
STATUTORY RULES OF NORTHERN IRELAND

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 2

Revision

CHAPTER 1

Revision on any grounds

Revision on any grounds

5.—(1) Any decision of the Department under Article 9 or 11 of the 1998 Order⁽¹⁾ (“the original decision”) may be revised by the Department if—

- (a) the Department commences action leading to the revision within one month of the date of notification of the original decision; or
- (b) an application for a revision is received by the Department at an appropriate office within—
 - (i) one month of the date of notification of the original decision (but subject to regulation 38(4) (correction of accidental errors)),
 - (ii) 14 days of the expiry of that period if a written statement of the reasons for the decision is requested under regulation 7 (consideration of revision before appeal) or 50 (notice of a decision against which an appeal lies) and that statement is provided within the period specified in head (i),
 - (iii) 14 days of the date on which that statement was provided if the statement was requested within the period specified in head (i) but was provided after the expiry of that period, or
 - (iv) such longer period as may be allowed under regulation 6 (late application for a revision).

(2) Paragraph (1) does not apply—

(1) Article 9 was amended by paragraph 16 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999, Part VII of Schedule 13 to the Welfare Reform and Pensions Act 1999, Schedule 6 to the Tax Credits Act 2002, paragraph 6 of Schedule 1 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 10(3) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and is amended by paragraph 36 of Schedule 2 and paragraph 37 of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015 and Article 11 was amended by paragraph 17 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999.

- (a) in respect of a relevant change of circumstances which occurred since the decision had effect or, in the case of an advance award under regulation 31, 32 or 33 of the Claims and Payments Regulations, since the decision was made;
- (b) where the Department has information or evidence which indicates that a relevant change of circumstances will occur;
- (c) in respect of a decision which relates to an employment and support allowance or personal independence payment where the claimant is terminally ill, unless the application for a revision contains an express statement that the claimant is terminally ill.

Late application for a revision

6.—(1) The Department may extend the time limit specified in regulation 5(1) (revision on any grounds) for making an application for a revision if all of the following conditions are met.

(2) The first condition is that the person wishing to apply for the revision has applied to the Department at an appropriate office for an extension of time.

(3) The second condition is that the application—

- (a) explains why the extension is sought;
- (b) contains sufficient details of the decision to which the application relates to enable it to be identified; and
- (c) is made within 13 months of the latest date by which the application for revision should have been received by the Department in accordance with regulation 5(1)(b)(i) to (iii).

(4) The third condition is that the Department is satisfied that it is reasonable to grant the extension.

(5) The fourth condition is that the Department is satisfied that due to special circumstances it was not practicable for the application for revision to be made within the time limit specified in regulation 5(1)(b)(i) to (iii).

(6) In determining whether it is reasonable to grant an extension of time, the Department must have regard to the principle that the greater the amount of time that has elapsed between the end of the time limit specified in regulation 5(1)(b)(i) to (iii) and the date of the application, the more compelling should be the special circumstances on which the application is based.

(7) An application under this regulation which has been refused may not be renewed.

Consideration of revision before appeal

7.—(1) This regulation applies in a case where—

- (a) the Department gives a person written notice of a decision under Article 9 or 11 of the 1998 Order (whether as originally made or as revised under Article 10 of that Order); and
- (b) that notice includes a statement to the effect that there is a right of appeal in relation to the decision only if the Department has considered an application for a revision of the decision.

(2) In a case to which this regulation applies, a person has a right of appeal under Article 13(2) of the 1998 Order⁽²⁾ in relation to the decision only if the Department has considered on an application whether to revise the decision under Article 10 of that Order.

(3) The notice referred to in paragraph (1) must inform the person—

(2) Article 13(2) was substituted by paragraph 19(2) of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and amended by Article 107(2) of the Welfare Reform (Northern Ireland) Order 2015.

- (a) of the time limit under regulation 5(1) (revision on any grounds) for making an application for a revision; and
 - (b) that, where the notice does not include a statement of the reasons for the decision (“written reasons”), the person may, within one month of the date of notification of the decision, request that the Department provide written reasons.
- (4) Where written reasons are requested under paragraph (3)(b), the Department must provide that statement within 14 days of receipt of the request or as soon as practicable afterwards.
- (5) Where, as the result of paragraph (2), there is no right of appeal against a decision, the Department may treat any purported appeal as an application for a revision under Article 10 of the 1998 Order.

CHAPTER 2

Revision on specific grounds

Introduction

8. A decision of the Department under Article 9 or 11 of the 1998 Order may be revised at any time by the Department in any of the cases and circumstances set out in this Chapter.

Official error, mistake etc.

- 9.** A decision may be revised where the decision—
- (a) arose from official error; or
 - (b) was made in ignorance of, or was based on a mistake as to, some material fact and as a result is more advantageous to a claimant than it would otherwise have been.

Decisions against which no appeal lies

- 10.** A decision may be revised where the decision is one which is—
- (a) specified in Schedule 2 to the 1998 Order⁽³⁾ (decisions against which no appeal lies); or
 - (b) prescribed by regulation 49(2) (decisions which may or may not be appealed).

Decisions where there is an appeal

11.—(1) A decision may be revised where there is an appeal against the decision within the time prescribed by the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999⁽⁴⁾ but the appeal has not been decided.

- (2) Where—
- (a) the Department makes a decision under Article 9 or 11 of the 1998 Order or such a decision is revised under Article 10(1) of that Order (“decision A”);
 - (b) the claimant appeals against decision A;
 - (c) after the appeal has been made, but before it results in a decision by the appeal tribunal, the Department makes another decision (“decision B”) which—
 - (i) supersedes decision A, or

(3) Schedule 2 was amended by paragraph 61 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), paragraph 10 of Schedule 1 to the Social Security Act (Northern Ireland) 2002 (c. 10 (N.I.)), paragraph 11 of Schedule 1 and Schedule 3 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 10(8) of Schedule 3 and Schedule 8 to the Welfare Reform Act (Northern Ireland) 2007 and Article 2(2) of S.R. 2002 No. 321 and is amended by paragraph 41 of Schedule 2 and paragraph 37 of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015.

(4) S.R. 1999 No. 162.

- (ii) decides a further claim by the claimant;
 - (d) after the making of the decision B, the appeal tribunal makes a decision on the appeal (“decision C”); and
 - (e) the Department would have made decision B differently if, at the time, it had been aware of decision C,
- the Department may revise decision B.

Award of another benefit

12. Where—

- (a) the Department makes a decision to award a benefit to a claimant (“the original award”); and
- (b) an award of another relevant benefit or of an increase in the rate of another relevant benefit is made to the claimant or, in the case of universal credit, to a member of the claimant’s family, for a period which includes the date on which the original award took effect,

the Department may revise the original award.

Advance awards etc.

13. A decision pursuant to regulation 31, 32 or 33 of the Claims and Payments Regulations to make an advance award of benefit may be revised if the conditions for entitlement are found not to have been satisfied at the start of the period for which the claim is treated as having been made.

Sanctions cases etc.

14.—(1) The following decisions may be revised—

- (a) a decision that the amount of an employment and support allowance is to be reduced by virtue of section 11J(1) of the 2007 Act⁽⁵⁾ (sanctions);
- (b) a decision that the amount of a jobseeker’s allowance is to be reduced by virtue of Article 8J(1) or 8K(1) of the Jobseekers Order⁽⁶⁾ (higher-level and other sanctions);
- (c) a decision that the amount of universal credit is to be reduced by virtue of Article 31(1) or 32(1) of the 2015 Order (higher-level and other sanctions).

(2) A decision under section 5B, 6 or 8 of the Fraud Act (the loss of benefit provisions) that benefit ceases to be payable or falls to be reduced as a result of the person—

- (a) being convicted of an offence; or
- (b) agreeing to pay a penalty as an alternative to prosecution,

may be revised where that conviction is quashed or set aside by a court or where the person withdraws the agreement to pay the penalty.

Other decisions relating to an employment and support allowance

15.—(1) A decision awarding an employment and support allowance may be revised in any of the following circumstances.

- (2) The first circumstance is where—

⁽⁵⁾ Section 11J is inserted by Article 63(2) of the Welfare Reform (Northern Ireland) Order 2015.

⁽⁶⁾ Sections 8J and 8K are inserted by Article 55(4) of the Welfare Reform (Northern Ireland) Order 2015.

- (a) the decision was made on the basis that the claimant had made and was pursuing an appeal against a decision of the Department that the claimant did not have limited capability for work (“the original decision”); and
 - (b) the appeal in relation to the original decision is successful.
- (3) The second circumstance is where—
- (a) the decision incorporates a determination that the conditions in regulation 26(2) of the Employment and Support Allowance Regulations (conditions for treating claimant as having limited capability for work until a determination about limited capability for work has been made) are satisfied;
 - (b) those conditions were not satisfied when the claim was made; and
 - (c) a decision falls to be made concerning entitlement to that award in respect of a period before the date on which the award took effect.
- (4) The third circumstance is where the claimant’s current period of limited capability for work is treated as a continuation of another such period under regulation 86 of the Employment and Support Allowance Regulations (linking period).
- (5) The fourth circumstance is where the decision—
- (a) immediately follows the last day of a period for which the claimant was treated as capable of work or as not having limited capability for work under regulation 55ZA of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996⁽⁷⁾ or regulation 46 of the Jobseeker’s Allowance Regulations (extended periods of sickness) and that period lasted 13 weeks; and
 - (b) is not a decision which embodies a determination that the person is treated as having limited capability for work under regulation 26 of the Employment and Support Allowance Regulations (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made).
- (6) A decision terminating a person’s entitlement to an employment and support allowance may be revised where—
- (a) that entitlement was terminated because of section 1A of the 2007 Act⁽⁸⁾ (duration of contributory allowance); and
 - (b) it is subsequently determined, in relation to the period of entitlement before that decision, that the person had or is treated as having had limited capability for work-related activity.

Other decisions relating to a jobseeker’s allowance

16.—(1) A decision awarding a jobseeker’s allowance may be revised in any of the following circumstances.

- (2) The first circumstance is where—
- (a) the Department makes a conversion decision (within the meaning of regulation 5(2)(b) of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010⁽⁹⁾ (deciding whether an existing award qualifies for conversion) in respect of a person;
 - (b) the person appeals against that decision;
 - (c) before or after the appeal is made, there is a decision to award a jobseeker’s allowance as the result of a claim being made by that person; and

⁽⁷⁾ S.R. 1996 No. 198, regulation 55ZA was inserted by regulation 2(5) of S.R. 2015 No. 138.

⁽⁸⁾ Section 1A is inserted by Article 57(1) of the Welfare Reform (Northern Ireland) Order 2015.

⁽⁹⁾ S.R. 2010 No. 312.

- (d) the appeal in relation to the conversion decision referred to in sub-paragraph (a) is successful.
- (3) The second circumstance is where—
 - (a) a person’s entitlement to an employment and support allowance is terminated because of a decision which embodies a determination that the person does not have limited capability for work;
 - (b) the person appeals against that decision;
 - (c) before or after that appeal is made, there is a decision to award a jobseeker’s allowance as the result of a claim being made by that person; and
 - (d) the appeal in relation to the termination decision referred to in sub-paragraph (a) is successful.

Contributions cases

- 17.—**(1) A decision (“the original decision”) may be revised where—
- (a) on or after the date of the original decision—
 - (i) a late paid contribution is treated under regulation 5 of the Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations (Northern Ireland) 2001(**10**) (“the Crediting Regulations”) (treatment for the purpose of any contributory benefit of late paid primary Class 1 contributions where there was no consent, connivance or negligence by the primary contributor) as paid on a date which falls on or before the date on which the original decision was made,
 - (ii) a direction is given under regulation 6 of the Crediting Regulations(**11**) (treatment for the purpose of any contributory benefit of contributions under the Act paid late through ignorance or error) that a late paid contribution is to be treated as paid on a date which falls on or before the date on which the original decision was made, or
 - (iii) an unpaid contribution is treated under regulation 60 of the Social Security (Contributions) Regulations 2001(**12**) (treatment for the purpose of contributory benefits of unpaid contributions where no consent, connivance or negligence by the primary contributor) as paid on a date which falls on or before the date on which the original decision was made; and
 - (b) either an award of benefit would have been made or the amount of benefit awarded would have been different.
- (2) A decision may be revised where, by virtue of regulation 6C of the Crediting Regulations(**13**) (treatment of Class 3 contributions paid under section 13A of the Act), a contribution is treated as paid on a date which falls on or before the date on which the decision was made.

Other decisions relating to personal independence payment

- 18.—**(1) Where the Department makes a decision awarding personal independence payment which takes effect immediately after the expiry of an existing award under regulation 32(3) of the Claims and Payments Regulations (advance claim for and award of personal independence payment), that decision may be revised if the requirements for entitlement are found not to have been met on the date on which the decision takes effect.

(10) S.R. 2001 No. 102; regulation 5 was amended by regulation 20(2) of S.I. 2002/2366 and regulation 28(4) of S.R. 2008 No. 286.

(11) Regulation 6 was amended by regulation 20(3) of S.I. 2002/2366.

(12) S.I. 2001/1004; regulation 60 was amended by regulation 11 of S.I. 2002/2366 and regulation 5 of S.I. 2007/1056.

(13) Regulation 6C was inserted by regulation 3(3) of S.R. 2009 No. 105.

(2) A decision that personal independence payment is not payable to a person for any period may be revised where—

- (a) the Department determines that the person meets the condition in Article 90(2) of the 2015 Order (care home residents) on incomplete evidence in accordance with regulation 39(5); and
- (b) after that determination is made, any of the costs of the qualifying services are recovered from the person for whom they are provided.

(3) A decision of the Department made in consequence of a negative determination may be revised at any time if it contains an error to which the claimant did not materially contribute.

Other decisions relating to universal credit

19.—(1) Where the Department has reduced the amount of an award of universal credit as a consequence of regulation 81 of the Universal Credit Regulations, that decision may be revised.

(2) A decision in relation to universal credit which adopts a determination made under the Universal Credit Housing Costs (Executive Determinations) Regulations (Northern Ireland) 2016⁽¹⁴⁾ may be revised at any time in consequence of a redetermination made by the Northern Ireland Housing Executive under those Regulations which resulted in an increase in the amount which represents rent for the purposes of calculating the housing costs element in universal credit.

CHAPTER 3

Procedure and effective date

Procedure for making an application for a revision

20.—(1) The Department may treat an application for a supersession under Article 11 of the 1998 Order as an application for a revision under Article 10 of that Order.

(2) The following paragraph applies where the Department, in order to consider all the issues raised by the application, requires further information or evidence from a person who has applied for a revision (“the applicant”).

(3) The Department must notify the applicant that—

- (a) the further information or evidence specified in the notification is required;
- (b) if the applicant provides the relevant information or evidence within one month of the date of notification or such longer period as the Department may allow, the decision may be revised taking such information or evidence into account; and
- (c) if the applicant does not provide such information or evidence within that period, the decision may be revised using such information or evidence as was submitted with the application for revision.

Effective date of a revision

21. Where, on a revision under Article 10 of the 1998 Order, the Department decides that the date from which the decision under Article 9 or 11 of that Order (“the original decision”) took effect was wrong, the revision takes effect from the date from which the original decision would have taken effect had the error not been made.

⁽¹⁴⁾ S.R. 2016 No. 222.