
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Universal Credit Regulations (Northern Ireland) 2016 by substituting a new regulation 62. They implement the judgment of the Court of Appeal in *Secretary of State v Johnson & others* [2020] EWCA Civ 778.

Regulation 62 makes provision for the way information, in particular information reported to HMRC by Real Time Information (“RTI”) Employers is to be used in calculating a person’s earned income. The substituted regulation broadly replicates the previous regulation with additional provision allowing for reallocation of payments to different assessment periods.

Paragraph (1) restates the requirement for claimants to provide such information at such time as the Department requires, except where paragraph (2) applies. Paragraph (2) also restates the requirement for the calculation of employed earnings to be based on the RTI received by the Department from HMRC (or to be taken as nil the absence of such information) in each assessment period. These paragraphs have the effect that RTI is taken at face value unless certain exceptions apply. The requirement for claimants to provide information is therefore mainly applicable to cases where those exceptions apply or where the claimant is self-employed or does not have a RTI employer.

The exceptions are set out in paragraph (3). The first is where the Department considers that the information provided by the employer is unlikely to be sufficiently accurate or timely. The second exception is where the information about a particular payment appears to be inaccurate. The third is where the absence of RTI in an assessment period is likely to be due to failure to report, rather than the claimant having not received a payment of earnings. In such cases the Department will determine the earnings in relation to the affected assessment period (or, in relation to the first exception, for each assessment period while the person is in that employment), using such information as the Department considers appropriate.

Paragraphs (5) and (6) are new provisions that allow the Department to reallocate a payment reported in one assessment period to another assessment period. Paragraph (5) allows a payment that has been reported late, or otherwise in the wrong assessment period, to be treated as employed earnings in the assessment period in which it was received. Paragraph (6) relates to calendar monthly paid employees who receive more than one payment in a single assessment period. The Department may, in order to maintain a regular payment pattern, treat one of those payments as employed earnings in a different assessment period. These new powers take effect in accordance with paragraph 32 of Schedule 1 to the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decision and Appeals) Regulations 2016 (S.R. 2016 No. 221).

Paragraph (7) widens and simplifies a provision in the previous regulation. It allows the Department to make consequential adjustments to avoid duplication or maintain a regular payment pattern where the Department has reallocated a payment or applied an exception referred to in paragraph (3).

These Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992 (c. 8), are not subject to requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.