***Changes to legislation:*** *The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016 is up to date with all changes known to be in force on or before 11 March 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY RULES OF NORTHERN IRELAND

# 2016 No. 221

# SOCIAL SECURITY

## The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016

*Made - - - - 4th May 2016*

*Laid before Parliament 10th May 2016*

*Coming into operation in accordance with regulation 1(1)*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 5(1A), 139D(1) and (6), 165(1) and (4) to (6) and 167(1) of the Social Security Administration (Northern Ireland) Act 1992 [F1] and Articles 2(2), 8(6), 10(1), (4) and (6), 11(3) and (6), 11A, 12(1), 13(2), (3), (3A), (3B), (5A) and (6), 16(1), 17, 18(1), 20(2), 21(1) to (3), 22, 23, 25(3)(b) and (5)(c), 26(6)(c), 28(1), 31(2) and 74(1) and (3) to (6) of, and paragraph 9 of Schedule 2, paragraphs 1, 4 and 9 of Schedule 3 and Schedule 4 to, the Social Security (Northern Ireland) Order 1998 [F2].

Those powers are exercisable by the Secretary of State by virtue of Article 4(1)(b) of the Welfare Reform (Northern Ireland) Order 2015 [F3].

**F1** 1992 c. 8; section 5(1A) is inserted by Article 104(3) of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I.1)), **section 139D** is inserted by paragraph 19 of Schedule 2 to that Order and is further amended by paragraph 9 of Schedule 3 and Part 1 of Schedule 12 to that Order; section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and section 18(5) of the National Insurance Contributions Act 2014 (c. 7) and subsections (5A) and (5B) of section 165 are inserted by Article 108(1) of the Welfare Reform (Northern Ireland) Order 2015 and section 165(6) was amended by Schedule 7 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)). Section 167(1) is cited for the meaning it gives to 'prescribe' and 'regulations'.

**F2** S.I. 1998/1506 (N.I. 10); Article 10(1) is amended by Part 7 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015, Article 11A was inserted by paragraph 18 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and amended by paragraph 42 of Schedule 2 to S.I. 2009/56, **Article 13(2)** was substituted by paragraph 19(3) of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and is amended by Article 107(2) of the Welfare Reform (Northern Ireland) Order 2015 and paragraphs (3A), (3B) and (5A) of Article 13 are inserted by Article 107(3) and (4) of that Order,

Article 18(1) was amended by paragraph 23 of Schedule 6 to Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999, Article 20(2) was amended by section 55(4) of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)), **Article 22** was amended by paragraph 8 of Schedule 1 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)) and is amended by Article 104(5) and Part 9 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015, Article 74(1) was amended by paragraph 17(2) of Schedule 4 to the Tax Credits Act 2002 (c. 21) and is amended by Article 108(2) of the Welfare Reform (Northern Ireland) Order 2015 and paragraphs (5A) and (5B) of Article 74 are inserted by Article 108(1) of that Order. Article 2(2) is cited for the meaning it gives to 'prescribe' and 'the Administration Act'.

**F3** S.I. 2015/2006 (N.I.1).

# PART 1

## General

### Citation, commencement and application

**1.**—(1) These Regulations may be cited as the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016 and come into operation—

(a) in so far as they relate to personal independence payment and for the purposes of this regulation, on 20th June 2016; and

(b) for all remaining purposes, immediately after the coming into operation of the Universal Credit Regulations.

(2) These Regulations apply in relation to—

(a) an employment and support allowance payable under Part 1 of the 2007 Act as amended by Schedule 3 and Part 1 of Schedule 12 to the 2015 Order (to remove references to an income-related allowance);

(b) a jobseeker's allowance payable under the Jobseekers Order as amended by Part 1 of Schedule 12 to the 2015 Order (to remove references to an income-based allowance);

(c) personal independence payment; and

(d) universal credit.

### Interpretation

**2.**—(1) In these Regulations—

"the 1998 Order" means the Social Security (Northern Ireland) Order 1998;

"the 2007 Act" means the Welfare Reform Act (Northern Ireland) 2007 [F4];

"the 2015 Order" means the Welfare Reform (Northern Ireland) Order 2015;

"the Administration Act" means the Social Security Administration (Northern Ireland) Act 1992 [F5];

"appeal" means an appeal to an appeal tribunal;

"appropriate office" means—

(a) in the case of a contributions decision which falls within Part II of Schedule 3 to the 1998 Order [F6] (decisions against which an appeal lies), any National Insurance Contributions office of HMRC or any office of the Department; or

(b) in any other case, the office of the Department or other place, the address of which is specified on the notification of the original decision referred to in regulation 5(1) (revision on any grounds);

"assessment period" is to be construed in accordance with regulation 22 of the Universal Credit Regulations (assessment periods);

"benefit" means a benefit or an allowance in relation to which these Regulations apply;

"benefit week" has the same meaning as in—

(a) regulation 2 of the Employment and Support Allowance Regulations (interpretation), in the case of an employment and support allowance;

(b) regulation 2 of the Jobseeker's Allowance Regulations (general interpretation), in the case of a jobseeker's allowance;

"child" means a person under the age of 16;

**[**[F7]"child disability payment" has the meaning given in regulation 2 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 in circumstances where regulation 36(1) of those Regulations applies;**]**

"claimant" means—

(a) any person who has claimed—

(i) an employment and support allowance,

(ii) a jobseeker's allowance,

(iii) personal independence payment;

(b) in the case of universal credit, any person who is a claimant for the purposes of Article 46 of the 2015 Order (interpretation of Part 2); and

(c) any other person from whom an amount of benefit is alleged to be recoverable;

"the Claims and Payments Regulations" means the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland ) 2016 [F8];

"the date of notification", in relation to a decision of the Department, means the date on which the notification of the decision is treated as having been given or sent in accordance with—

(a) regulation 3 (service of documents); or

(b) where the notification is given or sent using an electronic communication, Schedule 1 to the Claims and Payments Regulations;

"designated authority" means—

(a) the Department; or

(b) a person providing services to the Department;

"electronic communication" has the same meaning as in section 4(1) of the Electronic Communications Act (Northern Ireland) 2001 [F9];

"employment and support allowance" means an employment and support allowance in relation to which these Regulations apply;

"the Employment and Support Allowance Regulations" means the Employment and Support Allowance Regulations (Northern Ireland) 2016 [F10];

"family" means the claimant's partner and any—

(a) child; or

(b) qualifying young person, within the meaning of regulation 6 of the Universal Credit Regulations (meaning of "qualifying young person"),

who is a member of the same household as the claimant and for whom the claimant or the claimant's partner is, or both of them are, responsible;

"the Fraud Act" means the Social Security Fraud Act (Northern Ireland) 2001 [F11];

"fraud penalty", in relation to any claimant of an employment and support allowance, a jobseeker's allowance or universal credit, means any period during which the provisions of section 5B, 6 or 8 of the Fraud Act [F12] apply to the award;

"HMRC" means Her Majesty's Revenue and Customs;

"jobseeker's allowance" means a jobseeker's allowance in relation to which these Regulations apply;

"the Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations (Northern Ireland) 2016 [F13];

"the Jobseekers Order" means the Jobseekers (Northern Ireland) Order 1995 [F14];

"limited capability for work" has the same meaning as in—

(a) section 1(4) of the 2007 Act in relation to an employment and support allowance;

(b) Article 43(1) of the 2015 Order in relation to universal credit;

"limited capability for work determination" means—

(a) where the determination relates to an employment and support allowance, a determination whether a person has limited capability for work following a limited capability for work assessment in accordance with regulation 15(1) of the Employment and Support Allowance Regulations or a determination that a person is to be treated as having limited capability for work in accordance with regulation 16 or 25 of those Regulations;

(b) where the determination relates to universal credit, a determination whether a person has limited capability for work following a limited capability for work assessment referred to in regulation 40(2) of the Universal Credit Regulations or a determination that a person is to be treated as having limited capability for work in accordance with regulation 40(6) of those Regulations;

"negative determination" has the same meaning as in Article 85(6) of the 2015 Order (ability to carry out daily living activities or mobility activities);

"official error" means an error made by—

(a) an officer of the Department or HMRC acting as such which was not caused or materially contributed to by any person outside the Department or HMRC;

(b) a person employed by, and acting on behalf of, a designated authority which was not caused or materially contributed to by any person outside that authority,

but excludes any error of law which is shown to have been such by a subsequent decision of a Commissioner, or of the court (as defined in Article 27(7) of the 1998 Order [F15]);

"partner" means one of a couple within the meaning of Article 45 of the 2015 Order (couples);

"personal independence payment" means an allowance payable under Part 5 of the 2015 Order (personal independence payment);

"relevant benefit" has the same meaning as in Chapter II of Part II of the 1998 Order (decisions and appeals) [F16];

"terminally ill", in relation to a claimant, means that the claimant is suffering from a progressive disease and that death in consequence of that disease can reasonably be expected within 6 months;

"universal credit" means the benefit payable under Part 2 of the 2015 Order (universal credit);

"the Universal Credit Regulations" means the Universal Credit Regulations (Northern Ireland) 2016 [F17];

"writing" includes writing produced by means of electronic communications used in accordance with regulation 4 (electronic communications).

(2) [F18]... The Interpretation Act (Northern Ireland) 1954 [F19] applies to these Regulations as it applies to an Act of the Northern Ireland Assembly.

[F20](3) . . . . . .

**F4** 2007 c. 2 (N.I.).
**F5** 1992 c. 8 (N.I.)
**F6** Part II of Schedule 3 was amended by Schedule 9 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999.
**F7** Words in reg. 2(1) inserted (26.7.2021) by The Social Security (Scotland) Act 2018 (Disability Assistance for Children and Young People) (Consequential Modifications) Order 2021 (S.I. 2021/786), arts. 1(2), **25(2)**
**F8** S.R. 2016 No. 220.
**F9** 2001 c. 9 (N.I.); the definition of "electronic communication" was amended by paragraph 170 of Schedule 17 to the Communications Act 2003 (c. 21).
**F10** S.R. 2016 No. 219.
**F11** 2001 c. 17 (N.I.).
**F12** Section 5B was inserted by section 19(1) of the Welfare Reform Act (Northern Ireland) 2010 (c. 13 (N.I.)) and is amended by Articles 115(8)(a), 117(2) to (6) and 118(2) of, and paragraph 47 of Schedule 2, paragraph 14 of Schedule 3 and Part 1 of Schedule 12 to, the Welfare Reform (Northern Ireland) Order 2015. Section 6 was amended by paragraph 33 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, Schedule 6 to the Tax Credits Act 2002, section 45 of, and paragraph 14(2) and (3) of Schedule 3 to, the Welfare Reform Act (Northern Ireland) 2007, paragraph 1 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010, Articles 117(7), 118(3) to (11) of, and paragraph 48 of Schedule 2, paragraph 15 of Schedule 3 and Part 1 of Schedule 12, to the Welfare Reform (Northern Ireland) Order 2015. Section 8 was amended by paragraph 34 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 14(4) and (5) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007, paragraph 3 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010 and paragraph 50 of Schedule 2 and Part 1 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015.
**F13** S.R. 2016 No. 218.
**F14** S.I. 1995/2705 (N.I. 15).
**F15** The definition of "the court" was amended by paragraph 67 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4)
**F16** The definition of "relevant benefit" was amended by Part VII of Schedule 13 to the Welfare Reform and Pensions Act 1999 (c. 30), **Schedule 6** to the Tax Credits Act 2002, paragraph 6(a) of Schedule 1 to the State Pension Credit Act (Northern Ireland) 2002 and paragraph 10(3)(a) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and is amended by paragraph 36(a) of Schedule 2 and paragraph 37(a) of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015.
**F17** S.R. 2016 No. 216.
**F18** Words in reg. 2(2) omitted (16.11.2017) by virtue of The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2017 (S.R. 2017/218), regs. 1(1), **17(2)(a)**
**F19** 1954 c. 33 (N.I.).