

EXPLANATORY MEMORANDUM TO
THE UNIVERSAL CREDIT (EARNED INCOME) (AMENDMENT) REGULATIONS
(NORTHERN IRELAND) 2020

S.R. 2020 No. 226

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under sections 5(1A) and 165(1) to (4) and (6) of the Social Security Administration (Northern Ireland) Act 1992 and Article 48(1) and (2) and paragraph 4(1)(b) and (c) of Schedule 1 to, the Welfare Reform (Northern Ireland) Order 2015, and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Regulations amend the Universal Credit Regulations (Northern Ireland) 2016 (S.R. 2016 No. 216) in order to reallocate a calendar monthly payment of earnings reported via the Real Time Information (RTI) service to a different Universal Credit assessment period where it is necessary to maintain a regular payment cycle. This means that only one set of earnings will be taken into account in each assessment period for people who are paid calendar monthly rather than two which can sometimes happen currently. This reallocation will smooth entitlement to Universal Credit and help maintain a regular payment cycle.
- 2.2. These Regulations substitute regulation 62 of S.R. 2016 No. 216. Regulation 62 determines how information, in particular information reported via HMRC by Real Time Information employers, is to be used in the calculation of earned income.

3. Background

- 3.1. Legislation currently provides the RTI information about payment of earnings received from HMRC in each assessment period is to be taken into account in the Universal Credit calculation for that assessment period unless certain exceptions apply. These exceptions mainly concern instances where the information may be

incorrect or where there has been a failure to report. The information received from RTI means the Universal Credit IT system can automatically adjust an award each assessment period without requiring the claimant to self-report and without the need for a separate decision about the amount of earnings in each assessment period.

3.2. Under the current regulations a payment in relation to a calendar monthly paid employee reported via RTI would not fall within the exceptions if it is the correct amount and has been actually paid in the assessment period. So an early payment, for example because of a bank holiday, would give rise to two payments being counted in one assessment period. This higher level of earnings could lead to claimants not receiving any or less Universal Credit in that assessment period. It could also mean some claimants not benefiting from a work allowance (an amount a person can earn before Universal Credit starts to be reduced on account of earnings) in the following assessment period because there are no earnings to be taken into account.

3.1. On the 22 June in the case of *Johnson and Others*¹, the Court of Appeal in Great Britain decided that the Department for Work and Pension's lack of adjustment for those who have two calendar monthly salaried earnings taken into account in one assessment period (AP) due to a "non-banking day salary shift" was not rational.

3.2. These regulations therefore provide a solution to that Judgment. The policy intent is to ensure that ordinarily no more than one set of calendar monthly salary payments from a single employer are taken into account in each assessment period. This will also enable certain claimants to benefit from any applicable work allowance in each assessment period. This change in regulations will allow the Department for Communities to reallocate a payment reported via real time information (RTI) to a different assessment period, either because it was reported in the wrong assessment period, or (in the case of monthly paid employee) it is necessary to maintain a regular payment cycle. This issue applies to less than 1% of the people who are working and receiving Universal Credit.

3.3. As the Social Security system in Northern Ireland operates on a parity basis with Great Britain, it is necessary to amend the Universal Credit Regulations (Northern

¹ <https://www.bailii.org/ew/cases/EWCA/Civ/2020/778.html> Court of Appeal Judgment in the case of Johnson & others.

Ireland) 2016 to ensure the same rates of benefit are paid and the same conditions of entitlement apply across the United Kingdom.

4. Consultation

4.1. There is no requirement to consult on these Regulations.

5. Equality Impact

5.1. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals. As these Regulations are beneficial and give effect to the *Court of Appeal Judgment in Johnson and Others in Great Britain*, the Department has concluded that the proposals would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1. There is no impact on business, charities or voluntary bodies or on the public sector.

7. Financial Implications

7.1. None anticipated.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that the Rule –

- (a) is not incompatible with any of the Convention rights;
- (b) is not incompatible with Community law;
- (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion; and
- (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. These Regulations are equivalent to the Universal Credit (Earned Income) Amendment Regulations 2020 (S.I. 2020/1138) in Great Britain which were made on 19th October 2020 and come into force on 16th November 2020.

11. Additional Information

11.1. Guidance will be issued to Department for Communities staff prior to this Statutory Rule becoming operational.