

THE UNIVERSAL CREDIT (EARNED INCOME) AMENDMENT REGULATIONS 2020

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INTRODUCTION

1. This Memo provides guidance on the Universal Credit (Earned Income) Amendment Regulations 2020 (SI 2020 No 1138), (UC (EI) Amdt Regs). The Regulations come into force on 16.11.20¹.

1 UC (EI) Amdt Regs, reg 1

BACKGROUND

2. The Regulations amend Regulation 61 of the UCR following the decision of the Court of Appeal in Secretary of State for Work and Pensions v Johnson and Others [2020] EWCA Civ 778.

REAL TIME INFORMATION

3. Where a person is, or has been, engaged in an employment in respect of which their employer is a Real Time Information employer-
 1. the amount of the person's employed earnings from that employment in respect of each assessment period is to be based on the information reported



to HMRC under the PAYE Regulations and received by the Secretary of State from HMRC in that assessment period¹; and

2. in respect of an assessment period in which no information is received from HMRC, the amount of employed earnings in relation to that employment is to be taken to be nil².

1 UC (EI) Amdt Regs, reg 2(2)(a); 2 UC (EI) Amdt Regs, reg 2(2)(b)

EXCEPTIONS TO USE OF REAL TIME INFORMATION

4. Paragraph 3 does not apply where—
 1. In relation to a particular employment the Secretary of State considers that the employer is unlikely to report information to HMRC in a sufficiently accurate or timely manner¹;
 2. It appears to the Secretary of State that the amount of a payment reported to HMRC is incorrect, or fails to reflect the definition of employed earnings in regulation 55 (employed earnings), in some material respect²; or
 3. No information is received from HMRC in an assessment period and the Secretary of State considers that this is likely to be because of a failure to report information (which includes the failure of a computer system operated by HMRC, the employer or any other person)³.

1 UC (EI) Amdt Regs, reg 2(3)(a); 2 UC (EI) Amdt Regs, reg 2(3)(b); 3 UC (EI) Amdt Regs, reg 2(3)(c)

5. Where paragraph 3 does not apply by virtue of any of the exceptions in paragraph 4 the Secretary of State must determine the amount of employed earnings for the assessment period in question (or, where the exception in paragraph 4 (a) applies, for each assessment period in which the person is engaged in that employment) in accordance with regulation 55 (employed earnings) using such information or evidence as the Secretary of State deems appropriate¹.

1 UC (EI) Amdt Regs, reg 2(4)

REALLOCATION OF REPORTED PAYMENTS

6. Where it appears to the Secretary of State that a payment of employed earnings has been reported late, or otherwise reported in the wrong assessment period, the Secretary of State may determine that the payment is to be treated as employed earnings in the assessment period in which it was received¹.

1 UC (EI) Amdt Regs, reg 2(5)



7. Where a person is engaged in an employment where they are paid on a regular monthly basis and more than one payment in relation to that employment is reported in the same assessment period, the Secretary of State may, for the purposes of maintaining a regular pattern, determine that one of those payments is to be treated as employed earnings in respect of a different assessment period¹.

1 UC (EI) Amdt Regs, reg 2(6)

CONSEQUENTIAL ADJUSTMENTS

8. Where the Secretary of State makes a determination under any of paragraphs 5 to 7, the Secretary of State may make such other adjustments to the calculation of the person's employed earnings as may be necessary to avoid duplication or to maintain a regular payment pattern¹.

1 UC (EI) Amdt Regs, reg 2(7)

Example 1

Ranjeet has an AP that runs from the 28th day of each month to the 27th day of the following month. Ranjeet's employer regularly pays him on the 28th day of each month. Ranjeet was paid his usual salary on 28.11.20. Because 28.12.20 is a public holiday his salary for December is paid on 24.12.20. The following payment is paid as usual on 28.1.21. The DM determines that the payment received on 24.12.20 is to be treated as paid in the AP that ran from 28.12.20 to 27.1.21.

Example 2

Danielle has an AP that runs from the 25th day of each month to the 24th day of the following month. Danielle's employer regularly pays her on the 20th day of each month. Danielle's employer paid her as usual on 20.2.21 but was involved in an accident and did not complete the RTI return until 25.2.21. Danielle received her next payment of salary on 20.3.21. The DM determined that the 20.2.21 was reported late and is to be treated as employed earnings in the AP in which it was paid.

Example 3

Ingrid has an AP that runs from the 28st day of each month to the 27th day of the following month. Ingrid's employer regularly pays her on the 28th day of each month unless it is a non-banking day in which case she is paid on the working day before the 28th. The DM determines that Ingrid should be treated as receiving the salary paid on 26.2.21 as though paid on 28.2.21 and the salary paid on 26.3.21 as though paid on 28.3.21.



Example 4

Max has an AP that runs from the 27th day of each month to the 26th day of the following month. The DM determines that Max should be treated as receiving the salary paid on 24.12.20 as though it was paid on 27.12.20 and the salary paid on 26.2.21 as though paid on 27.2.21 and the salary paid on 26.3.21 as though paid on 27.3.21.

ANNOTATIONS

Please annotate the number of this Memo (ADM Memo 27/20) against ADM paragraphs:

H3191 – H3194

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in – Memo [7/19](#) Requesting case guidance from DMA Leeds for all benefits.

DMA Leeds: **November 2020**

The content of the examples in this document (including use of imagery) is for illustrative purposes only