receipt by the Department of the final decision of an issue which has been referred to HMRC under paragraph (1) or (2), it must—

- (a) in a case where the Department made a decision under paragraph (3)(b), decide whether to revise the decision under Article 10 of the 1998 Order or to supersede it under Article 11 of that Order;
- (b) in a case to which paragraph (3)(a) or (c) applies, decide the claim, application or other matter in accordance with the final decision of the issue so referred.

(5) In this regulation—

“final decision” means the decision of HMRC under Article 7 of the Transfer of Functions Order or the determination of any appeal in relation to that decision; and

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(2) Article 7 was amended by sections 80(6) and 81(5) of, and Part VIII(2) of Schedule 9 to, the Child Support, Pensions and Social Security Act 2000 (c. 19) and Article 10(2) and (3) of the Employment (Northern Ireland) Order 2002 ([S.I.2002/2836 \(N.I. 2\)](#)).

“the Transfer of Functions Order” means the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999<sup>(3)</sup>.

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<sup>(3)</sup> S.I. 1999/671.