

2020 No. 226

SOCIAL SECURITY

**The Universal Credit (Earned Income) (Amendment)
Regulations (Northern Ireland) 2020**

Made - - - - - *21st October 2020*

Coming into operation - *16th November 2020*

The Department for Communities makes the following Regulations, in exercise of the powers conferred by sections 5(1A) and 165(1) to (4) and (6) of the Social Security Administration (Northern Ireland) Act 1992(a), and now vested in it(b) and Article 48(1) and (2) and paragraph 4(1)(b) and (c) of Schedule 1 to, the Welfare Reform (Northern Ireland) Order 2015(c).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Universal Credit (Earned Income) (Amendment) Regulations (Northern Ireland) 2020 and come into operation on 16th November 2020.

(2) The Interpretation Act (Northern Ireland) 1954(d) shall apply to these Regulations as it applies to an Act of the Assembly.

Substitution of regulation 62 of the Universal Credit Regulation (Northern Ireland)

2. For regulation 62 (Information for calculating earned income – real time information etc.) of the Universal Credit Regulations (Northern Ireland) 2016(e) substitute—

“Information for calculating earned income – real time information etc.

62.—(1) Unless, paragraph (2) applies, a person shall provide such information for the purposes of calculating their earned income at such times as the Department may require.

Real time information

(2) Where a person is, or has been, engaged in an employment in respect of which their employer is a Real Time Information employer—

- (a) the amount of the person’s employed earnings from that employment in respect of each assessment period is to be based on the information reported to HMRC under the PAYE Regulations and received by the Department from HMRC in that assessment period; and

(a) 1992 c. 8 Section 5(1A) was inserted by Article 104(3) of S.I. 2015/2006 (N.I. 1)
(b) See Article 8(b) of S.R. 1999 No. 481. The Department for Social Development was renamed the Department for Communities in accordance with section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.)
(c) S.I. 2015 / 2006 (N.I. 1)
(d) 1954 c. 33 (N.I.)
(e) S.R. 2016 No. 216

- (b) in respect of an assessment period in which no information is received from HMRC, the amount of employed earnings in relation to that employment is to be taken to be nil.

Exceptions to use of Real Time Information

(3) Paragraph (2) does not apply where—

- (a) in relation to a particular employment the Department considers that the employer is unlikely to report information to HMRC in a sufficiently accurate or timely manner;
- (b) it appears to the Department that the amount of a payment reported to HMRC is incorrect, or fails to reflect the definition of employed earnings in regulation 55 (employed earnings) in some material respect; or
- (c) no information is received from HMRC in an assessment period and the Department considers that this is likely to be because of a failure to report information (which includes the failure of a computer system operated by HMRC, the employer or any other person).

(4) Where paragraph (2) does not apply by virtue of any of the exceptions in paragraph (3) the Department shall determine the amount of employed earnings for the assessment period in question (or, where the exception in paragraph (3)(a) applies, for each assessment period in which the person is engaged in that employment) in accordance with regulation 55 (employed earnings) using such information or evidence as the Department thinks fit.

Reallocation of reported payments

(5) Where it appears to the Department that a payment of employed earnings has been reported late, or otherwise reported in the wrong assessment period, the Department may determine that the payment is to be treated as employed earnings in the assessment period in which it was received.

(6) Where a person is engaged in an employment where they are paid on a regular monthly basis and more than one payment in relation to that employment is reported in the same assessment period, the Department may, for the purposes of maintaining a regular pattern, determine that one of those payments is to be treated as employed earnings in respect of a different assessment period.

Consequential adjustments

(7) Where the Department makes a determination under any of paragraphs (4) to (6), the Department may make such other adjustments to the calculation of the person's employed earnings as may be necessary to avoid duplication or to maintain a regular payment pattern.

(8) In this regulation "Real Time Information Employer" has the meaning in regulation 2A (1) of the PAYE Regulations."

Sealed with the Official Seal of the Department for Communities on 21st October 2020

(L.S.)

Anne McCleary

A senior officer of the Department of Communities

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.

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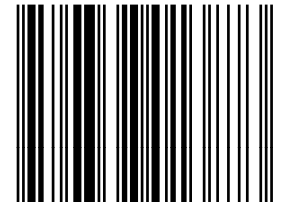
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