

EXPLANATORY MEMORANDUM TO
THE UNIVERSAL CREDIT (EARNED INCOME) AMENDMENT REGULATIONS
2020

2020 No. 1138

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 Universal Credit (Earned Income) Amendment Regulations 2020 make the following amendments to reallocate a calendar monthly payment of earnings reported via the Real Time Information (RTI) service to a different Universal Credit assessment period where it is necessary to maintain a regular payment cycle. This means that only one set of earnings will be taken into account in each assessment period for people who are paid calendar monthly rather than two which can sometimes happen currently. This reallocation will smooth entitlement to Universal Credit and help maintain a regular payment cycle.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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.

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 This instrument makes amendments to The Universal Credit Regulations 2013¹. The amendment substitutes a new regulation 61. Regulation 61 determines how information, in particular information reported via HMRC by Real Time Information employers (RTI Information), is to be used in the calculation of earned income.

7. Policy background

What is being done and why?

- 7.1 Legislation currently provides the RTI information about payment of earnings received from HMRC in each assessment period is to be taken into account in the Universal Credit calculation for that assessment period unless certain exceptions apply. These exceptions mainly concern instances where the information may be incorrect or where there has been a failure to report. The information received from RTI means the Universal Credit IT system can automatically adjust an award each assessment period without requiring the claimant to self-report and without the need for a separate decision about the amount of earnings in each assessment period.
- 7.2 Under the current regulations a payment in relation to a calendar monthly paid employee reported via RTI would not fall within the exceptions if it is the correct amount and has been actually paid in the assessment period. So an early payment, for example because of a bank holiday, would give rise to two payments being counted in one assessment period. This higher level of earnings could lead to claimants not receiving any or less Universal Credit in that assessment period. It could also mean some claimants not benefiting from a work allowance (an amount a person can earn before Universal Credit starts to be reduced on account of earnings) in the following assessment period because there are no earnings to be taken into account.
- 7.3 On the 22 June in the case of *Johnson and Others*², the Court of Appeal found in the favour of the Department with regard to the interpretation of Regulation 54 of the Universal Credit Regulations 2013 about how Universal Credit is calculated. However, it also decided that the Department's lack of adjustment for those who have two calendar monthly salaried earnings taken into account in one assessment period (AP) due to a "non-banking day salary shift" was not rational.
- 7.4 These regulations therefore provide a solution to that Judgment. The policy intent is to ensure that ordinarily no more than one set of calendar monthly salary payments from a single employer are taken into account in each assessment period. This will also enable certain claimants to benefit from any applicable work allowance in each assessment period. This change in regulations will allow DWP to reallocate a payment reported via real time information (RTI) to a different assessment period, either because it was reported in the wrong assessment period, or (in the case of monthly paid employee) it is necessary to maintain a regular payment cycle. This issue applies to less than 1% of the people who are working and receiving Universal Credit.

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

² <https://www.bailii.org/ew/cases/EWCA/Civ/2020/778.html> Court of Appeal Judgment in the case of Johnson & others.

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 or 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 7th October 2020. 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, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument, our assessment is that allowing for the reallocation of a calendar monthly payment reported via RTI to a different assessment period is a positive measure and no or no significant impact is foreseen on the private, public or voluntary sectors.

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 formally review the impacts of these amendments.

14.2 The regulation does not include a statutory review

15. Contact

15.1 Trevor Pendergast at the Department for Work and Pensions Telephone: 0207 449 5639 or email: trevor.pendergast@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Kerstin Parker, 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 Will Quince, Minister for Welfare Delivery, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.