

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY AND UNIVERSAL CREDIT (MIGRATION OF TAX CREDIT CLAIMANTS AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2024

2024 No. 341

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument makes amendments and modifications to various social security regulations.
- 2.2 These amendments make appropriate provision for student finance in the calculation of means tested benefits, ensure that advance payments of Universal Credit can only be made to persons with a National Insurance Number, update out of date references to other legislation, ensure children placed for adoption are treated as part of a Universal Credit claimant's household, and support the move to Universal Credit and associated Tax Credits closure.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, and Scotland.

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 minor changes that amend the following regulations:
- The Income Support (General) Regulations 1987¹;
 - The Jobseeker's Allowance Regulations 1996²;
 - The Housing Benefit Regulations 2006³;

¹ <https://www.legislation.gov.uk/uksi/1987/1967/contents>

² <https://www.legislation.gov.uk/uksi/1996/207/contents>

³ <https://www.legislation.gov.uk/uksi/2006/213/contents>

- The Employment and Support Allowance Regulations 2008⁴;
- The Social Security (Payments on Account of Benefit) Regulations 2013⁵;
- The Universal Credit Regulations 2013⁶; and
- The Universal Credit (Transitional Provisions) Regulations 2014⁷.

7. Policy background

What is being done and why?

Amendment to regulation 66D of the Income Support (General) Regulations 1987⁸, regulation 136C of the Jobseeker's Allowance Regulations 1996⁹, regulation 64B of the Housing Benefit Regulations 2006¹⁰ and regulation 139A of the Employment and Support Allowance Regulations 2008¹¹ - Treatment of special support loans

- 7.1 The Scottish Government are introducing a Special Support Loan (which is intended to cover course costs for, for example, books, equipment, travel and childcare) payable to Higher Education students. In England and Wales, loans and grants for these purposes are disregarded when considering the impact of student income on benefits. This amendment ensures that the Scottish Support Loan will be disregarded in the same way as the analogous payments made to students in England and Wales.

Amendment to the Social Security (Payments on Account of Benefit) Regulations 2013, regulation 5(1) - Payment on account of benefit where there is no award of benefit¹²

- 7.2 These regulations set out the circumstances in which an advance of benefit can be made to a person where there is no award of benefit. The policy intent in Universal Credit is, and always has been, that an advance of benefit should only be made to a person who has been allocated a National Insurance Number (NINo). This policy intent was not supported by the Court of Appeal's interpretation of the existing provision as set out in a recent judgment¹³. In response to the judgment, and since it is not possible to make advance Universal Credit payments before a NINo has been allocated without introducing a significant fraud risk, this amendment ensures that an advance of Universal Credit will only be paid where the person has been allocated a NINo.

⁴ <https://www.legislation.gov.uk/uksi/2008/794/contents>

⁵ <https://www.legislation.gov.uk/uksi/2013/383/contents>

⁶ <https://www.legislation.gov.uk/uksi/2013/376/contents>

⁷ <https://www.legislation.gov.uk/uksi/2014/1230/contents>

⁸ <https://www.legislation.gov.uk/uksi/1987/1967/regulation/66D>

⁹ <https://www.legislation.gov.uk/uksi/1996/207/regulation/136C>

¹⁰ <https://www.legislation.gov.uk/uksi/2006/213/regulation/64B>

¹¹ <https://www.legislation.gov.uk/uksi/2008/794/regulation/139A>

¹² <https://www.legislation.gov.uk/uksi/2013/383/regulation/5>

¹³ <https://www.bailii.org/ew/cases/EWCA/Civ/2023/566.html>

Amendments to the Universal Credit Regulations 2013

Regulation 2 – Interpretation¹⁴

- 7.3 The definition of a ‘foster parent’ is being amended to update references to the legislation that governs the placement of children. This ensures the currently applicable legislation is referred to when identifying/defining foster parents.

Regulation 4A – Responsibility for children looked after by a local authority¹⁵

- 7.4 The child element in Universal Credit cannot generally be paid for children looked after by a local authority (including foster children). This exclusion should not apply if the child is, despite local authority involvement, living with a person who has parental responsibility for them.
- 7.5 Children and Qualifying Young People placed for adoption with a Universal Credit claimant are considered part of the claimant’s benefit unit and the policy intent is therefore that the claimant can receive child element for these children. The Universal Credit claimant is then not to be treated as a foster parent and, despite ongoing involvement with the local authority, the child should not be treated as ‘looked after’ by the local authority once they are placed on what is hoped is a permanent basis.
- 7.6 This amendment ensures children placed for adoption with a Universal Credit claimant are not considered to be still looked after by the local authority and are part of the claimant’s benefit unit so they can receive Universal Credit child element for these children.

Regulation 68(7) - Person treated as having student income¹⁶

- 7.7 These regulations currently include the Young Student Bursary (YSB), which is payable to certain students in Higher Education in Scotland, in the definition of a student loan. The YSB is defined as a payment under specific Scottish legislation. A change in the way the YSB has been paid means that there are no longer any YSB payments to which that definition applies. The YSB (in its current form) in Scotland should now be treated as a student grant. This amendment removes the redundant reference to YSB, which is disregarded when calculating student income for the purposes of Universal Credit, from the definition of a student loan to ensure any confusion or ambiguity is avoided.

Regulation 71 - Calculation of student income - amount for an assessment period¹⁷

- 7.8 This amendment clarifies that where a student makes a claim to Universal Credit part-way through their course year, the student income is to be averaged across an academic year, or a period of study if shorter. This change reflects policy intent to ensure that student income is attributed to assessment periods as intended.

¹⁴<https://www.legislation.gov.uk/uksi/2013/376/regulation/2>

¹⁵<https://www.legislation.gov.uk/uksi/2013/376/regulation/4A>

¹⁶<https://www.legislation.gov.uk/uksi/2013/376/regulation/68>

¹⁷<https://www.legislation.gov.uk/uksi/2013/376/regulation/71>

Amendment to the Universal Credit (Transitional Provisions) Regulations 2014

Regulation 6A - Restrictions on claims for housing benefit, income support or a tax credit¹⁸

- 7.9 These regulations introduced restrictions on claims to tax credits but included an exemption that allowed existing tax credit claimants to renew their tax credit claim each financial year between April and July, and to continue receiving tax credits for the following year, if they are eligible, and report any changes they may have.
- 7.10 This amendment removes the exemption that ensures that existing tax credit claimants can automatically renew those tax credit claims. It also removes the exemption for existing tax credit claimants who are claiming working tax credit only and have a change of circumstances that would require them to claim child tax credit, and vice versa. Removing the exemption will mean claimants will not be able to request a renewal of their tax credits claim from 6th April 2025, supporting His Majesty's Revenue and Customs (HMRC's) commitment to migrating (tax credit claimants will be invited to move to Universal Credit) or ending tax credits claims by the end of the 2024/2025 tax year.

Regulation 12A – Modification of tax credits legislation: finalisation of tax credits¹⁹

- 7.11 Claimants who make a claim to Universal Credit are required to confirm details of their income and circumstances for the part-year they were receiving tax credits, up to the day before their claim for Universal Credit (known as “In-Year Finalisation”).
- 7.12 Although the current legislation allows for In-Year Finalisation, once a Universal Credit claim is made, whether that be via a voluntary, natural or managed migration, it does not allow for the same treatment where no claim to Universal Credit has been made.
- 7.13 This amendment allows the In-Year Finalisation of tax credit awards where a claimant, who has been invited to claim Universal Credit, has not done so by their deadline date, ensuring they are treated the same as those who do. This will avoid the need for complex, confusing and potentially delayed interactions with HMRC that claimants would otherwise face. It also provides those claimants with their relevant appeal rights earlier, should they need to exercise them.

Schedule 1, paragraph 16 – Modification to the Tax Credits (Definition and Calculation of Income) Regulations 2002²⁰

- 7.14 His Majesty's Revenue and Customs have made changes to the way self-employed traders tax liability on their trading profits for a specific tax year are calculated (known as the Basis Period Reform). These changes align self-employed traders accounting periods to the actual tax year (6 April to 5 April) and remove all legislative reference to the term ‘basis period’.
- 7.15 This amendment removes accounting dates to allow In-Year Finalisation of tax credits using the correct amount of trading profits applicable to the part-year in 2024/2025 and ensures accurate and consistent finalisations.

¹⁸ <https://www.legislation.gov.uk/ukxi/2014/1230/regulation/6A>

¹⁹ <https://www.legislation.gov.uk/ukxi/2014/1230/regulation/12A>

²⁰ <https://www.legislation.gov.uk/ukxi/2014/1230/schedule/paragraph/16>

8. European Union Withdrawal and Future Relationship

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, legislation.gov.uk.

10. Consultation outcome

10.1 The Department presented the draft regulations to the Social Security Advisory Committee (SSAC) on 24 January 2024. The committee did not take the regulations on formal reference.

10.2 The Department presented the draft Housing Benefit regulations to the Local Authority Association (LAAs) on 3 January 2024. The LAAs did not have any comments or concerns.

11. Guidance

11.1 The decision makers’ guide: staff guide²¹ and advice for decision making: staff guide²² will be updated on gov.uk by the relevant coming into force dates.

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 as this instrument does not include amendments that introduce new delivery processes.

12.3 A full Impact Assessment has not been prepared for this instrument because it has negligible impact on business or civil society organisations.

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 and the regulations do not include a statutory review.

15. Contact

15.1 Natalie Liddell at the Department for Work and Pensions, email: natalie.liddell@dpw.gov.uk can be contacted with any queries regarding the instrument.

15.2 Graeme Connor, Deputy Director for Universal Credit Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

²¹ <https://www.gov.uk/government/collections/decision-makers-guide-staff-guide>

²² <https://www.gov.uk/government/publications/advice-for-decision-making-staff-guide>

15.3 Jo Churchill MP, Minister for Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.