
DRAFT STATUTORY INSTRUMENTS

2013 No.

The Universal Credit Regulations 2013

PART 6

CALCULATION OF CAPITAL AND INCOME

CHAPTER 2

EARNED INCOME

Introduction

51. This Chapter provides for the calculation or estimation of a person's earned income for the purposes of section 8 of the Act (calculation of awards).

Meaning of "earned income"

52. "Earned income" means—

- (a) the remuneration or profits derived from—
 - (i) employment under a contract of service or in an office, including elective office,
 - (ii) a trade, profession or vocation, or
 - (iii) any other paid work; or
- (b) any income treated as earned income in accordance with this Chapter.

Meaning of other terms relating to earned income

53.—(1) In this Chapter—

- "car" has the meaning in section 268A of the Capital Allowances Act 2001⁽¹⁾;
- "employed earnings" has the meaning in regulation 55;
- "gainful self-employment" has the meaning in regulation 64;
- "HMRC" means Her Majesty's Revenue and Customs;
- "motor cycle" has the meaning in section 268A of the Capital Allowances Act 2001;
- "PAYE Regulations" means the Income Tax (Pay As You Earn) Regulations 2003⁽²⁾;
- "relievable pension contributions" has the meaning in section 188 of the Finance Act 2004⁽³⁾;
- "self-employed earnings" has the meaning in regulation 57; and
- "start-up period" has the meaning in regulation 63.

(2) References in this Chapter to a person participating as a service user are to—

(1) 2001 c.2. Section 268A was inserted by section 30 of the Finance Act 2009 (c.10).
(2) S.I. 2003/2682.
(3) 2004 c.12.

- (a) a person who is being consulted by or on behalf of—
 - (i) a body which has a statutory duty to provide services in the field of health, social care or social housing; or
 - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,
 in their capacity as a user, potential user, carer of a user or person otherwise affected by the provision of those services; or
- (b) the carer of a person consulted under sub-paragraph (a).

Calculation of earned income - general principles

54.—(1) The calculation of a person’s earned income in respect of an assessment period is, unless otherwise provided in this Chapter, to be based on the actual amounts received in that period.

(2) Where the Secretary of State—

- (a) makes a determination as to whether the financial conditions in section 5 of the Act are met before the expiry of the first assessment period in relation to a claim for universal credit; or
- (b) makes a determination as to the amount of a person’s earned income in relation to an assessment period where a person has failed to report information in relation to that earned income,

that determination may be based on an estimate of the amounts received or expected to be received in that assessment period.

Employed earnings

55.—(1) This regulation applies for the purposes of calculating earned income from employment under a contract of service or in an office, including elective office (“employed earnings”).

(2) Employed earnings comprise any amounts that are general earnings, as defined in section 7(3) of ITEPA, but excluding—

- (a) amounts that are treated as earnings under Chapters 2 to 11 of Part 3 of ITEPA (the benefits code); and
- (b) amounts that are exempt from income tax under Part 4 of ITEPA.

(3) In the calculation of employed earnings the following are to be disregarded—

- (a) expenses that are allowed to be deducted under Chapter 2 of Part 5 of ITEPA; and
- (b) expenses arising from participation as a service user (see regulation 53(2)).

(4) The following benefits are to be treated as employed earnings—

- (a) statutory sick pay;
- (b) statutory maternity pay;
- (c) ordinary statutory paternity pay;
- (d) additional statutory paternity pay; and
- (e) statutory adoption pay.

(5) In calculating the amount of a person’s employed earnings in respect of an assessment period, there are to be deducted from the amount of general earnings or benefits specified in paragraphs (2) to (4)—

- (a) any relievable pension contributions made by the person in that period;

- (b) any amounts paid by the person in that period in respect of the employment by way of income tax or primary Class 1 contributions under section 6(1) of the Contributions and Benefits Act; and
- (c) any sums withheld as donations to an approved scheme under Part 12 of ITEPA (payroll giving) by a person required to make deductions or repayments of income tax under the PAYE Regulations.

Employee involved in trade dispute

56. A person who has had employed earnings and has withdrawn their labour in furtherance of a trade dispute is, unless their contract of service has been terminated, to be assumed to have employed earnings at the same level as they would have had were it not for the trade dispute.

Self-employed earnings

57.—(1) This regulation applies for the purpose of calculating earned income that is not employed earnings and is derived from carrying on a trade, profession or vocation (“self-employed earnings”).

(2) A person’s self-employed earnings in respect of an assessment period are to be calculated by taking the amount of the gross profits (or, in the case of a partnership, the person’s share of those profits) of the trade, profession or vocation and deducting from that amount—

- (a) any payment made to HMRC in the assessment period in respect of the trade, profession or vocation by way of—
 - (i) Class 2 contributions payable under section 11(1) or (3) of the Contributions and Benefits Act or any Class 4 contributions payable under section 15 of that Act, or
 - (ii) income tax; and
- (b) any relievable pension contributions made by the person in the assessment period (unless a deduction has been made in respect of those contributions in calculating a person’s employed earnings).

(3) The gross profits of the trade, profession or vocation in respect of an assessment period are the actual receipts in that period less any deductions for expenses allowed under regulation 58 or 59.

(4) The receipts referred to in paragraph (3) include receipts in kind and any refund or repayment of income tax, value added tax or national insurance contributions relating to the trade, profession or vocation.

Permitted expenses

58.—(1) The deductions allowed in the calculation of self-employed earnings are amounts paid in the assessment period in respect of—

- (a) expenses that have been wholly and exclusively incurred for purposes of the trade, profession or vocation; or
- (b) in the case of expenses that have been incurred for more than one purpose, an identifiable part or proportion that has been wholly and exclusively incurred for the purposes of the trade, profession or vocation,

excluding any expenses that were incurred unreasonably.

(2) Payments deducted under paragraph (1) may include value added tax.

(3) No deduction may be made for payments in respect of—

- (a) expenditure on non-depreciating assets (including property, shares or other assets held for investment purposes);

- (b) any loss incurred in respect of a previous assessment period;
 - (c) repayment of capital or payment of interest in relation to a loan taken out for the purposes of the trade, profession or vocation;
 - (d) expenses for business entertainment.
- (4) This regulation is subject to regulation 59.

Flat rate deductions for mileage and use of home and adjustment for personal use of business premises

59.—(1) This regulation provides for alternatives to the deductions that would otherwise be allowed under regulation 58.

(2) Instead of a deduction in respect of the actual expenses incurred in relation to the acquisition or use of a motor vehicle, the following deductions are allowed according to the mileage covered on journeys undertaken in the assessment period for the purposes of the trade, profession or vocation—

- (a) in a car, van or other motor vehicle (apart from a motorcycle), 45 pence per mile for the first 833 miles and 25 pence per mile thereafter; and
- (b) on a motorcycle, 24 pence per mile,

and, if the motor vehicle is a car or motor cycle, the only deduction allowed for the acquisition or use of that vehicle is a deduction under this paragraph.

(3) Where a person carrying on a trade, profession or vocation incurs expenses in relation to the use of accommodation occupied as their home, instead of a deduction in respect of the actual expenses, a deduction is allowed according to the number of hours spent in the assessment period on income generating activities related to the trade, profession or vocation as follows—

- (a) at least 25 hours but no more than 50 hours, £10;
- (b) more than 50 hours but no more than 100 hours, £18;
- (c) more than 100 hours, £26.

(4) Where premises which are used by a person mainly for the purposes of a trade, profession or vocation are also occupied by that person for their personal use, whether alone or with other persons, the deduction allowed for expenses in relation to those premises is the amount that would be allowed under regulation 58(1) if the premises were used wholly and exclusively for purposes of the trade, profession or vocation, but reduced by the following amount according to the number of persons occupying the premises for their personal use—

- (a) £350 for one person;
- (b) £500 for two persons;
- (c) £650 for three or more persons.

Notional earned income

60.—(1) A person who has deprived themselves of earned income, or whose employer has arranged for them to be so deprived, for the purpose of securing entitlement to universal credit or to an increased amount of universal credit is to be treated as possessing that earned income.

(2) Such a purpose is to be treated as existing if, in fact, entitlement or higher entitlement to universal credit did result and, in the opinion of the Secretary of State, this was a foreseeable and intended consequence of the deprivation.

(3) If a person provides services for another person and—

- (a) the other person makes no payment for those services or pays less than would be paid for comparable services in the same location; and

(b) the means of the other person were sufficient to pay for, or pay more for, those services, the person who provides the services is to be treated as having received the remuneration that would be reasonable for the provision of those services.

(4) Paragraph (3) does not apply where—

- (a) the person is engaged to provide the services by a charitable or voluntary organisation and the Secretary of State is satisfied that it is reasonable to provide the services free of charge or at less than the rate that would be paid for comparable services in the same location;
- (b) the services are provided by a person who is participating as a service user (see regulation 53(2)); or
- (c) the services are provided under or in connection with a person's participation in an employment or training programme approved by the Secretary of State.

Information for calculating earned income

61.—(1) Where—

- (a) a person has employed earnings in respect of which deductions or repayments of income tax are required to be made under the PAYE Regulations; and
- (b) the person required to make those deductions or repayments is a Real Time Information employer,

the information on which the calculation of those earnings is to be based for the purposes of determining the person's earned income is the information about those earnings reported to HMRC in accordance with the PAYE Regulations.

(2) Where paragraph (1) does not apply or where a Real Time Information employer fails to report information to HMRC, the person must provide such information for the purposes of calculating the person's earned income at such times as the Secretary of State may require.

(3) Where, by virtue of paragraph (1), the calculation of employed earnings is to be based on information reported under the PAYE Regulations, those employed earnings are to be treated as if they had been received by the person in the assessment period in which the Secretary of State receives that information, unless the Secretary of State has made a determination in accordance with regulation 54(2)(b) (estimate where information not reported) in relation to a previous assessment period.

(4) In this regulation "Real Time Information employer" has the meaning in regulation 2A(1) of the PAYE Regulations(4).

Gainful self-employment

Minimum income floor

62.—(1) Where, in any assessment period, a claimant is in gainful self-employment (see regulation 64) 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.

(2) The "minimum income floor" is, subject to paragraph (3)—

- (a) the amount of the claimant's individual threshold (see regulation 90(2)(b)) multiplied by 52 and divided by 12; minus

(4) Regulation 2A was inserted by [S.I.2012/822](#).

- (b) an amount that the Secretary of State considers appropriate to take account of any income tax or national insurance contributions for which the person would be liable in respect of the assessment period if they had earned income of that amount.
- (3) But if the claimant is a member of a couple and, by virtue of paragraph (1), the amount of the couple's earned income would exceed the maximum for a couple—
 - (a) in a case where the couple's combined earned income (before the application of paragraph (1)) is equal to or exceeds the maximum for a couple, paragraph (1) does not apply; and
 - (b) in any other case, the minimum income floor is to be reduced so that the amount of the couple's earned income does not exceed the maximum for a couple.
- (4) In paragraph (3) the "maximum for a couple" is—
 - (a) the amount applicable in regulation 90(3) (earnings threshold for a couple) multiplied by 52 and divided by 12; minus
 - (b) an amount that the Secretary of State considers appropriate to take account of any income tax or national insurance contributions for which the couple would be liable in respect of the assessment period if they had earned income of that amount.
- (5) Paragraph (1) does not apply where—
 - (a) the assessment period falls within a start-up period or is the assessment period in which a start-up period begins or ends; or
 - (b) the claimant falls within any of the following sections of the Act—
 - (i) section 19 (claimants subject to no work-related requirements), except by virtue of regulation 90,
 - (ii) section 20 (claimants subject to a work-focused interview requirement only), or
 - (iii) section 21 (claimants subject to a work preparation requirement only).

Start-up period

- 63.**—(1) A "start-up period" is a period of 12 months and applies from the beginning of the assessment period in which the Secretary of State determines that a claimant is in gainful self-employment where—
- (a) the claimant has begun to carry on the trade, profession or vocation which is their main employment in the 12 months preceding the beginning of that assessment period; and
 - (b) the claimant is taking active steps to increase their earnings from that employment to the level of the claimant's individual threshold (see regulation 90).
- (2) But no start-up period may apply in relation to a claimant where a start-up period has previously applied in relation to that claimant, whether in relation to the current award or any previous award of universal credit, unless that previous start-up period—
- (a) began more than 5 years before the beginning of assessment period referred to in paragraph (1); and
 - (b) applied in relation to a different trade, profession or vocation which the claimant has ceased to carry on.
- (3) The Secretary of State may terminate a start-up period at any time if the person is no longer in gainful self-employment or is no longer taking the steps referred to in paragraph (1)(b).

Meaning of “gainful self-employment”

64. A claimant is in gainful self-employment for the purposes of regulations 62 and 63 where the Secretary of State has determined that—

- (a) the claimant is carrying on a trade, profession or vocation as their main employment;
- (b) their earnings from that trade, profession or vocation are self-employed earnings; and
- (c) the trade, profession or vocation is organised, developed, regular and carried on in expectation of profit.