

SSAC draft 1st June 2018

Draft Regulations laid before Parliament under section 43(3)(m) of the Welfare Reform Act 2012, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2018 No.

SOCIAL SECURITY

The Universal Credit (Transitional Provisions) (Managed Migration) Amendment Regulations 2018

Made - - - - - ***
Coming into force - -

In accordance with section 43(3) and (6)(b) of the Welfare Reform Act 2012(a) a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 42(2) and (3) of, and paragraph 4(6) of Schedule 1 and paragraphs 1(1), 4(1), (2)(a) and (3) and 6(a) of Schedule 6 to the Welfare Reform Act 2012(b).

[In accordance with section 172(1) of the Social Security Administration Act 1992(c), the Secretary of State has referred the proposals in respect of these Regulations to the Social Security Advisory Committee.]

Citation and commencement

1. These Regulations may be cited as the Universal Credit (Transitional Provisions) (Managed Migration) Amendment Regulations 2018 and come into force on the day on which they are made.

Amendment of the Universal Credit (Transitional Provisions) Regulations 2014

2.—(1) The Universal Credit (Transitional Provisions) Regulations 2014(d) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) insert at the appropriate places—

“childcare costs element” has the meaning in the Universal Credit Regulations;

“deadline day” has the meaning in regulation 44;

(a) 2012 c.5.

(b) 2012 c.5.

(c) 1992 c.5.

(d) S.I. 2014/1230. Regulation 42 was inserted by ...

“earned income” has the meaning in Chapter 2 of Part 6 of the Universal Credit Regulations;

“HMRC” means Her Majesty’s Revenue and Customs;

“housing costs element” has the meaning in the Universal Credit Regulations;

“indicative UC amount” has the meaning in regulation 54;

“migration day” has the meaning in regulation 49;

“migration notice” has the meaning in regulation 44;

“notified person” has the meaning in regulation 44;

“official error” means an error that—

(a) was made by an officer of, or an employee of a body acting on behalf of, the Department for Work and Pensions, HMRC or a local authority that administers housing benefit; and

(b) was not caused, or materially contributed to, by any person outside that body or outside the Department, HMRC or local authority;

“prisoner” has the meaning in the Universal Credit Regulations;

“qualifying claim” has the meaning in regulation 48;

“severe disability premium” means a premium under paragraph 6 of Schedule 4 to the Employment and Support Allowance Regulations 2008^(a) or any corresponding premium in relation to income support, old style JSA or housing benefit;

“total legacy amount” has the meaning in regulation 53;

“transitional capital disregard” has the meaning in regulation 51;

“transitional element” has the meaning in regulation 52;

(b) in the definition of “existing benefit” before “regulation 25(2)” insert “paragraph (3) and”;

(c) after paragraph (2) insert—

“(3) For the purposes of these Regulations,—

(a) references to an award of an income-based jobseeker’s allowance are to an award of an old style JSA where the claimant is, or joint claimants are, entitled to the income based allowance; and

(b) references to an award of an income-related employment and support allowance are to an award of an old style ESA where the claimant is entitled to the income-related allowance,

and references to an award of an existing benefit are to be read accordingly.”.

(3) In regulation 8A (transitional housing payment)^(b) at the end of sub-paragraph (a) omit “and” and at the end of sub-paragraph (b) insert—

“; and

(c) if a claim for universal credit is made by a notified person, then notwithstanding anything in the Housing Benefit Regulations 2006, the weekly amount of housing benefit to which the person is entitled for that period of two weeks is the same as the weekly amount they were entitled to on the day mentioned in regulation 8(2)(a) or (b) (whichever is applicable).”.

(4) In regulation 11(1) for “regulations 7(7) and 8(4)” substitute “these Regulations” and after sub-paragraph (b) add the following full out words—

“and references to an award of a tax credit are to be read accordingly.”.

(a)

(b) Regulation 8A was inserted by S.I. 2018/65, regulation 6(8).

(5) In regulation 15 (modification of the Claims and Payments Regulations in relation to universal credit claimants)—

(a) for paragraph (2) substitute—

“(2) In paragraph (3) of that regulation (circumstances in which the claimant could not be expected to have made a claim earlier), insert—

(aa) the claimant was previously in receipt of an existing benefit (as defined in the Universal Credit (Transitional Provisions) Regulations 2014) and—

(i) notification of the expiry of entitlement to that benefit was not sent to the claimant before the date that the claimant’s entitlement expired; or

(ii) in a case where the Secretary of State has sent a migration notice (as defined in those Regulations) to the claimant, there was an official error (as defined in those Regulations) which caused or contributed to a delay in making the claim.”; and

(b) after paragraph (2) insert—

“(3) References in these Regulations to a claim being backdated are to the time within which a claim must be made being extended under regulation 26 of the Claims and Payments Regulations (as modified by this regulation).”.

(6) After regulation 43(a) insert—

“PART 4

MANAGED MIGRATION TO UNIVERSAL CREDIT

The migration process

Migration notice

44.—(1) The Secretary of State may, at any time, issue a notice (“a migration notice”) to a person who is entitled to an award of an existing benefit—

(a) informing the person that all awards of an existing benefit to which they are entitled are to terminate and that they will need to make a claim for universal credit; and

(b) specifying a day (“the deadline day”) by which a claim for universal credit must be made.

(2) The migration notice may contain such other information as the Secretary of State considers appropriate.

(3) The deadline day must not be within the period of one month beginning with the day on which the migration notice is issued.

(4) If the person who is entitled to an award of an existing benefit is, for the purposes of that award, a member of a couple or a member of a polygamous marriage, the Secretary of State must also issue a migration notice to the other member (or members) specifying the same deadline day.

(5) The Secretary of State may cancel a migration notice issued to any person—

(a) if it has been issued in error;

(b) if the Secretary of State has made a determination in accordance with regulation 4 (discretion to determine that claims for universal credit may not be made); or

(a) Regulation 43 was inserted by S.I.2017/376, regulation 3(1).

- (c) in any other circumstances where the Secretary State considers it necessary to do so in the interests of the person, or any class of person, or to safeguard the efficient administration of universal credit.
- (6) A “notified person” is a person to whom a migration notice has been issued.

Extension of the deadline day

45.—(1) The Secretary of State may determine that the deadline day should be changed to a later day either—

- (a) on the Secretary of State’s own initiative; or
- (b) if a notified person requests such a change before the deadline day, where there is a good reason to do so.

(2) If a determination is made under paragraph (1) the Secretary of State must inform the notified person or persons of the new deadline day.

Termination of existing benefits if no claim before the deadline

46.—(1) All awards of an existing benefit to which a notified person is entitled that have not already terminated by virtue of the provisions mentioned in paragraph (2) or regulation 47(2) are to terminate on the day before the deadline day.

(2) The provisions are—

- (a) in the case of an award of a tax credit, income support or housing benefit, regulation 8 (termination of awards of certain existing benefits: other claimants); or
- (b) in the case of an award of income-based jobseeker’s allowance or income-related employment and support allowance, the order under section 150(3) of the Act which brings section 33(1)(a) or (b) of the Act (abolition of benefits) into force in relation to that award(a).

(3) Paragraph (1) does not affect the continuation of housing benefit by virtue of paragraph (2A) (two week extension) or paragraph (3) (specified accommodation or temporary accommodation) of regulation 8(b).

(4) Where paragraph (1) applies to an award of income-based jobseeker’s allowance or income-related employment and support allowance “terminate” in relation to that award means treating it as if section 33(1)(a) or (b) of the Act had been brought into force.

(5) For the avoidance of doubt, the day on which a benefit terminates is the last day of entitlement to that benefit.

Notified persons who claim UC as a different benefit unit

47.—(1) This regulation applies where—

- (a) notified persons who are a members of a couple for the purposes of an award of an existing benefit are single persons for the purposes of a claim universal credit; or
- (b) notified persons who are members of a polygamous marriage for the purposes of an award of an existing benefit are a couple or single persons for the purposes of a claim for universal credit.

(2) Where this regulation applies, all existing benefits to which any of those notified persons are entitled are to terminate on the day before the earliest day on which an award of

(a) The order is the Welfare Reform Act 2012 (Commencement No.9 and Transitional and Transitory Provisions and Commencement No.8 and Savings and Transitional Provisions (Amendment)) Order 2013 (S.I.2013/983) which has been amended by S.I. 2014/1452.

(b)

universal credit is to commence by virtue of claim by any of those persons (and paragraphs (3) to (5) of regulation 46 also apply for the purposes of this paragraph).

(3) If, where this regulation applies—

- (a) a notified person makes a claim for universal credit—
 - (i) on or before the deadline day; or
 - (ii) after the deadline day, but the award of universal credit is to commence on or before the deadline day because the claim has been backdated, and
- (b) because of an earlier claim by another notified person, there would otherwise be a gap between the day on which those benefits terminate and the commencement of the award of universal credit,

then, notwithstanding anything in the Claims and Payments Regulations, as modified by regulation 15, the award is to commence on the day after those benefits terminate.

Transitional Protection

Meaning of “qualifying claim”

48.—(1) A “qualifying claim” is a claim for universal credit by a single claimant who is a notified person or by joint claimants, both of whom are notified persons, where the following conditions are met—

- (a) the claim is made—
 - (i) on or before the deadline day; or
 - (ii) after the deadline day, but the award is to commence on or before the deadline day because claim has been backdated; and
- (b) none of the circumstances in paragraph (2) applies.

(2) The circumstances are—

- (a) before the claim is made (and after the issue of the migration notice) the notified person has made another claim for universal credit that is defective and the Secretary of State has not (because the defect has not been corrected or the claim has not been completed in accordance within the Secretary of State’s instructions within the required time) treated that claim as if properly made in the first instance by virtue of regulation 8(6) of the Claims and Payments Regulations;
- (b) before the claim is made (and after the issue of the migration notice) the notified person has made another claim for universal credit in respect of which the Secretary of State has required further evidence or information which the person has not provided within one month (or any extension of one month) in accordance with regulation 37 of the Claims and Payments Regulations; or
- (c) the claimant was a prisoner on the migration day.

Meaning of “migration day”

49. “Migration day” in relation to a qualifying claim means the day on which, subject to regulation 8(2A) and (3) (continuation of housing benefit), all awards of an existing benefit are to terminate as a consequence of that claim in accordance the provisions mentioned in regulation 46(2).

Secretary of State to determine whether transitional protection applies

50.—(1) Before making a decision on a qualifying claim the Secretary of State must first determine whether—

- (a) a transitional capital disregard is to apply; or
- (b) a transitional element is to be included,

(or both) in the calculation of the award.

(2) But the Secretary of State need not determine whether a transitional element is to be included in a case where regulation 47 (qualifying persons who claim as different benefit unit) or regulation 8(3) (continuation of housing benefit in respect of specified accommodation or temporary accommodation) applies.

The transitional capital disregard

51.—(1) A transitional capital disregard is to apply where, on the migration day, the claimant—

- (a) is entitled to an award of a tax credit; and
- (b) has capital exceeding £16,000.

(2) Where a transitional capital disregard applies, any capital exceeding £16,000 is to be disregarded for the purposes of—

- (a) determining whether the financial condition in section 5(1)(a) or 5(2)(a) of the Act (capital limit) is met; and
- (b) calculating the amount of an award of universal credit (including the indicative UC amount).

(3) Where a transitional capital disregard has been applied in the calculation of an award but, in any assessment period, the claimant no longer has (or joint claimants no longer have) capital exceeding £16,000, the transitional capital disregard is not to apply in any subsequent assessment period.

(4) A transitional capital disregard is not to apply for more than 12 assessment periods.

The transitional element

52.—(1) A transitional element is to be included in the calculation of an award if the total amount of any awards of existing benefits determined in accordance with regulation 53 (“the total legacy amount”) is greater than the amount of an award of universal credit determined in accordance with regulation 54 (“the indicative UC amount”).

(2) Where a transitional element is to be included in the calculation of an award, the amount of that element is to be treated, for the purposes of section 8 of the Act (calculation of awards), as if it were an additional amount to be included in the maximum amount under section 8(2) before the deduction of income under section 8(3).

The transitional element - total legacy amount

53.—(1) The total legacy amount is the sum of the representative monthly rates of any awards of an existing benefit to which a claimant is, or joint claimants are, entitled on the migration day.

Tax credits

(2) To calculate the representative monthly rate of an award of working tax credit or child tax credit—

- (a) take the figure for the daily rate of the award on the migration day provided by HMRC and calculated in accordance with section 13 of the 2002 Act and the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002(a) on the basis of the information as to the claimant’s circumstances held by HMRC on that day; and
- (b) convert to a monthly figure by multiplying by 365 and dividing by 12

(a) S.I. 2002/2008 as amended.

IS, ESA(IR) and JSA(IB)

(3) To calculate the representative monthly rate of an award of income support, income-based jobseeker's allowance or income-related employment and support allowance—

- (a) take the weekly rate on the migration day calculated in accordance with—
 - (i) Part 1 of the Jobseekers Act 1995(a) and the Jobseeker's Allowance Regulations 1996(b),
 - (ii) Part 1 of the 2007 Act (c), the Employment and Support Allowance Regulations 2008(d) and the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010(e);
 - (iv) Part VII of the Social Security Contributions and Benefits Act 1992(f) and the Income Support (General) Regulations 1987(g),on the basis of information held by the Secretary of State on that day; and
- (b) convert to a monthly figure by multiplying by 52 and dividing by 12.

(4) The amount of income-related employment and support allowance or income-based jobseeker's allowance is to be calculated before any reduction for a sanction.

(5) Where —

- (a) a claimant who is entitled to an income-based jobseeker's allowance is also entitled to a contribution based jobseeker's allowance; or
- (b) a claimant who is entitled to an income-related employment and support allowance is also entitled to a contributory allowance,

then, despite section 4(8) to (11) of the Jobseekers Act 1995 and section 6(5) to (7) of the 2007 Act (excess over the contributory allowance to treated as attributable to the income-based, or income-related, allowance) the weekly rate in paragraph (3) is to be calculated as the applicable amount(h) less the claimant's income (if any).

Housing benefit

(6) To calculate the representative monthly rate of an award of housing benefit—

- (a) take the weekly rate on the migration day calculated in accordance with Part VII of the Social Security Contributions and Benefits Act 1992 and the Housing Benefit Regulations 2006(i), on the basis of the information held by the Secretary of State on that day, and convert to a monthly figure by multiplying by 52 and dividing by 12; or
- (b) in a case where the claimant had rent free periods, calculate the annual rate by multiplying the weekly rate (as above) by the number of weeks in the year in respect of which the claimant is liable to pay rent, and convert to a monthly figure by dividing by 12.

(7) For the purposes of paragraph (6), if the migration day falls in a rent free period, the weekly rate of housing benefit is to be calculated by reference to the amount of rent for the last complete week that was not a rent free period.

(8) In paragraphs (6) and (7) "rent free period" has the meaning in regulation 81 of the Housing Benefit Regulations 2006.

(a) 1995 c.18.
(b) S.I. 1996/207, as amended.
(c) 2007 c.5.
(d) S.I. 2008/794, as amended.
(e) S.I. 2010/1907 as amended by S.I.2010/2430.
(f) 1992 c.6.
(g) S.I. 1987/1967, as amended.
(h) See section 4 of the Jobseekers Act 1995 and section 7 of the 2007 Act for the meaning of "applicable amount".
(i) S.I. 2006/

The benefit cap

(9) Where—

- (a) the existing benefits do not include an award of housing benefit, or they include an award of housing benefit that has been reduced to the minimum amount by virtue of Part 8A of the Housing Benefit Regulations 2006(a) (the benefit cap);
- (b) Part 7 of the Universal Credit Regulations (the benefit cap) is to apply in the calculation of the indicative UC amount; and
- (c) the claimant's total entitlement to welfare benefits (as defined in section 96(10) (b) of the Act) on the termination day is greater than the relevant amount, the total legacy amount is to be the relevant amount.

(10) For the purposes of paragraph (9)—

- (a) the amount of each welfare benefit is the monthly equivalent calculated in the manner set out in regulation 73 of the Universal Credit Regulations; and
- (b) the "relevant amount" is the amount referred to in regulation 80A(c) of those Regulations which is applicable to the claimant.

The transitional element - indicative UC amount

54.—(1) The indicative UC amount is the amount to which a claimant would be entitled if an award of universal credit were calculated in accordance with section 8 of the Act by reference to the claimant's circumstances on the migration day, applying the assumptions in paragraph (2).

(2) The assumptions are—

- (a) if the claimant is entitled to an award of child tax credit, the claimant is responsible for any child or qualifying young person in respect of whom the individual element of a child tax credit is payable;
- (b) if the claimant is entitled to an award of working tax credit that includes the childcare element, the indicative UC amount includes the childcare costs element and, for the purposes of calculating the amount of that element, the amount of the childcare costs is equal to the relevant weekly childcare charges for the purposes of regulation 53(2), converted to a monthly amount by multiplying by 52 and dividing by 12;
- (c) if the claimant is entitled to an award of housing benefit, the relevant payments for the purposes of Schedule 4 to the Universal Credit Regulations (housing costs element for renters) are equal to the appropriate maximum housing benefit for the purposes of regulation 53(6)(d) converted to a monthly amount by multiplying by 52 and dividing by 12.
- (d) the amount of the claimant's earned income is—
 - (i) if the claimant had an award of a tax credit, the annual amount of any employment income or trading income (as defined by regulation 4 or 6 respectively of the Tax Credits (Definition and Calculation of Income) Regulations 2002(e)) by reference to which the representative monthly rate of that tax credit is calculated for the purposes of regulation 52(2) converted to a net monthly amount by—
 - (aa) dividing by 12, and

(a)

(b) The definition of welfare benefit was amended by the Welfare Reform and work Act 2016 (c.7) s.8.

(c) Regulation 80A was inserted by

(d) See regulation 70 of the Housing Benefit Regulations 2006 (S.I. 2006/231) for the meaning of "appropriate maximum".

(e) S.I.2002/2006.

- (ab) deducting such amount for income tax and national insurance contributions as the Secretary of State considers appropriate;
 - (ii) if paragraph (i) does not apply and the claimant had an award of income support, income-based jobseeker's allowance or income-related employment and support allowance, the amount of earnings by reference to which the representative monthly rate of that benefit was calculated for the purposes of regulation 52 (including nil if none were taken into account) converted to a monthly amount by multiplying by 52 and dividing by 12; or
 - (iii) if paragraphs (i) and (ii) do not apply, but the claimant had an award of housing benefit, the amount of earnings by reference to which the representative monthly rate of that benefit was calculated for the purposes of regulation 52 (including nil if none were taken into account) converted to monthly amount by multiplying by 52 and dividing by 12.
- (3) If the claimant would not meet the financial condition in section 5(1)(b) of the Act (or, in the case of joint claimants they would not meet the condition in section 5(2) (b)) the claimant is to be treated, for the purposes of calculating the indicative UC amount, as if they were entitled to an award of universal credit of a nil amount.
- (4) If a transitional capital disregard is to apply, any capital exceeding £16,000 is to be disregarded.
- (5) The indicative UC amount is to be calculated after any reduction under Part 7 of the Universal Credit Regulations (the benefit cap) but before any reduction under section 26 (higher-level sanctions) or 27 (other sanctions) of the Act.
- (6) But there is to be no reduction for the benefit cap under that Part where the amount of the claimant's earned income (or, in the case of a couple their combined earned income) on the termination day, calculated in accordance with paragraph (2)(d), is equal to or exceeds the amount specified in paragraph (1)(a) of regulation 82 (exceptions – earnings) of the Universal Credit Regulations.
- (7)) The calculation of the indicative UC amount is to be based on the information that is used for the purposes of calculating the total legacy amount, supplemented as necessary by such further information or evidence as the Secretary of State requires.

The transitional element – initial amount and adjustment where other elements increase

- 55.—(1) The initial amount of the transitional element is—
- (a) if the indicative UC amount is greater than nil, the amount by which the total legacy amount exceeds the indicative UC amount; or
 - (b) if the indicative UC amount is nil, the total legacy amount plus any amount by which the income which fell to be deducted in accordance with section 8(3) of the Act (that is 63% of earned income above the work allowance and 100% of unearned income) exceeded the maximum amount.
- (2) The amount of the transitional element to be included in the calculation of an award is—
- (a) for the first assessment period, the initial amount;
 - (b) for the second assessment period, the initial amount reduced by the sum of any relevant increases in that assessment period;
 - (c) for the third and each subsequent assessment period, the amount that was included for the previous assessment period reduced by the sum of any relevant increases (as in sub-paragraph (b)).
- (3) If the amount of the transitional element is reduced to nil in any assessment period, a transitional element is not to apply in the calculation of the award for any subsequent assessment period.

(4) A “relevant increase” is an increase in any of the amounts that are included in the maximum amount under sections 9 to 12 of the Act (including any of those amounts that is included for the first time), apart from the childcare costs element.

Ending of transitional protection

Circumstances in which transitional protection ceases

56.—(1) A transitional capital disregard or a transitional element does not apply in any assessment period to which paragraph (2) or (4) applies, or in any subsequent assessment period.

Cessation of employment or sustained drop in earnings

(2) This paragraph applies to an assessment period if the following condition is met—

- (a) in the case of a single claimant—
 - (i) it is the assessment period after the third consecutive assessment period in which the claimant’s earned income is less than the amount specified in regulation 99(6)(a) of the Universal Credit Regulations (the single administrative threshold); and
 - (ii) in the first assessment period of the award, the claimant’s earned income was equal to or more than that threshold; or
- (b) in the case of joint claimants—
 - (i) it is the assessment period after the third consecutive assessment period in which their combined earned income is less than the amount specified in regulation 99(6)(b) of the Universal Credit Regulations (the couple administrative threshold), and
 - (ii) in the first assessment period of the award, their combined earned income was equal to or more than that threshold.

(3) For the purposes of paragraph (2) a claimant is to be treated as having earned income equal to or more than the single administrative threshold (or, as the case may be, the couple administrative threshold) in any assessment period in respect of which regulation 62 (minimum income floor) of the Universal Credit Regulations applies to that claimant or would apply but for regulation 62(5) of those Regulations (minimum income floor not to apply in a start-up period) or regulation 59 of these Regulations (minimum income floor not to apply for the first 6 months.).

Couple separating or forming

(4) This paragraph applies to an assessment period in which—

- (a) joint claimants cease to be a couple or become members of a different couple; or
- (b) a single claimant becomes a member of a couple (unless it is a case where the person may, by virtue of regulation 3(3) of the Universal Credit Regulations (claimant with an ineligible partner), claim as a single person.

Application of transitional protection to a subsequent award

57.—(1) Where—

- (a) a transitional capital disregard is applied, or a transitional element is included, in the calculation of an award, and that award terminates; or
- (b) the Secretary State determines (in accordance with regulation 49) that a transitional capital disregard is to apply, or transitional element is to be included in the calculation of an award, but the decision on the qualifying claim is that there is no entitlement to an award,

no transitional capital disregard is to apply and no transitional element is to be included in the calculation of any subsequent award unless paragraph (2) applies.

(2) This paragraph applies if—

- (a) the reason for the previous award terminating, or there being no entitlement to an award, was that the claimant (or joint claimants) had earned income on account of which the financial condition in section 5(1)(b) or 5(2)(b) of the Act (income is such that the amount payable is at least 1p) was not met; and
- (b) the claimant (or joint claimants) become entitled to an award within the period of 3 months beginning with —
 - (i) where paragraph (1)(a) applies, the last day of the month that would have been the final assessment period of the previous award (had it not terminated), or
 - (ii) where paragraph (1)(b) applies, the day that would have been the last day of the first assessment period had there been entitlement to an award.

(3) Where paragraph (2) applies in a case where a previous award has terminated, the new award is to be treated for the purposes of regulation 51 (transitional capital disregard), 52 (transitional element), 55 (transitional element – initial amount and adjustment where other elements increase) and 56 (circumstances in which transitional protection ceases) as if it were a continuation of that award.

Miscellaneous

Qualifying claim – Secretary of State may set later commencement day

58. Where the Secretary of State decides a qualifying claim that was made on or before the deadline day, and it is not a case where the award is to start earlier than the date of claim by virtue of regulation 26 of the Claims and Payment Regulations, as modified by regulation 15, or by virtue of regulation 47(3), the Secretary of State may determine a day on which the award of universal credit is to commence that is after, but no more than one month after, the date of claim.

Minimum income floor not to apply for first 6 months

59.—(1) Where universal credit is awarded to a claimant who is a notified person, regulation 62 of the Universal Credit Regulations (minimum income floor) does not apply in relation to that claimant in respect of an assessment period falling wholly or partly within the period of six months beginning with the day on which the award commences.

(2) In a case where the Secretary of State has determined that the claimant is in gainful self-employment, but is not taking active steps to increase the earnings from that employment to the level of their individual threshold, the Secretary of State may terminate the period mentioned in paragraph (1).

(3) In this regulation “gainful self-employment” and “individual threshold” have the meaning in regulation 64 and 90 respectively of the Universal Credit Regulations.

Students

60. Where a notified person does not meet the basic condition in section 4(1)(d) of the Act (receiving education) on the day on which all existing awards terminate in accordance with the provisions mentioned in regulation 46(2) because the person is undertaking a full time course (see regulation 12(2) and 13 of the Universal Credit Regulations), that condition is not to apply in relation to the notified person while they are continuing to undertake that course.

Rounding

61. Regulation 6 of the Universal Credit Regulations (rounding) applies for the purposes of calculating any amount under this Part.

Effect of revision, appeal etc. of an award of an existing benefit

62. Nothing in regulation 53 (total legacy amount) or 54 (indicative UC amount) requiring a calculation in relation to the transitional element to be made on the basis of information held on the migration day prevents the Secretary of State from revising or superseding a decision in relation to a claim for, or an award of, universal credit where—

- (a) in the opinion of the Secretary of State the information held on that day was inaccurate or incomplete in some material respect because of—
 - (i) a misrepresentation by a claimant;
 - (ii) a failure to report information that a claimant was required to report where that failure was advantageous to the claimant; or
 - (iii) an official error; or
- (b) an application to revise or supersede a decision in relation to an award of an existing benefit (including the report of a change of circumstances), or an appeal from such a decision, that was outstanding on the migration day has since been concluded.

Claimants in receipt of severe disability premium: restriction on new claims for UC and transitional payments

63.—(1) No claim may be made for universal credit on or after [*date of coming into force of the MM regs*] by a single claimant who, or joint claimants either of whom,—

- (a) is, or has been within the past month, entitled to an award of an existing benefit that includes a severe disability premium (“SDP”);
- (b) during that month continues to satisfy the conditions for eligibility for an SDP; and
- (c) is not a notified person.

(2) Where it comes to the attention of the Secretary of State on or after [*date of coming into force of MM regs*] that—

- (a) a claimant, or joint claimants, became entitled to an award of universal credit as a consequence of a claim made before that date and the Secretary of State is satisfied that paragraph (1) would have prevented the claim from being made if it had been in force at that time;
- (c) that award has not since terminated (whether by a claimant ceasing to meet the conditions of entitlement to universal credit or becoming, or ceasing to be, a member of a couple);
- (d) the claimant has not (or neither of joint claimants has) ceased to be entitled to the care component, the daily living component, armed forces independence payment or attendance allowance (all as defined in paragraph 6 of Schedule 4 to the Employments and Support Allowance Regulations 2008(a)); and
- (e) no person has become a carer for—
 - (i) in the case of a single claimant, the claimant, or
 - (ii) in the case of joint claimants—
 - (aa) if SDP was payable at the higher rate, both of them
 - (bb) if SDP was payable at the lower rate, the claimant who was the qualifying partner,

the Secretary of State must determine, in accordance with paragraph (3), the amount of a transitional SDP payment in respect of each assessment period of the award that began, or is to begin, before the conversion day.

(a)

- (3) The amount for each assessment period is—
- (a) in the case of a single claimant —
 - (i) £80, if the LCWRA element is included in the award; or
 - (ii) £280, if the LCWRA element is not included;
 - (b) in the case of joint claimants—
 - (i) £360 if the higher SDP rate was payable and no person has become a carer for either or both of them,
 - (ii) £80, if paragraph (i) does not apply and the LCWRA element is included in the award in respect of either or both of them, or
 - (iii) £280, if the LCWRA element is not included in respect of either or both of them and—
 - (aa) the lower SDP rate was payable, or
 - (bb) the higher SDP was payable but a person has become a carer for one of them.

(4) If the LCWRA element is not included in the award at the time of the determination under paragraph (3), but is included in a later assessment period (and sub-paragraph (b)(i) does not apply), the amount for that assessment period, and each subsequent assessment period beginning before the conversion day, is £80 (and the Secretary of State may make a further determination).

(5) The transitional SDP payment is to be treated as an additional amount of universal credit and may be paid by way of a lump sum or periodic payments, as the Secretary of State determines.

(6) In the assessment period that begins after the conversion day, the calculation of the award is to include the amount of the transitional SDP payment as if it were the initial amount of a transitional element calculated under regulation 55(1).

(7) In respect of each subsequent assessment period, the award is to be treated, for the purposes of regulation 55(2) (adjustment where other elements increase), regulation 56 (circumstances in which transitional protection ceases) and regulation 57 (application of transitional protection to a subsequent award), as if the transitional SDP payment had been converted into a transitional element.

(8) The conversion day for all cases to which this regulation applies is to be determined by the Secretary of State having regard to the efficient administration of universal credit.

(9) Any amount paid as a lump sum as a consequence of a determination under this regulation is to be disregarded in the calculation of capital for the duration of the award or, if longer, 12 months from the date of that payment.

(10) In this regulation—

“the lower SDP rate” and “the higher SDP rate” are the rates specified in sub-paragraph (i) and (ii) respectively of paragraph 11(2)(b) of Schedule 4 to the Employment and Support Allowance Regulations 2008 or the corresponding rates in relation to income support, old style JSA or housing benefit;

“the qualifying partner”, in relation to a couple in respect of whom the lower SDP rate was payable is the partner who had no carer or, as the case may be, was not the partner who satisfied the qualifying condition for SDP only by virtue of being a patient,

and references to a person being a carer for another person are to the person being entitled to, and in receipt of, a carer's allowance or having an award of universal credit which includes the carer element in respect of caring for that other person.

Amendment consequential on restriction on claims by certain severely disabled persons

3.—(1) In paragraph (2) of article 7 (transitional provision: claims for housing benefit, income support or a tax credit) of the Welfare Reform Act 2012 (Commencement No. 23 and Transitional

and Transitory Provisions) Order 2015**(b)**[Amendment to allow legacy claimants who are subject to the hard gateway to claim legacy benefits].

Parliamentary Under Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)