
STATUTORY INSTRUMENTS

2013 No. 381

The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013

PART 4

OTHER MATTERS RELATING TO DECISION- MAKING

Correction of accidental errors

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

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

(3) The Secretary of State 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 section 8 or 10 of the 1998 Act.

(2) Where—

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

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

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

(3) The matter is whether, for the purposes of regulation 45 (relevant education) of the Jobseeker's Allowance Regulations 2013 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 Secretary of State as to what costs are to be included in claimant's award of universal credit under section 11 (housing costs) of the 2012 Act; and

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

Status: Point in time view as at 30/03/2015.

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

- (5) Where, in the case of personal independence payment—
- (a) a determination falls to be made by the Secretary of State as to whether a person meets the condition in section 85(2) (care home residents where the costs of qualifying services are borne out of local or public funds) of the 2012 Act; and
 - (b) it appears to the Secretary of State that, having made reasonable enquiries, the Secretary of State is not in possession of all of the evidence or information which is or could be relevant for the purposes of the determination,

the Secretary of State may make the determination using such information or evidence as is in the Secretary of State's possession.

Determinations as to limited capability for work

40.—(1) Where, in relation to an award of an employment and support allowance, the Secretary of State 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 2 of Part 1 of the 1998 Act (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 (employment and support allowance) of the 2007 Act or Part 1 (universal credit) of the 2012 Act applies, a determination falls to be made as to whether a person—

- (a) is, 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 Secretary of State, 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 the Universal Credit Regulations in consequence of information provided to the Secretary of State by HMRC is prescribed for the purposes of section 159D(1)(b)(vi) (effect of alterations affecting universal credit) of the Administration Act^{M1}.

(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 (employed earnings) of the Universal Credit Regulations to calculate employed earnings in relation to any assessment period, the Secretary of State must—

- (a) inform the person that they may request that the Secretary of State 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 159D(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 159(D)(2) or (3) came into force in relation to the person.

Marginal Citations

M1 Section 159D was inserted by section 31 of, and paragraph 23 of Schedule 2 to, the 2012 Act.

Issues for HMRC

42.—(1) Where, on consideration of any claim or other matter, it appears to the Secretary of State that an issue arises which, by virtue of section 8 of the Transfer Act, falls to be decided by an officer of HMRC, the Secretary of State must refer that issue to HMRC.

(2) Where—

- (a) the Secretary of State has decided any claim or other matter on an assumption of facts—
 - (i) which appeared to the Secretary of State not to be in dispute, but
 - (ii) concerning which, had an issue arisen, that issue would have fallen, by virtue of section 8 of the Transfer Act, 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 Secretary of State on receipt of that application or appeal that such an issue arises,

the Secretary of State 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 Secretary of State 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 Secretary of State of the final decision of an issue which has been referred to HMRC under paragraph (1) or (2), the Secretary of State must—

- (a) in a case where the Secretary of State made a decision under paragraph (3)(b), decide whether to revise the decision under section 9 of the 1998 Act or to supersede it under section 10 of that Act;
- (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—

- (a) “final decision” means the decision of HMRC under section 8 (decisions by officers of Board) of the Transfer Act or the determination of any appeal in relation to that decision; and
- (b) “the Transfer Act” means the Social Security Contributions (Transfer of Functions, etc.) Act 1999 ^{M2}.

Status: Point in time view as at 30/03/2015.

Changes to legislation: There are currently no known outstanding effects for the The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013, PART 4. (See end of Document for details)

Marginal Citations

M2 1999 c. 2. Section 8(1) was amended by the [Employment Act 2002 \(c. 22\)](#) (“the Employment Act”), section 9(1) and (2), the [Work and Families Act 2006 \(c. 18\)](#) (“the 2006 Act”), section 11 and Schedule 1, paragraph 46, by the [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), [sections 77\(5\), 76\(6\)](#) and 85 and Schedule 9, Part 8(1). Subsection (3) was amended by section 9 of the Employment Act and by section 11 of, and paragraph 46 of Schedule 1 to, the 2006 Act. Subsection (4) was repealed by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), [section 88](#) and Schedule 13, Part 6.

Appeals raising issues for HMRC

43.—(1) This regulation applies where—

- (a) a person has appealed to the First-tier Tribunal and it appears to the First-tier Tribunal that an issue arises which, by virtue of section 8 of the Transfer Act, falls to be decided by HMRC; and
- (b) the tribunal has required the Secretary of State to refer that issue to HMRC.

(2) Pending the final decision of any issue which has been referred to HMRC in accordance with paragraph (1), the Secretary of State may revise the decision under appeal under section 9 of the 1998 Act, or make a further decision under section 10 of that Act superseding that decision, in accordance with the Secretary of State's determination of any issue other than one which has been so referred.

(3) On receipt by the Secretary of State of the final decision of an issue which has been referred to HMRC in accordance with paragraph (1), the Secretary of State must consider whether the decision under appeal ought to be revised or superseded under the 1998 Act, and—

- (a) if so, revise it or make a further decision which supersedes it; or
- (b) if not, invite the First-tier Tribunal to determine to appeal.

(4) In this regulation, “final decision” and “Transfer Act” have the same meaning as in regulation 42 (issues for HMRC).

Status:

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Changes to legislation:

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