

EXPLANATORY MEMORANDUM TO
THE UNIVERSAL CREDIT (CHILDCARE COSTS AND MINIMUM INCOME FLOOR) (AMENDMENT) REGULATIONS 2019

2019 No. 1249

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The regulations make two amendments to The Universal Credit Regulations 2013¹ ('the 2013 Regulations'). These amendments:

- increase the time permitted for a universal credit claimant to report that they have paid childcare costs so that a childcare element of universal credit can be paid. Hitherto claimants have generally been required to report the payment in the same monthly universal credit assessment period² as it was paid. The amendment extends the time allowed for reporting the payment to include the following assessment period; and
- clarify that all universal credit claimants who are determined by the Department as being 'gainfully self-employed' and expected to work will be subject to an assumed level of earnings – the 'Minimum Income Floor' – when calculating their universal credit entitlement (unless they are still in a permitted period during which the Minimum Income Floor is not to be applied).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

4.3 Corresponding legislation for Northern Ireland will be produced and led by the Department for Communities in Northern Ireland.

¹ <http://www.legislation.gov.uk/uksi/2013/376/contents>

² Universal Credit claimants are assessed and paid on a monthly basis. The start date of this month is determined according to the claimant's date of claim, and is called the 'assessment period'.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 *The Welfare Reform Act 2012*³ provides for the introduction in Great Britain of universal credit, a working age income-related social security benefit, and the abolition of income support, housing benefit, working tax credit, child tax credit and the income-related components of jobseeker's allowance and employment and support allowance.
- 6.2 The 2013 Regulations provide for matters relating to the administration of universal credit, including: entitlement; components and calculation of an award; application of the Benefit Cap; requirements for participation in the labour market; sanctions and hardship payments.
- 6.3 Specifically, as regards the two amendments the Department is making, the 2013 Regulations provide for a childcare costs element in a universal credit award, and the application of a 'Minimum Income Floor' when calculating the award of a claimant who is determined to be gainfully self-employed.

7. Policy background

What is being done and why?

Childcare costs

- 7.1 The 2013 Regulations, as amended by The Universal Credit (Digital Service) Amendment Regulations 2014⁴, provide the conditions for the award of the childcare costs element of universal credit. To meet the conditions, the claimant must generally report that they have paid for childcare in the same universal credit assessment period in which the payment was made.
- 7.2 If a claimant does not report the payment in the same assessment period, then at present it is considered under general rules on the late reporting of a change of circumstance. This means that the Secretary of State must be satisfied that special circumstances prevented timely reporting. The phrase "special circumstances" is not defined in law, but can include, for example, death, bereavement, serious illness or major postal disruption. If that is not the case, then the childcare costs element will not be paid. Currently if the claimant pays for childcare at the very end of their assessment period it leaves them with very little time to report the payment to the Department within that assessment period. If they report the childcare payment in the next assessment period, special circumstances would need to apply in order to have those costs considered for reimbursement up to the prescribed limits. This means there is a risk that they might not be eligible to have those costs included as the childcare element of their Universal Credit award.
- 7.3 Guidance was issued earlier this year to advise officials to take a generous and flexible approach to what might constitute special circumstances as an interim measure before

³ <http://www.legislation.gov.uk/ukpga/2012/5/contents>

⁴ <http://www.legislation.gov.uk/uksi/2014/2887/contents>

the regulations could be changed in order to ensure claimants did not lose out on reimbursement of childcare costs. However, the claimant still needed to demonstrate some form of special circumstances.

- 7.4 **Regulation 2** of this instrument will amend the 2013 Regulations to ease the reporting rule so that a childcare costs element will be paid if reported either in the assessment period during which the claimant paid the childcare costs or the assessment period immediately following it.
- 7.5 This is intended to help households with children, giving people more confidence that they will receive support they need in work.

The Minimum Income Floor

- 7.6 The 2013 Regulations also provide for a ‘Minimum Income Floor’ to be applied when calculating the award of universal credit claimants who are determined by the Department to be ‘gainfully self-employed’⁵.
- 7.7 The Minimum Income Floor sets an assumed level of income from self-employment, and is designed to provide a fair incentive for the self-employed to increase their earnings and productivity. The earnings expectations of self-employed claimants under universal credit mirror those that would be expected of claimants with similar circumstances in employed work. For example, the level of the Minimum Income Floor for claimants expected to be able to work full-time is equivalent to 35 hours per week at the National Minimum Wage.
- 7.8 The Minimum Income Floor is applied to a universal credit claimant⁶ subject to two conditions: that the claimant (a) is gainfully self-employed and (b) within the All Work Related Requirements conditionality group (i.e. that their circumstances are such that they are expected to be available for and seek work).
- 7.9 **Regulation 3** of this instrument amends the 2013 Regulations to make clear that a reference to a claimant in the All Work Related Requirements conditionality group includes those who are exempt from the requirement to look for work only because their earnings exceed the Conditionality Earnings Threshold.⁷
- 7.10 The Conditionality Earnings Threshold is only relevant to employed claimants and, as such, has no role in the application of the Minimum Income Floor. For example, a claimant could meet the Conditionality Earnings Threshold as a result of average earnings over a period of time if they are an employed earner. However, self-employed universal credit claimants are expected to plan for fluctuations in income in the same way as all other self-employed people must do and which is part of running a sustainable business. Gainfully self-employed claimants are expected to earn at or above the set assumed level in each assessment period and, where earnings fall short of this, the Minimum Income Floor is applied.
- 7.11 This has always been the policy and was clear in the original 2013 Regulations. However, an amendment made in 2014 by *The Universal Credit and Miscellaneous Amendments (No.2) Regulations 2014*⁸ may have created ambiguity, despite

⁵ As defined in the 2013 Regulations: <http://www.legislation.gov.uk/uksi/2013/376/regulation/64>

⁶ Provided that they are not in a permitted ‘start-up’ period during which the Minimum Income Floor is not to be applied.

⁷ The Conditionality Earnings Threshold is a level of earned income above which a universal credit claimant is not expected to seek more work.

⁸ [SI 2014/2888](#)

paragraph 7.33 of the Explanatory Memorandum⁹ stating that there was no change in policy.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Informal consolidated text of instruments is available to the public free of charge via the 'National Archive' website: www.legislation.gov.uk .

10. Consultation outcome

10.1 The Department presented the draft regulations to the Social Security Advisory Committee (SSAC) on 24 July 2019. The Committee did not take the regulations on formal reference.

11. Guidance

11.1 Guidance is being updated to support staff and will be published on the Department's website.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 A full assessment was made of the impact of the introduction of universal credit and has been published.¹⁰ This covers information concerning the Department's obligations regarding its Equality Duty. On 7 June 2018, recent analysis was published in the "UC Programme Full Business Case Summary"¹¹, which sets out the rationale for universal credit and outlines the expected employment impacts, economic case, and the value for money assessment.¹²

12.4 The Department has concluded that no benefit recipient with a protected characteristic will be adversely affected.

12.5 The change in the rule for reporting childcare costs gives claimants more time to do so. This will be beneficial to all working claimants with children, and may be particularly helpful to vulnerable claimants and lone parents, who may face more pressure when managing their universal credit claims compared with other working households with children.

⁹ http://www.legislation.gov.uk/ukxi/2014/2888/pdfs/ukxiem_20142888_en.pdf

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220177/universal-credit-wr2011-ia.pdf

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725477/uc-business-case-summary.pdf

¹² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725477/uc-business-case-summary.pdf

12.6 The amendment relating to the application of the Minimum Income Floor seeks only to clarify the legislation. It does not change the treatment of universal credit claimants.

12.7 A Regulatory Impact Assessment has not been prepared for this instrument because it has no direct impact on business or in relation to the impact on individuals, charities and the wider public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There are no plans to review the impacts of these amendments, which are

- beneficial for claimants as regards reporting childcare costs, and
- neutral as regards application of the Minimum Income Floor, since this amendment only clarifies the law to reflect long-standing policy.

14.2 The regulations do not include a statutory review clause.

15. Contact

15.1 Craig Dutton at the Department for Work and Pensions Telephone: 01743 843377 or email: craig.dutton1@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Martha Baker, acting Deputy Director for Universal Credit Policy at the department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mims Davies MP – Parliamentary Under-Secretary of State for Employment can confirm that this Explanatory Memorandum meets the required standard.