
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

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,

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.