draft 10th September 2014

STATUTORY INSTRUMENTS

2014 No.

SOCIAL SECURITY

The Universal Credit (Surpluses and Self-employed Losses) Regulations 2014

Made - - - -	***
Laid before Parliament	***
Coming into force - -	***

The Secretary of State for Work and Pensions, in exercise of the powers conferred by paragraph 4(1), (3)(a) and (4) of Schedule 1 to, the Welfare Reform Act 2012(**a**), makes the following Regulations:

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

Citation and commencement

1.—(1) These Regulations may be cited as the Universal Credit (Surpluses and Self-employed Losses) Amendment Regulations 2014 and come into force on [.. ..] 2016.

Self employed earnings – treatment of losses

2.—(1) The Universal Credit Regulations 2013 are amended as follows.

(2) In regulation 57 (self-employed earnings) for paragraphs (2) and (3) substitute—

"(2) A person's self-employed earnings in respect of an assessment period are to be calculated as follows.

Step 1

Calculate the amount of the person's profit or loss in respect of each trade, profession or vocation carried on by the person by—

(a) taking the actual receipts in that assessment period; and

(b) deducting any amounts allowed as expenses under regulation 58 or 59.

Where a trade, profession or vocation is carried on in a partnership, take the amount of the profit or loss attributable to the person's share in the partnership.

(**a**) 2012 c.5.

Step 2

If the person has carried on more than one trade, profession or vocation in the assessment period, add together the amounts resulting from step 1 in respect of each trade, profession or vocation.

Step 3

Deduct from the amount resulting from step 1 or (if applicable) step 2 any payment made by the person to HMRC in the assessment period in respect of—

(a) Class 2 contributions under section 11(1) or (3) of the Contributions and Benefits Act or Class 4 contributions under section 15 of that Act, and

(b) income tax incurred by virtue of carrying on a trade, profession or vocation.

If the amount resulting from steps 1 to 3 is nil or a negative amount, the amount of the person's self-employed earnings in respect of the assessment period is nil (and ignore the following steps).

If the amount resulting from steps 1 to 3 is a negative amount, the person has a loss of that amount for the assessment period (and see regulation 57A as to the use of that loss in a subsequent assessment period).

Step 4

If the amount resulting from step 3 is greater than nil, deduct from that amount any relievable pension contributions made by the person in the assessment period (unless a deduction has been made in respect of those contributions in calculating the person's employed earnings).

If the amount resulting from this step is nil or a negative amount, the person's self-employed earnings in respect of the assessment period are nil (and ignore the following step).

Step 5

If the amount resulting from step 4 is greater than nil, deduct from that amount any unused losses (see regulation 57A), taking the oldest first.

If the amount resulting from this step is greater than nil, that is the amount of the person's self-employed earnings for the assessment period.

If the amount resulting from this step is nil or a negative amount, the amount of the person's self-employed earnings in respect of the assessment period is nil."

(3) In regulation 57(4) for "paragraph (3)" substitute "paragraph (2)".

(4) After regulation 57 insert—

"Unused losses

57A.—(1) For the purposes of step 5 in regulation 57(2), a person has an unused loss if—

(a) the person has a loss for any of the previous 11 assessment periods (see step 3 in regulation 57(2)), and

(b) the amount of the loss has not been extinguished in a subsequent assessment period.

(2) For the purposes of paragraph (1)(b) a loss is extinguished if no amount of the loss remains after it has been deducted at step 5 in regulation 57(2).

(3) Where a person was entitled to a previous award of universal credit and the last day of entitlement in respect of that award fell within the 6 months preceding the first day of entitlement in respect of the new award, for the purposes of this regulation the Secretary of State may, if the person provides such information as the Secretary of State requires, treat

the assessment periods under the previous award and any months between that award and the current award as assessment periods under the current award.”

(5) In regulation 58 (permitted expenses) in paragraph (3) omit sub-paragraph (b).

Carry forward of surplus earnings

3.—(1) The Universal Credit Regulations 2013 are amended as follows.

(2) In regulation 62 (minimum income floor) after paragraph (4) insert—

(4A) Where this regulation applies in respect of an assessment period in which surplus earnings are treated as an amount of earned income under regulation 64A (surplus earnings), that amount is to be added to the claimant’s earned income before this regulation is applied and, in the case of joint claimants, it is to be added to the earned income of either member of the couple so as to produce the lowest possible amount of combined earned income after this regulation is applied.

(3) After regulation 64 insert—

“Surplus earnings

64A.—(1) This regulation applies in relation to a claim for universal credit where—

(a) the claimant (or either of joint claimants) was entitled to an award of universal credit that terminated within the 6 months ending on the first day in respect of which the claim is made (“the old award”); and

(b) there were surplus earnings in the assessment period in which the old award terminated.

(2) Where this regulation applies, and there are also surplus earnings in the month that would have been an assessment period for the old award (had it continued) which immediately precedes the first assessment period for the new award, the amount of those surplus earnings is to be treated as earned income for the purposes of—

(a) determining whether there is entitlement to a new award; or

(b) if there is entitlement to a new award, calculating the amount of the award in the first assessment period.

(3) Whether there were surplus earnings in the assessment period in which the old award terminated, or whether there are surplus earnings in any of the subsequent 5 months that would have been assessment periods for the old award (had it continued), is to be determined as follows.

Assessment period in which the old award terminated

There are surplus earnings in the assessment period in which the old award terminated if the total earned income for that assessment period exceeds the relevant threshold. (“the original surplus”)

Month 1

There are surplus earnings in the first month after the assessment period in which the old award terminated if the original surplus, combined with the total earned income for that month exceeds the relevant threshold.

Month 2

There are surplus earnings in the second month after the assessment period in which the old award ended if the earned income for that month, including any surplus earnings from the previous month, exceeds the relevant threshold.

Months 3, 4 and 5

Surplus earnings for the third, fourth and fifth month are to be calculated in the same way as for the second month.

(4) For the purposes of paragraph (3)—

(a) where, in the case of a joint claim, there is an old award for each claimant (because each of the claimants was previously entitled to universal credit as a single person or as a member of a different couple) the surplus earnings are to be calculated separately in accordance with paragraph (3) as if the claimant were a single person and if there is an amount of surplus earnings in relation to both old awards, both amounts are to be treated as earned income for the purposes of the new award; and

(b) if—

(i) a single claimant in relation to the new award was entitled to an old award as a joint claimant, or

(ii) if either of the joint claimants in relation to the new award was entitled to an old award as a member of a different couple,

the original surplus is to be apportioned in the first month so that the amount to be attributed to the claimant bears the same proportion to the whole of the original surplus as the claimant's earned income in the final assessment period of the old award bears to the total earned income in that assessment period;

(6) In this regulation—

"total earned income" is the earned income of the claimant or, if the claimant is a member of a couple, the couple's combined earned income, but does not include any amount a claimant would be treated as having by virtue of regulation 62 (the minimum income floor);

"the nil UC threshold" is the amount of total earned income at which there would be no entitlement to universal credit, expressed by the following formula—

$$(M - U) \times 100/65 + WA$$

Where—

M is the maximum amount of an award of universal credit;

U is unearned income;

WA is the work allowance (see regulation 22),

and, in determining those amounts in relation to the period between the termination of the old award and the commencement of the new award, the Secretary of State may make such assumptions as to the claimants circumstances as the Secretary of State considers appropriate;

"the relevant threshold" is the nil UC threshold plus £100.

Saving

4.—(1) These Regulations do not apply to an award of universal credit that has been made by virtue of any of the following orders—

(a) 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(**a**);

(b) the Welfare Reform Act 2012 (Commencement No. 11 and Transitional and Transitory Provisions and Commencement No. 9 and Transitional and Transitory Provisions (Amendment)) Order 2013(**b**);

(c) the Welfare Reform Act 2012 (Commencement No. 13 and Transitional and Transitory Provisions) Order 2013(**c**);

(**a**) S.I. 2013/983 (C. 41).
(**b**) S.I. 2013/1511 (C. 60).
(**c**) S.I. 2013/2657 (C. 107).

(d) the Welfare Reform Act 2012 (Commencement No. 14 and Transitional and Transitory Provisions) Order 2013(**a**);

(e) the Welfare Reform Act 2012 (Commencement No. 16 and Transitional and Transitory Provisions) Order 2014(**b**);

(f) the Welfare Reform Act 2012 (Commencement No. 17 and Transitional and Transitory Provisions) Order 2014(**c**),

unless it is an award to which paragraph (2) applies.

(2) This paragraph applies to—

(a) an award made to members of a couple jointly as a consequence of a previous award having ended when the couple formed; or

(b) an award made to a single claimant as a consequence of a previous award having ended when the claimant ceased to be a member of a couple,

where either member of the couple in question was entitled to an award of universal credit that was made by virtue of *[commencement order for the digital service area]*.

Name
Parliamentary Under Secretary of State
Department

Address
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

(**a**) S.I. 2013/2846 (C. 114).
(**b**) S.I. 2014/209 (C. 7).
(**c**) S.I. 2014/1583 (C.61).