

**EXPLANATORY MEMORANDUM TO  
THE UNIVERSAL CREDIT (SURPLUSES AND SELF-EMPLOYED LOSSES) (DIGITAL  
SERVICE) AMENDMENT REGULATIONS 2015**

**2015 No. 345**

1. This explanatory memorandum has been prepared by The Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The regulations will allow past earnings to be taken into account in the Universal Credit income calculation where a claimant returns to Universal Credit within six months of a previous award ending. Additionally, they will allow self-employed claimants to carry forward a loss from one assessment period into the next, for up to eleven assessment periods.
- 2.2 The regulations will apply to the Universal Credit Digital Service only, from 2016.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None

4. **Legislative Context**

- 4.1 The Welfare Reform Act 2012<sup>1</sup> provided for the introduction in Great Britain of a new working age income-related social security benefit, Universal Credit, and the abolition of income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, and Child and Working Tax Credits.
- 4.2 The detailed rules for calculating Universal Credit are set out in the Universal Credit Regulations 2013. These Regulations amend Part 6 of those Regulations, which deals with the calculation of a claimant's capital and income.
- 4.3 The Department for Work and Pensions has identified an unintended consequence where certain Universal Credit claimants may be unfairly advantaged or disadvantaged in the amount of Universal Credit award they receive when their earnings fluctuate. Regulation 2 makes provision to address that consequence.
- 4.4 Additionally, following work with stakeholders, the Department for Work and Pensions is introducing a new provision to benefit self-employed claimants and allow them to carry forward losses, a practice not allowed under current legislation. Regulation 3 provides for this.

---

<sup>1</sup> Welfare Reform Act 2012: <http://www.legislation.co.uk/ukpga/2012/5/contents>

4.5 The savings provision in regulation 4 will restrict the impact of these Regulations to claimants within the Universal Credit's new enhanced on line service ("The Digital Service") which is delivering the full scope of Universal Credit for the full range of claimant's circumstances. The saving provision also limits the application of the amendments to surplus earnings and losses arising after April 2016.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain

5.2 Northern Ireland will make their own reciprocal arrangement to introduce these regulations.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 Under current legislation, it is possible that two people in the same circumstances may receive significantly different amounts of Universal Credit award based on the structure of their earnings pattern. The proposed regulations are designed to reduce this unintended consequence where claimants may genuinely have irregular earnings, as well as remove perverse incentives for employers and employees to manipulate earnings payment patterns to maximise Universal Credit awards. Under the proposed regulations, when a claimant returns to Universal Credit within six months of a previous award ending, the Department for Work and Pensions may take into account earnings during the intervening period.

7.2 Additionally, under these proposals, self-employed claimants will be able to carry forward a loss from one month into the next monthly assessment period, for up to eleven assessment periods. This follows consultation with the Social Security Advisory Committee and stakeholders and reflects the additional challenges of self-employment, such as the occasional need for a self-employed claimant to make a significant financial investment in order to grow their business.

7.3 The Secondary Legislation Scrutiny Committee may wish to note that the Social Security Advisory Committee formally took these regulations on referral in October 2014 in order to conduct a public consultation. In light of their consultation report to the Department, the regulations have been amended to reflect the comments of stakeholders where appropriate. Details of these amendments and the Government's full response to the Social Security Advisory Committee's report will be published on the same date as these regulations.

7.4 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website [legislation.gov.uk](http://legislation.gov.uk) An explanation as to which instruments are maintained on each site is available here.

## **8. Consultation outcome**

- 8.1 The Social Security Advisory Committee held a public consultation on these regulations, open to organisations and individuals, between 17 October and 7 November 2014. The Committee received 28 written responses within their consultation: 24 from representatives of organisations, local authorities or groups, and four from individuals contributing in a personal capacity. Most of the responses raised concerns that the Department's proposals would not deliver solutions to the problems the proposals were seeking to solve and worried around the additional complexity the proposals might introduce. The Committee subsequently delivered its report to the Department on 15 December 2014. A copy of this consultation will be published on gov.uk
- 8.2 The Department for Work and Pensions response to the SSAC consultation will be published here: <https://www.gov.uk/government/consultations/universal-credit-government-proposal-to-take-account-of-past-earnings-in-repeat-claims> alongside the laying of these regulations. The Department has accepted some of the Social Security Advisory Committee consultation recommendations, such as an increased 'de minimis' level (the Department has taken the decision to raise the de minimis from £100 to £300) and exemption for domestic abuse victims but has not accepted the other recommendations. The rationale for this is set out in detail within the Government response to the SSAC consultation.

## **9. Guidance**

- 9.1 This change will not come into effect until April 2016. Guidance will be produced for staff ahead of this date to ensure they are suitably trained to advise claimants as to the impact of these regulations. The Department has made a clear commitment to providing claimants with advice and guidance so that they understand this policy and how it may affect them. This will enable claimants to discuss the implications with service agents or work coaches and factor this knowledge into their spending decisions in the period after their Universal Credit award ceases.

## **10. Impact**

- 10.1 The Universal Credit Impact Assessment published in December 2012 can be found here: <https://www.gov.uk/government/publications/universal-credit-impact-assessment>. This includes analysis of the impact of Universal Credit on claimants with characteristics protected under the Equality Act 2010. A separate impact assessment has not been produced for these regulations since they do not impact business or civil society organisations. The Department has undertaken an equality analysis, in line with the Equality Duty, and concluded that these regulations will not result in any particular advantage or disadvantage for protected groups.

## **11. Regulating small business**

- 11.1 The legislation has no impact on small businesses themselves. The regulations do however cover self-employed claimants in receipt of Universal Credit.

11.2 The Department established The Universal Credit Self-Employed Stakeholder Advisory Group in December 2014 to help review and monitor this policy, amongst its other work, as part of the Department's 'Test and Learn' approach. This will help the Government to provide support as required to self-employed claimants impacted by this policy who may be running small businesses.

## **12. Monitoring & review**

12.1 Universal Credit operates under the 'Test and Learn' approach. This means that policy is constantly under review and amended where problems are identified that require addressing.

## **13. Contact**

Sharon Blackburn at The Department for Work and Pensions Tel: 02074495754 or email: [sharon.blackburn@dwp.gsi.gov.uk](mailto:sharon.blackburn@dwp.gsi.gov.uk) can answer any queries regarding the instrument.