

UNIVERSAL CREDIT – TWO CHILD LIMIT

Contents	Paragraphs
Introduction	1-2
Background	3 - 4
Timing	5
Changes	
Child element	6 - 7
New claim restriction	8
Transitional protection	
Interim period	9
After the interim period	10
Connected awards	11
Exceptions	12
Multiple births	13
Adoptions	14
Non-parental caring arrangements	15 - 16
Non-consensual conception	17 - 18
Continuation of existing exception – previous UC award	19 – 21
Continuation of an exception from a previous CTC/IS/JSA award	22 – 23
Order of children	24 - 26
Claims for HB, IS or a CT	27
Definitions	
Approved person	28
British Islands	29
Criminal Injuries compensation Scheme	30
Members of the same family	31

Relevant criminal injury 32

Step parent 33

Annotations

Contacts

INTRODUCTION

- 1 This memo provides guidance on amendments to legislation, in particular those regulations which provide for the amount of the child element in UC.
- 2 These amendments are made by the Social Security (Restrictions on Amounts for Children) Amendment Regulations 2017 (SI 2017/376) and come into force on 6.04.17¹

1 The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 reg 1

BACKGROUND

- 3 Support for children within UC is made by the addition of a child element which is awarded in respect of each child or qualifying young person for whom the claimant is responsible.
- 4 In the Written Ministerial Statement it was announced that from April 2017 the number of children or qualifying young persons in respect of whom the child element in UC is payable will be limited to a maximum of two. Legislation has been amended to ensure that new UC claims from families with more than 2 children will be directed to tax credits until November 2018.

TIMING

- 5 Where any of the amendments covered by this memo applies to an existing award of UC, that amendment has effect for the purposes of that award from 6.4.17.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, part 3, para 32

CHANGES

Child element

- 6 From 6.4.17, the child element will only be awarded in respect of the first and second child or qualifying young person in the claimant's household¹.

1 UC Regs, reg 24A(1)(a)

- 7 A third and any subsequent child or qualifying young person in the claimant's household will only qualify for a child element if that child or qualifying young person is

1. transitionally protected or (see paragraph 9 to 11)
2. an exception¹. (see paragraph 12 to 23)

1 UC Regs, reg 24A(1)(b)

New claim restriction

- 8 ADM Chapters M3 (Claims for UC –gateway conditions) and M5 (Claims for UC – digital service area) give guidance on the conditions for claiming UC. For the period from 6.4.17 to 31.10.18¹ no new claims for UC can be made by a single claimant or members of a couple jointly who have responsibility for more than 2 children or qualifying young persons, unless it is a claim made where

1. the last day of a previous entitlement of the claimant or either joint claimant fell within the 6 months preceding the current claim **and**

- 1.1 during these preceding 6 months they continued to meet the basic conditions for UC (other than accepting a claimant commitment or temporary absence from GB that would be disregarded) **and**

they were not excluded as a person who is

- 1.2 a member of a religious order
- 1.3 a prisoner (other than those described at ADM E3040)
- 1.4 serving a sentence of imprisonment in hospital² **or**

2. the claim is made by a single person within one month of an award of UC terminating because that person ceased to be a member of a couple³

Note: The SoS retains the option to extend the restrictive period to a later date.

1 UC (TP) Regs, reg 39(2); 2 reg 39(1)(a); 3 reg 39(1)(b)

Example: Kevin is a single parent with 3 children. On 2.10.17 he is made redundant and makes his first UC claim. Kevin is not entitled to claim UC.

TRANSITIONAL PROTECTION

Interim period

- 9 For the purposes of these provisions an interim period¹ is set beginning with 6.4.17 and ending on 31.10.18. A child (the 3rd or subsequent child) is transitionally protected², as described at paragraph 7.1, where an award of UC
 1. is in respect of an assessment period that
 - 1.1 includes 6.4.17 **or**
 - 1.2 falls wholly within the period from 6.4.17 to 31.10.18 **and**
 2. includes the child in question, who was born before 6.4.17 **and**
 3. there are at least 2 other children or qualifying young persons who were
 - 3.1 born before 6.4.17
 - 3.2 higher in the order (see paragraph 24) than the child at 2.³

1 UC (TP) Regs, reg 39(2); 2 UC Regs, reg 24A(3); 3 UC (TP) Regs, reg 40(2)

Example: Kevin is a single parent with 5 children. On 24.3.17 he is made redundant and makes his first UC claim. Kevin's 3rd, 4th and 5th child will be transitionally protected and he is entitled to a child element in respect of all of his children.

After the interim period

- 10 A child (the 3rd or subsequent child) is transitionally protected, as provided at paragraph 7.1 above, where an award of UC is in respect of an assessment period that includes 31.10.18 or begins on a date after 31.10.18 **and**
 1. includes the child in question, who was born before 6.4.17¹ **and**

2. the claimant or either joint claimant was
 - 2.1 on 31.10.18
 - 2.1.a entitled to UC **or**
 - 2.1.b in a period of non-entitlement between connected awards (see paragraph 11) **or**
 - 2.2 where 2.1 does not apply the claimant became entitled to UC on a date after 31.10.18 and within the 6 months immediately preceding that date was in receipt of CTC/IS/JSA which included an allowance for that child. **and**

throughout these periods (2.1 or 2.2) the claimant has not ceased to be responsible for that child or ceased to be entitled to UC (apart from a period of non-entitlement between connected awards)² **and**
3. there are at least 2 other children or qualifying young persons who were born before 6.4.17
 - 3.1 for whom the claimant or either joint claimant satisfied the conditions described at .2 and
 - 3.2 are higher in the order (see paragraph 24) than the child under consideration³.

1 UC (TP) Regs, reg 40(3)(a); 2 reg 40(3)(b); 3 reg 40(3)(c)

Example: Kevin is a single parent with 5 children (all born before 6.4.17). He is made redundant and on 20.11.18 makes his first UC claim. Although the new claim restriction is now lifted Kevin doesn't satisfy all the transitional provisions (in particular previous entitlement within 6 months) and so is only paid a child element in respect of his two eldest children.

Connected awards

- 11 For the purposes of paragraph 10.2 awards are connected awards where the later award was made
1. as a result of the other award terminating when the claimant
 - 1.1 ceased to be a member of a couple or
 - 1.2 became a member of a couple

2. in any other circumstances which resulted in retaining the same assessment period for that award, that is where the new assessment period begins on the same day of each month as the assessment period of the previous award.¹

1 UC (TP)Regs, reg 40(4)

EXCEPTIONS

- 12 There are 5 categories that fall into the exception specified at paragraph 7.2
 1. multiple births (paragraph 13)
 2. adoptions (paragraph 14 – 15)
 3. non-parental caring arrangements (paragraph 16 – 17)
 4. non-consensual conception (paragraph 18 – 20)
 5. continuation of existing exception. (paragraph 21 – 23)

Multiple births

- 13 An exception applies where
 1. the claimant is a parent (other than an adoptive parent) of the child
 2. the child was one of two or more children born as a result of the same pregnancy
 3. the claimant is responsible for at least two of the children born as a result of that pregnancy
 4. the child is not the first in the order of multiple birth children established under paragraph 24.¹

1 UC Regs, Sch 12, para 2

Example: Couple have two children Jack aged 5 and Jill aged 3, twins Alex and Luke are born on 20.12.17. The claimant is the parent of and responsible for the twins, they were born as a result of the same pregnancy and the DM decides that Alex is first in the child order of the twins. The claimant is entitled to a child element for Jack, Jill and a child element for Luke under the multiple birth exception criteria. (Luke is not considered to be the first child in the DMs order of the twins)

Adoptions

- 14 An exception applies¹ where
1. the child or qualifying young person has been
 - 1.1 adopted or
 - 1.2 placed for adoptionwith the claimant under legislation.²

1 UC Regs, Sch 12, para 3; 2 Adoption and Children Act 2002, Adoption and Children (Scotland) Act 2007

- 15 The exception at paragraph 14 does not apply where the claimant or, if the claimant is a member of a couple, the other member
1. was immediately prior to the child's adoption, a step parent of the child **or**
 2. has at any time been a parent of the child **or**
 3. adopted the child under a convention adoption order or an external adoption¹ **or**
 4. had already adopted the child under the law of any country or territory outside the British Islands (see paragraph 29).

1 Adoption and Children Act 2002, s144 & Adoption and Children Scotland Act 2007, s119(1)

Non-parental caring arrangements

- 16 An exception applies where the claimant is
1. a friend or family carer of the child **or**
 2. responsible for a child who is also a parent of a child¹.

1 UC Regs, Sch 12, para 4

Example: Couple have two children Jack aged 10 and Jill aged 15, Jill has a son Alex born on 20.12.17. As the claimant is responsible for Jill (who is the parent of Alex) he is entitled to a child element for Jack and Jill and also for Alex under the exception criteria.

- 17 For the purposes of paragraph 16.1 the term friend or family carer means a person who is responsible for the child, but is not that child's parent or step parent **and**
1. is named in a child arrangements order, under legislation¹, as a person with whom the child is to live **or**

2. is a guardian² or special guardian³ of the child **or**
3. is entitled to a guardian's allowance⁴ in respect of that child **or**
4. in Scotland
 - 4.1 has a kinship care order⁵ in respect of that child **or**
 - 4.2 is a guardian⁶ of that child **or**
 - 4.3 one or more of the parental responsibilities or parental rights⁷ are vested by a permanence order made in respect of that child under legislation⁸ **or**
5. fell within any of the above (1. to 4.) immediately prior to the child's 16th birthday and has since continued to be responsible for that child⁹ **or**
6. has taken care of the child in circumstances in which it is likely that child would otherwise be looked after by a local authority¹⁰.

Note: the family carer should provide evidence from a social worker to support the declaration that the child would otherwise be looked after by a local authority.

1 Children Act 1989, s8;2 s5; 3 s14A;4 C & B Act, s77;5 Children and Young People (Scotland)Act 2014, s72(1); 6 Children (Scotland) Act 1995, s7; 7 s1 or 2; 8 Adoption and Children (Scotland) Act 2007, s80; 9 UC Regs, Sch 12, para 4(2)(g); 10 para 4(2)(h)

Non-consensual conception

18 An exception applies where

1. the claimant is the child's parent **and**
2. the DM determines (see paragraph 20) that
 - 2.1 the child is likely to have been conceived as a result of sexual intercourse to which the parent did not agree by choice or did not have the freedom and capacity to agree by choice **and**
 - 2.2 the parent is not living at the same address as the other party to that sexual intercourse¹.

Note: For 2.2 the DM should accept the claimant's statement confirming that they were not living at the same address as the other party.²

19 The freedom or capacity to agree by choice, as required at paragraph 18.2. includes, at or around the time the child was conceived, such circumstances in which

1. the parents were personally connected **and**
2. one parent was repeatedly or continuously engaging in behaviour towards the other parent that was controlling or coercive **and**
3. that behaviour had a serious effect on the recipient¹

Note 1: the parents are personally connected if they are in an intimate personal relationship with each other or they were living together and were members of the same family or they were living together and had previously been in an intimate personal relationship with each other².

Note 2: the behaviour will have had a serious effect where it causes fear, on at least two occasions, that violence will be used against the parent or it causes serious alarm or distress which has a substantial adverse effect on the parent's day to day activities³.

20 The DM can only make the determination, as described at paragraph 18.2.1, where

1. the child's parent provides evidence (that evidence will probably take the form of a completed pro forma) from an approved person that shows
 - 1.1 they had contact with that approved person (see paragraph 28) or another approved person **and**
 - 1.2 their circumstances are consistent with those of a person to whom 1. and 2.1 of paragraph 18 would apply **or**
2. there has been
 - 2.1 a conviction for an offence of rape under legislation¹ **or**
 - 2.2 a conviction for an offence of controlling or coercive behaviour in an intimate or family relationship under legislation² **or**
 - 2.3 a conviction for any offence under the law of a country outside GB that the DM considers to be comparable to either offence mentioned above **or**

2.4 an award under the Criminal Injuries Compensation Scheme in respect of a relevant criminal injury sustained by the parent

and the DM considers it likely that the offence or injury (**2.1** to **2.4** above)

2.5 was caused by one parent **or**

2.6 diminished the other parents freedom or capacity to agree to the sexual intercourse

which resulted in the conception of the child³.

Note 1: no time limit is placed on when the report needs to be made to the approved person after the actual incident that resulted in the pregnancy, in order to be eligible for the exception.

Note 2: There is no requirement to provide evidence from an approved person where the DM is satisfied that the same evidence had already been provided to HMRC in relation to a CTC exception⁴.

1 Sexual Offences Act 2003, s1 & Sexual Offences (Scotland) Act 2009, s1; 2 Serious Crime Act 2015, s76; 3 UC Regs, Sch 12, para 5(3); 4 UC (TP) Regs, reg 42(2)

Continuation of existing exception – previous UC award

21 An exception applies¹ where none of the exceptions listed at **1.** to **4.** of paragraph 12 are triggered and the claimant

1. is the child's step parent **and**

2. had previously been entitled to UC as a member of a joint claim couple with the child's parent where that child fell under one of the multiple birth, adoption or non-consensual conception exceptions **and**

3. since the previous award ended each subsequent UC award was as a consequence of

3.1 the previous award having ended when the claimant ceased to be a member of a couple **or**

3.2 the previous award ending when they became a member of a couple with another claimant **or**

- 3.3** any other circumstances which result in retaining assessment periods for that award that begin on the same day of each month² as the assessment period for a previous award.

1 UC Regs, Sch 12, para 6; 2 UC Regs, reg 21

22 Where in the previous award mentioned at 21.2 a multiple birth exception applied

1. the step parent was also responsible for one or more children or qualifying young persons born as a result of the same pregnancy as the child **and**
2. the child was not the first in the order established under paragraph 24¹.

1 UC Regs, Sch 12, para 6(e)

Continuation of an exception from a previous CTC/IS/JSA award

23 The claimant is treated as satisfying¹ the exception described at paragraph 21 where the claimant

1. is the step-parent of a child or qualifying young person **and**
2. within the 6 months immediately preceding the first day on which the claimant became entitled to UC they had an award of CTC, IS or JSA in which an exception corresponding with the UC exceptions of

2.1 multiple birth

2.2 adoption

2.3 non-consensual conception

2.4 continuation of an existing exception

applied.

Note: Where it is **2.4** (the continuation exception equivalent) that is considered, the claimant should be treated as satisfying the test of paragraph 21.2 despite the previous award not being an award of UC.

1 UC (TP)Regs, reg 41(1);

ORDER OF CHILDREN

24 The order of children or qualifying young persons in the claimant's household is established by reference to a specific date¹ in relation to each child or qualifying young person for whom the claimant is responsible.

1 UC Regs, reg 24B

25 The specific date for each child is

1. the child's date of birth¹, where the claimant or if the claimant is a member of a couple, the other member, is the child's parent or step parent **or**
2. where .1 does not apply
 - 2.1 the date on which the claimant became responsible for the child **or**
 - 2.2 in the case of joint claimants where each of them became responsible for the child on a different date, the earliest date².

Note: when placing the children in specific date order the earliest date will equate /relate to the first child.

1 UC Regs, reg 24B(1)(a); 2 reg 24B(1)(b)

Example: Kevin and Penny already have two children, Tom aged 5 and Dick aged 3, when they adopt Harry who is aged 6. For the purposes of the two child limit the order of children arranged by considering date of birth and date of responsibility is Tom, Dick then Harry.

26 Where

1. the same date is established, under paragraph 25 above, in relation to two or more children or qualifying young persons for whom the claimant is responsible **or**
2. the claimant gave birth to a child less than 10 months after becoming responsible for a child or qualifying young person under the non-parental caring exception (paragraph 16)

the order of the children or qualifying young persons in the claimant's household should be determined by the DM to ensure the greatest number of children qualify for the child element.¹

1 UC Regs, reg 24B(2)

Example: Kevin and Penny are the parents of Dick aged 3 and the guardian of Tom aged 5, when Harry is born. They became Tom’s guardian on 10.7.17 and Harry was born on 20.11.17. For the purposes of the two child limit the order of children arranged by considering date of birth and date of responsibility should be Dick, Tom then Harry however under this configuration Kevin wouldn’t qualify for a child element for Harry. The order is re-arranged in to the more beneficial order of Dick, Harry then Tom. Kevin now qualifies for the child element for all 3 children as Tom falls into an exception.

Claims for HB, IS or a TC

- 27 M5025 gives a definition of “digital service area”¹, also known as the Full Service. Claims for HB, IS or a TC cannot normally be made in a digital service area if a claim for UC could be made instead (see M5090). However, this does not apply where UC claims cannot be made as in paragraph 8¹.

1 WR Act 12 (Commencement No. 23 etc.) Order, art 7(2); The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017, reg 4

DEFINITIONS

Approved person

- 28 An approved person is a person of a description specified on an approved list.

Note: the approved list will be of professionals who are trained to deal with such sensitive situations and with whom it would be beneficial for the claimant to engage in order to obtain relevant guidance and support.

British Islands

- 29 The British Islands means the UK, the Channel Islands and the Isle of Man.

Criminal Injuries Compensation Scheme

- 30 Criminal injuries compensation scheme has the meaning specified in legislation¹.

1 Criminal Injuries Compensation Act 1995

Members of the same family

- 31 Parents are members of the same family where

1. they are, or have been married to or civil partners of each other

2. they are relatives as specified in legislation¹
3. they have agreed to marry each other
4. they have entered into a civil partnership agreement under specified legislation²
5. they are both parents of the same child
6. they have, or have had, parental responsibility³ for the same child.

1 Family Law Act 1996, s63(1); 2 Civil Partnership Act 2004, s73; 3 UC Regs, reg 4A(2)

Relevant criminal injury

32 Relevant criminal injury means

1. a sexual offence (including a pregnancy sustained as a direct result of being the victim of a sexual offence)
2. physical abuse of an adult, including domestic abuse
3. mental injury

as described in the tariff of injuries in the Criminal Injuries Compensation Scheme.

Step-parent

33 In relation to a child or qualifying young person a step-parent is a person who is not the child's parent but

1. is a member of a couple, the other member of which is a parent of the child, where both are responsible for that child **or**
2. was previously a member of a couple, the other member of which was a parent of the child, where immediately prior to ceasing to be a member of that couple the person was, and has since continued to be, responsible for that child¹.

1 UC Regs, reg 2

ANNOTATIONS

Please annotate the number of this memo (ADM 10/17) against the following ADM paragraphs: E1015, F1005, F7040, M5106

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in Memo [DMG 3/13](#) - Obtaining legal advice and guidance from DMA Leeds.

DMA Leeds: February 2017