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STATUTORY INSTRUMENTS

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**2020 No. 1138**

**SOCIAL SECURITY**

The Universal Credit (Earned Income)  
Amendment Regulations 2020

<i>Made</i>	- - - -	<i>19th October 2020</i>
<i>Laid before Parliament</i>		<i>20th October 2020</i>
<i>Coming into force</i>	- -	<i>16th November 2020</i>

The Secretary of State makes the following regulations in exercise of powers conferred by sections 5(1A) and 189(1), (4) and (6) of the Social Security Administration Act 1992<sup>(1)</sup> and section 42(1) to (3) of, and paragraph 4(1)(b) and (c) of Schedule 1 to, the Welfare Reform Act 2012<sup>(2)</sup>.

In accordance with section 173(1)(b) of the Social Security Administration Act 1992 the Social Security Advisory Committee has agreed that these Regulations should not be referred to it.

**Citation and commencement**

1. These Regulations may be cited as the Universal Credit (Earned Income) Amendment Regulations 2020 and come into force on 16th November 2020.

**Substitution of regulation 61 of the Universal Credit Regulation 2013**

2. For regulation 61 (Information for calculating earned income – real time information etc.) of the Universal Credit Regulations 2013<sup>(3)</sup> substitute—

**“Information for calculating earned income – real time information etc.**

**61.**—(1) Unless paragraph (2) applies, a person must provide such information for the purposes of calculating their earned income at such times as the Secretary of State may require.

*Real time information*

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(1) 1992 c.5. Section 5(1A) was inserted by s.99(3) of the Welfare Reform Act 2012 (c.5). Section 189(1) was amended by Schedule 7, paragraph 109, and Schedule 8, to the Social Security Act 1998 (c. 14), Schedule 3, paragraph 57, to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), and Schedule 6, paragraph 1, to the Tax Credits Act 2002 (c. 21). Section 189(4) was amended by Schedule 7, paragraph 109, and Schedule 8, to the Social Security Act 1998. Section 189(4) and (6) was amended by S.I. 2013/252.

(2) 2012 c. 5.

(3) S.I. 2013/376. Regulation 61 was substituted by S.I. 2014/2888.

(2) Where a person is, or has been, engaged in an employment in respect of which their employer is a Real Time Information employer—

- (a) 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 period<sup>(4)</sup>; and
- (b) 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 nil.

*Exceptions to use of Real Time Information*

(3) Paragraph (2) does not apply where—

- (a) 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 manner;
- (b) 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 respect; or
- (c) 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).

(4) Where paragraph (2) does not apply by virtue of any of the exceptions in paragraph (3) the Secretary of State must determine the amount of employed earnings for the assessment period in question (or, where the exception in paragraph (3)(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 thinks fit.

*Reallocation of reported payments*

(5) 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 received.

(6) 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 period.

*Consequential adjustments*

(7) Where the Secretary of State makes a determination under any of paragraphs (4) to (6), the Secretary of State may make such other adjustments to the calculation of the

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(4) See also regulation 41(1) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decision and Appeals) Regulations 2013 (S.I. 2013/381), which provides that an alteration in the amount of a person's employed earnings which is based on information from HMRC, is an alteration prescribed for the purposes of section 159D(1)(b)(vi) of the Social Security Administration Act 1992. The effect of this is that the award may be adjusted without a decision of the Secretary of State (subject to the person having the right to request such a decision where they dispute the information provided by HMRC).

person's employed earnings as may be necessary to avoid duplication or to maintain a regular payment pattern.

(8) In this regulation "Real Time Information Employer" has the meaning in regulation 2A(1) of the PAYE Regulations<sup>(5)</sup>.

Signed by authority of the Secretary of State for Work and Pensions

19th October 2020

*Will Quince*  
Parliamentary Under Secretary of State  
Department for Work and Pensions

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(5) Regulation 2A was inserted by [S.I. 2012/822](#) and amended by [S.I.2013/521](#).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Universal Credit Regulations 2013 by substituting a new regulation 61. They implement the judgment of the Court of Appeal in *Secretary of State v Johnson & others* [2020] EWCA Civ 778.

Regulation 61 makes provision for the way information, in particular information reported to HMRC by Real Time Information Employers (“RTI information”), is to be used in calculating a person’s earned income. The substituted regulation broadly replicates the previous regulation with additional provision allowing for reallocation of payments to different assessment periods.

Paragraph (1) restates the requirement for claimants to provide such information at such time as the Secretary of State requires, except where paragraph (2) applies. Paragraph (2) also restates the requirement for the calculation of employed earnings to be based on the RTI information received by the Secretary of State from HMRC (or to be taken as nil in the absence of such information) in each assessment period. These paragraphs have the effect that RTI information is taken at face value unless certain exceptions apply. The requirement for claimants to provide information is therefore mainly applicable to cases where those exceptions apply or where the claimant is self-employed or does not have a Real Time Information employer.

The exceptions are set out in paragraph (3). The first is where the Secretary of State considers that the information provided by the employer is unlikely to be sufficiently accurate or timely. The second exception is where the information about a particular payment appears to be inaccurate. The third is where the absence of RTI information in an assessment period is likely to be due to failure to report, rather than the claimant having not received a payment of earnings. In such cases the Secretary of State will determine the earnings in relation to the affected assessment period (or, in relation to the first exception, for each assessment period while the person is in that employment), using such information as the Secretary of State considers appropriate.

Paragraphs (5) and (6) are new provisions that allow the Secretary of State to reallocate a payment reported in one assessment period to another assessment period. Paragraph (5) allows a payment that has been reported late, or otherwise in the wrong assessment period, to be treated as employed earnings in the assessment period in which it was received. Paragraph (6) relates to calendar monthly paid employees who receive more than one payment in a single assessment period. The Secretary of State may, in order to maintain a regular payment pattern, treat one of those payments as employed earnings in a different assessment period. These new powers take effect in accordance with paragraph 32 of Schedule 1 to the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decision and Appeals) Regulations 2013 ([S.I. 2013/381](#)).

Paragraph (7) widens and simplifies a provision in the previous regulation. It allows the Secretary of State to make consequential adjustments to avoid duplication or maintain a regular payment pattern where the Secretary of State has reallocated a payment or applied one of the exceptions referred to in paragraph (3).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, public or voluntary sectors is foreseen.