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WELSH STATUTORY INSTRUMENTS

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**2019 No. 187 (W. 47)**

**EDUCATION, WALES**

**The Free School Lunches and Milk  
(Universal Credit) (Wales) Order 2019**

<i>Made</i>	- - - -	<i>5 February 2019</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>6 February 2019</i>
<i>Coming into force</i>	- -	<i>1 April 2019</i>

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 512ZB(4)(a)(ai), 512ZB(4)(b)(ai) and 568 of the Education Act 1996<sup>(1)</sup>, and now vested in them<sup>(2)</sup>, make the following Order:

**Title, commencement, application and interpretation**

1.—(1) The title of this Order is the Free School Lunches and Milk (Universal Credit) (Wales) Order 2019 and it comes into force on 1 April 2019.

(2) This Order applies in relation to Wales.

(3) In this Order—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996;

“the 2013 Regulations” (“*Rheoliadau 2013*”) means the Universal Credit Regulations 2013<sup>(3)</sup>

“assessment period” has the meaning given by regulation 21 of the 2013 Regulations;

“gainful self-employment” has the meaning given by regulation 64 of the 2013 Regulations;  
and

“universal credit” (“*credyd cynhwysol*”) means universal credit payable under Part 1 of the Welfare Reform Act 2012<sup>(4)</sup>.

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(1) 1996 c.56. Section 512ZB was inserted by section 201 of the Education Act 2002. Subsections (4)(a)(ai) and (4)(b)(ai) were inserted by section 31 of, and paragraphs 37 and 39(a) of Schedule 2 to the Welfare Reform Act 2012.

(2) The functions of the Secretary of State were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) and then to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

(3) S.I. 2013/376.

(4) 2012 c. 5.

### **Prescribed circumstances: receipt of universal credit**

2.—(1) The circumstances prescribed<sup>(5)</sup> for the purposes of section 512ZB(4)(a)(ai) of the 1996 Act are that C’s parent—

- (a) is on, or after, 1st April 2019 in receipt of universal credit, and
- (b) in the relevant assessment period has earned income not exceeding the applicable amount.

(2) The circumstances prescribed for the purposes of section 512ZB(4)(b)(ai) of the 1996 Act are that C—

- (a) is on, or after, 1st April 2019 in receipt of universal credit, and
- (b) in the relevant assessment period has earned income not exceeding the applicable amount.

(3) For the purposes of paragraphs (1) and (2)—

- (a) the definition of “earned income” under regulation 52 of the 2013 Regulations<sup>(6)</sup> applies subject to sub-paragraph (b);
- (b) where, in any assessment period, a claimant is in gainful self-employment, regulation 62<sup>(7)</sup> of the 2013 Regulations does not apply for the purposes of calculating a person’s earned income under regulation 52(b) of those Regulations;
- (c) the relevant assessment period and the applicable amount are those referred to in the following paragraphs as applicable—

- (i) except where paragraphs (ii) or (iii) apply, where the parent has earned income which did not exceed £616.67 in the universal credit assessment period immediately preceding the date of the request for a free school meal (period 1)—

- (aa) the relevant assessment period is period 1; and

- (bb) the applicable amount is £616.67;

- (ii) this paragraph applies where paragraph (i) does not because the applicable amount referred to in that paragraph is exceeded and there is a universal credit assessment period (period 2) immediately preceding period 1 referred to in that paragraph—

- (aa) the relevant assessment period is the sum of period 1 and period 2; and

- (bb) the applicable amount is £1,233.34;

- (iii) this paragraph applies where paragraph (ii) does not because the applicable amount referred to in that paragraph is exceeded and there is a universal credit assessment period (period 3) immediately preceding period 2 referred to in that paragraph—

- (aa) the relevant assessment period is the sum of period 1, period 2 and period 3; and

- (bb) the applicable amount is £1,850;

- (d) where C, or as the case may be C’s parent, is—

- (i) a member of a couple who have jointly made a claim for, and are entitled to, universal credit; or

- (ii) a member of a couple but has claimed, and is entitled to, universal credit as a single person,

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<sup>(5)</sup> By virtue of section 512 of the Education Act 1996, “prescribed” in section 512ZB means prescribed by the Welsh Ministers by order.

<sup>(6)</sup> Chapter 2 of Part 6 of the 2013 regulations is concerned with earned income for the purpose of calculating an award of universal credit

<sup>(7)</sup> This regulation provides that where, in any assessment period, a claimant is in gainful self-employment and the claimant’s earned income in respect of that assessment period is less than the minimum income floor, the claimant is to be treated as having earned income equal to the minimum income floor.

references to applicable amounts in paragraphs (i) to (iii) of sub-paragraph (c) are to be read as references to the combined income of the couple.

### **Transitory provisions**

**3.—**(1) In the circumstances referred to in paragraphs (2) to (4), C's eligibility for a free school lunch ceases on the cessation day.

(2) Where C—

- (a) does not, on or after 1st April 2019 become eligible for a free school lunch pursuant to paragraph (a)(ai) or (b)(ai) of subsection (4) of section 512ZB of the 1996 Act, but
- (b) was, on 31st March 2019, eligible, or after that date becomes eligible, for such a lunch pursuant to paragraphs (a)(i) to (iia), (aa), (b)(i) to (iia) or (c)(ii) of that subsection.

(3) Where C was eligible for a free school lunch pursuant to paragraph (a)(ai) or (b)(ai) of subsection (4) of section 512ZB of the 1996 Act on 31st March 2019 whether or not those provisions subsequently cease to apply in relation to C.

(4) Where C becomes eligible for a free school lunch pursuant to paragraph (a)(ai) or (b)(ai) of subsection (4) of section 512ZB of the 1996 Act on, or after, 1st April 2019 whether or not those provisions subsequently cease to apply in relation to C and regardless of whether C was so eligible before so doing pursuant to paragraphs (a)(i) to (iia), (aa), (b)(i) to (iia) or (c)(ii) of that subsection.

(5) The cessation day is the later of—

- (a) 31st December 2023; and
- (b) the day on which—
  - (i) C completes primary education as defined in section 2 of the 1996 Act (if C were at that stage of education on 31st December 2023);
  - (ii) C completes secondary education as defined in that section (if C were at that stage of education on 31st December 2023).

### **Revocation**

**4.** The Free School Lunches and Milk (Universal Credit) (Wales) Order 2013<sup>(8)</sup> is revoked.

5 February 2019

*Kirsty Williams*  
Minister for Education, one of the Welsh  
Ministers

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order prescribes conditions for the purposes of section 512ZB of the Education Act 1996 (c. 56).

Article 2 deals with the inter-play between the receipt of the social security benefit known as “universal credit” and eligibility for free school lunch and milk. It provides that where a person (“C”) or C’s parent is in receipt of universal credit on or after 1st April 2019 and does not have income in excess of a specified applicable amount in the relevant period immediately preceding the date of request for a free school lunch, they come within section 512ZB(4) (paragraphs (1) and (2)). Paragraphs (3)(a) and (b) define “earned income” for the purposes of paragraphs (1) and (2). Paragraph 3(c) provides that the relevant period can, in any particular case, be a single universal credit assessment period, 2 such periods or 3 such periods – each of which attracts, as a threshold, a different applicable amount of income (based on twelfths of an equivalent yearly income of £7,400). Persons within section 512ZB(4) are eligible for free school lunches and milk when a request has been made by them (or on their behalf).

Article 3 makes transitory provisions in relation to a person (C) who is eligible for free school lunch and milk by virtue of satisfying certain conditions under section 512ZB(4) of the Education Act 1996. Article 3 provides that where C was entitled to a free school lunch in specified cases by virtue of being eligible for certain social security benefits, such entitlement ceases on the cessation day which is the later of (a) 31st December 2023, and (b) the completion of the stage of education C was at on 31st December 2023.

Article 4 revokes the Free School Lunches and Milk (Universal Credit) (Wales) Order 2013.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Pupil Wellbeing Branch, the Support for Learners Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.