
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make changes in relation to various social security benefits as a consequence of the restrictions on entitlement to child tax credit and the child element of universal credit provided for in sections 13 and 14 of the Welfare Reform and Work Act 2016 (c. 7) (the “2016 Act”). The universal credit changes include exceptions from those restrictions, transitional arrangements and a minor consequential amendment. The Regulations also make consequential changes in relation to housing benefit, income support and jobseekers allowance.

Regulation 2 amends the Universal Credit Regulations 2013 (S.I. 2013/376) (the “Universal Credit Regulations”) by inserting into them new regulations 24A and 24B and a new Schedule 12.

- Regulation 24A sets out the rule for determining whether a claimant is entitled to the child element in respect of a child or qualifying young person for whom the claimant is responsible. The child element will be available in respect of the first or second child or qualifying young person in the claimant’s household as this will be within the maximum amount of the child element available under section 10 of the Welfare Reform Act 2012 (c. 5) as amended by the 2016 Act. The child element will only be available in respect of a third or subsequent child or qualifying young person in the claimant’s household if that child or qualifying young person is transitionally protected or an exception applies in relation to them. Regulation 24B sets out the rule for determining whether a child or qualifying young person is the first, second, third or subsequent one in the claimant’s household for this purpose.
- Schedule 12 provides that an exception to the restriction on entitlement to the child element will apply in respect of a third or subsequent child or qualifying young person in the claimant’s household who is: born as part of a multiple birth, other than the first child in that birth (paragraph 2); adopted from local authority care (paragraph 3); within the claimant’s responsibility as part of a non-parental caring arrangement (paragraph 4); or born as a result of non-consensual conception (paragraph 5). Paragraph 6 of Schedule 12 also provides for certain cases where an exception, granted in a previous universal credit award to joint claimants by virtue of one member of the couple being the parent or adopter of the relevant child or qualifying young person, may continue to apply in a subsequent, connected universal credit award made to the other member of that couple, where that person continues to be responsible for the same child or qualifying young person but would not be entitled to the exception in their own right.

Regulation 2 of these Regulations also inserts a new definition of “step-parent” into the Universal Credit Regulations as step-parents of children or qualifying young persons are referred to in certain exceptions under the new Schedule 12. The definition also clarifies the meaning of this term as used elsewhere in those regulations.

Regulation 3 amends the Universal Credit (Transitional Provisions) Regulations 2014 (S.I. 2014/1230) by inserting into them a new Part 3 (comprising new regulations 39 to 43) to set out the transitional arrangements for the coming into force of section 14 of the 2016 Act.

- Regulation 39 prevents a new claim for universal credit being made by any person with more than two children or qualifying young persons during the period beginning with 6th April 2017 and ending with 31st October 2018 (“the interim period”). The interim period may be extended by the Secretary of State.

Status: This is the original version (as it was originally made).

- Regulation 40 set out the circumstances in which a child or qualifying young person, who is the third or subsequent child or qualifying young person in the claimant’s household, is transitionally protected for the purpose of entitlement to the child element. Different criteria apply during and after the interim period. During the interim period (as for child tax credit) the protection depends on the child or qualifying young person being born before 6th April 2017. After the interim period it also depends on their having been part of an award of universal credit since the end of the interim period or part of an award of child tax credit, income support or a jobseeker’s allowance in the six months before becoming part of a universal credit award.
- Regulation 41 provides for the exception in paragraph 6 of the new Schedule 12 to the Universal Credit Regulations (continuation of an existing exception in a subsequent award) to apply in respect of a child or qualifying young person in a universal credit award, where a relevant exception previously applied in relation to an award of child tax credit, income support or an income related jobseeker’s allowance.
- Regulation 42 provides that the Secretary of State may rely on evidence previously provided to HMRC (in the context of a child tax credit claim) in order to make a determination for the purposes of the non-consensual conception exception in paragraph 5 of the new Schedule 12 to the Universal Credit Regulations.
- Regulation 43 provides that the higher amount of the child element payable in respect of the first child or qualifying young person (abolished by section 14(5)(b) of the 2016 Act) continues to be payable to claimants who are responsible for a child or qualifying young person born before 6th April 2017.

Regulation 3 of these Regulations also inserts a definition of “qualifying young person” into the Universal Credit (Transitional Provisions) Regulations 2014 as this term is used in the new Part 3 of those regulations.

Regulation 4 makes a minor consequential amendment.

Regulation 5 provides that income support claimants whose applicable amount includes an amount in respect of children or young persons will not receive an amount in respect of a third or subsequent child or young person born on or after 6th April 2017. This restriction will not apply if any of the exceptions in the new Schedule 12 of the Universal Credit Regulations would apply in respect of that child or young person if the claimant were entitled to an award of universal credit.

Regulation 5 also provides that, where, as a result of this regulation, a claimant does not receive an amount in respect of a third or subsequent child or young person born on or after 6th April 2017, then any child benefit received by the claimant in respect of that child or young person is disregarded in the calculation of their income other than earnings. This aligns the treatment of child benefit received in respect of those children and young persons with the treatment of child benefit received in respect of children or young persons by claimants who are not entitled to an amount in respect of any child or young person.

Regulation 6 provides for jobseeker’s allowance claimants whose applicable amount includes an amount in respect of children or young persons to be treated in the same way as income support claimants in respect of third or subsequent children or young persons born on or after 6th April 2017.

Regulations 7 to 9 make changes to the Housing Benefit Regulations 2006 (S.I. 2006/213) and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214) consequent on the changes made to child tax credit provisions by section 13 of the 2016 Act.

Regulations 7 and 8 amend the provisions of those Regulations on “applicable amounts” (amounts used for the purpose of provisions on the taking into account of a claimant’s income) in order to provide that, save where the claimant is awarded child tax credit, the applicable amount is to include a maximum of two amounts for any children or young persons for whom the claimant or the claimant’s partner is responsible and who are members of the same household (“default provisions”).

Where the claimant has an award of child tax credit, an amount is to be included in the applicable amount for any child or young person in respect of whom an individual element of child tax credit is included in the calculation of the maximum rate of that credit, where the total amount to be included would be higher than the total amount that would be included under the default provisions (“child tax credit provisions”).

Regulation 9 contains transitional provisions for the situation where a claimant is entitled to housing benefit on 5th April 2017 and the claimant’s family then includes more than 2 children or young persons (“protected individuals”). In this case, the claimant’s applicable amount is to include an amount for each protected individual, until a new claim for housing benefit is made (*See* paragraphs (2) to (4)).

The regulation also includes provision for the case where, after the 5th April 2017, the family includes one or more protected individuals and one or more new children or young persons.

In this case, where the child tax credit provisions do not apply, the default provisions are to apply to any new child or young person such that an amount is only to be included in the applicable amount in respect of a new child or young person where the number of protected individuals in the family has fallen to one and, where this is the position, the maximum number of amounts to be included is two.

An impact assessment has not been produced for this instrument as it has no impact on business and civil society organisations. This instrument has no impact on the public sector.