

REVISION OF ESA & JSA – EFFECTS OF CHANGES TO COLLECTION OF CLASS 2 NATIONAL INSURANCE

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INTRODUCTION

- 1 This memo provides guidance on the changes introduced by [The Social Security \(Credits, and Crediting and Treatment of Contributions\) \(Consequential and Miscellaneous Amendments\) Regulations 2016](#) (S.I. 2016 /1145) (“the Regulations”). The changes come into effect on 01.01.2017¹.

¹ *Social Security (Credits, and Crediting and Treatment of Contributions)(Consequential and Miscellaneous Amendments) Regulations 2016, reg 1*

BACKGROUND

- 2 As a consequence of the reform of the method of collection and payment of Class 2 NICs¹, the deadline for the payment of Class 2 NICs from the 2015/16 tax year onwards is now 31st January of the following calendar year: for example, Class 2 NICs due in the 2015/2016 tax year are due to be paid by 31.01.2017. This date falls after the start of the benefit year for ESA/JSA, which means there is an increased possibility of a claim for these benefits being made in circumstances where entitlement relies on as yet unpaid contributions.

Note: Class 2 NICs are only relevant in JSA claims from share fishermen and volunteer development workers.

Example

A claim to ESA is made on 21.01.2017 in respect of a period of LCW which started on 14.01.2017. The claimant started self employment in June 2015. Entitlement to ESA relies on satisfaction of the contribution conditions in the tax years 2014/15 and 2015/2016. The claimant was previously unemployed and has Class 1 credits for the whole of 2014/15, and for the weeks in 2015/16 before he started self-employment. At the point of claim the claimant had not filed his self assessment return for 2015/16 – he has until 31.1.2017 to do so. Consequently, it has not yet been established whether he has any Class 2 NIC liability for 2015/16, and so no Class 2 NICs have been paid. Neither contribution condition is satisfied and the claim for ESA is therefore disallowed.

- 3 In order to address this the Regulations provide for payments of Class 2 NICs which are made by 31st January to be treated as having been made at an earlier date, in appropriate cases, to ensure that claimants are not disadvantaged by the changes. In such cases a decision to disallow claims to ESA and JSA may be revised in the claimant's favour.
- 4 The Regulations also provide for cases where benefit has been awarded and the NICs upon which an award of benefit was based are repaid or refunded to the contributor. In these cases the decision to award benefit may be revised to disallow benefit.

REVISION OF DECISION: CONTRIBUTIONS PAID BY DUE DATE

- 5 A decision on a claim to JSA or ESA may be revised¹ at any time where
 1. on or after the date of the decision a contribution that is paid by the due date is treated as paid², in relation to JSA, before the week for which JSA is claimed, or in relation to ESA before the relevant benefit week **and**
 2. as a result, the person now satisfies the contribution conditions

1 UC, PIP, JSA & ESA (D&A) Regs, reg 17(3); 2 Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001, reg 7A

Example

A claim to ESA is made on 21.01.2018 in respect of a period of LCW starting on 14.01.2018. Entitlement relies on satisfaction of the contribution conditions for the tax years 2015/2016 and 2016/2017. The claimant started self-employment in April 2015.

The claimant has previously paid his Class 2 NICs for 2015/16, but, at the point of claim, has not yet filed his Self Assessment return for 2016/2017. His Class 2 liability for this year has not yet been established and no Class 2 NICs have been paid. As a result, whilst the first contribution condition is satisfied, the second contribution condition isn't, and his claim to ESA is disallowed. DWP is subsequently notified that the claimant has paid his Class 2 NICs for 2016/2017 on 31.01.2018. These NICs are treated as having been paid before 14.01.2018. Both contribution conditions are now satisfied and the original decision to disallow ESA is revised in the claimant's favour.

REVISION OF DECISION: CONTRIBUTIONS ARE REFUNDED

- 6 A decision to award JSA or ESA may be revised¹ at any time where contributions are repaid or returned to the contributor where this means the person no longer satisfies the contribution conditions of entitlement to the benefit.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 17(4) & 17(5)

Example

ESA is awarded in January 2018 to a claimant who is self-employed. The award was based on Class 2 NICs paid in respect of 2015/16 and 2016/17 RITYs. Class 2 NICs for 2016/17 were paid on the basis of profits declared on a Self Assessment return filed on 31st 2018. In March 2018 HMRC adjusts the declared profits for 2016/17 to a figure below which no liability for Class 2 NICs actually arose. HMRC informs the claimant of this. The claimant pursues and accepts a refund of NICs. These NICs are removed from the claimant's NI record. As a consequence of this the claimant does not satisfy the contribution conditions for ESA. The decision to award ESA is revised so as to disallow the award.

ANNOTATIONS

The number of this Memo (ADM 28/16) should be noted against the following ADM paragraphs:

A3091, U1020, R1051

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such

referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: December 2016

The content of the examples in this document (including use of imagery) is for illustrative purposes only