

**The Universal Credit (Miscellaneous
Amendments, Savings and Transitional
Provision) Regulations (S.I. 2018 No. 65)**

**Report by the Social Security Advisory
Committee under Section 174(1) of the Social
Security Administration Act 1992 and statement
by the Secretary of State for Work and Pensions
in accordance with Section 174(2) of that Act**

*Presented to Parliament pursuant to Section 174(2) of the
Social Security Administration Act 1992*

January 2018



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Surplus Earnings – response to SSAC

The Department welcomes the Social Security Advisory Committee's (SSAC) report on The Universal Credit (Miscellaneous Amendments, Savings and Transitional Provision) Regulations 2018 (S.I. 2018 No. 65) which it has carefully considered and reviewed.

Universal Credit lies at the heart of our reforms to transform the welfare system, so it supports those who can work and cares for those who can't, while being fair to the taxpayer.

Under Universal Credit, claimants are moving into work significantly faster and spending more time looking for work than under the previous system. By way of example, around 86% of people on Universal Credit were actively looking to increase their hours, compared to just 38% of people on Job Seekers Allowance and some 77% of people on Universal Credit were actively looking to increase their earnings, compared to just 51% of people on Job Seekers Allowance.

Re-claims in order to erode a surplus

You raise a concern with claimants having to make repeated monthly claims to successfully erode their surplus earnings.

The re-claim process in Universal Credit is a simplified one, intentionally designed as a simple and swift process for claimants. For claimants whose only change is the level of earnings, the average time to complete a re-claim could be just eight minutes.

The need for affected claimants to re-claim each month does not differ significantly from the current situation. Currently, where the level of earnings causes the UC entitlement to reduce to NIL and the claim to close, claimants need to re-claim if there is a change to their circumstances or level of earnings.

This is also the case with surplus earnings, the claimant has the same need to re-claim as there are no re-awards in Full Service. Notification from DWP on claim closure would advise the claimant of the need to re-claim if their circumstances change.

In addition, the Department will ensure that messaging and guidance, both for those claimants impacted by surplus earnings and for work coaches helping claimants, reinforces this message so that the claimant's responsibilities are clear and they are kept well-informed.

50/50 apportionment when a couple carrying a surplus separate

The Department has changed the apportionment rules to provide greater clarity to claimants in understanding how a surplus is recovered. The apportionment rules

would only come into force in the event a couple separating at the same time a surplus is outstanding also re-claimed within 6 months of the original surplus being created.

It is reasonable that a couple and their household would equally benefit from household income such as a one off bonus. As such, the surplus should be equally apportioned unless there are grounds that this is unreasonable.

Additionally, the regulations allow for a decision maker acting on behalf of the Secretary of State to consider the reasonableness of an individual's circumstances when looking at a decision on apportionment, allowing discretion to ensure claimants are adequately protected.

The Government is committed to doing all that we can to improve support for people affected by domestic abuse. The regulations that introduce this change include an exemption for victims of domestic violence to ensure that there is no financial disincentive for these individuals to leave an abusive relationship. No surplus would be apportioned to that claimant.

A higher de minimis

Claimant and work coach communications and guidance will be very clear to ensure that claimants impacted by the higher de minimis of £2500 are able to prepare adequately for any change the following year.

It is important to note the introduction of a higher de minimis allows the department to implement this change in a safe and secure way with minimal impact to the majority of claimants. The department plans to monitor volumes and claimant impact as we develop an automated process.

This policy also carries a SoS discretion to extend the date at which we revert the de minimis back to £300 if needed. As such, if we identify significant or unexpected issues with this policy, we can ensure minimal volumes are impacted.

Changes to work allowances and up to date analysis

The cost estimate is based on our UC model which is based on the current design of UC. Additionally, the UC Evaluation Framework sets out how UC will be formally evaluated. This sits alongside the wider analytical work on UC including a broad analytical work programme focused on the test and learn approach in UC and building strong evidence around the performance of the programme and the drivers of performance. This evaluation is published on Gov.uk.

In draft regulation 4(2) should the reference to “31st March 2018” not be “31st March 2019”?

The date has since been changed to 31st March 2019.

The Rt Hon Esther McVey MP
Secretary of State for Work and Pensions
Department for Work and Pensions
Caxton House
Tothill Street
London, SW1H 9NA

19 January 2018

Dear Esther,

At its meeting on 13 December 2017 the Social Security Advisory Committee considered, in accordance with section 172(1) of the Social Security Administration Act 1992, the proposed change in the calculation of surplus earnings and self-employed losses for Universal Credit claimants. We understand that the Department intends to bring them forward as part of *The Universal Credit (Miscellaneous Amendments and Saving and Transitional Provision) Regulations*.

Our scrutiny process was unable to proceed to completion while these proposals remained subject to the Parliamentary Business and Legislation (PBL) Committee triage process. I understand that you expect to get PBL approval today. Accordingly, I am writing to confirm that the Committee has decided to take this particular proposal on formal reference.¹

Given the nature of our concerns and substance of our recommendation set out below, we have taken the view that there would be limited value in our undertaking a public consultation before presenting advice to you and, mindful also of your proposed timescale for laying the regulations, we are therefore in a position to provide our report to you immediately. We have focused on setting out our high-level concerns in this report, however a more detailed record of our concerns can be found in our formal minutes of the discussion which we attach as an annex.

The original proposals on surplus earnings and self-employed losses have already gone through a number of iterations. The Committee took the initial proposals on formal reference in 2014, and our subsequent report acknowledged the considerable challenges for the Department in designing appropriate regulations in this context. There have inevitably been a number of developments since 2014 – both in terms of data available to the Department which should allow for a further analysis of the impact of the proposals, and the number of adjustments to the original design of Universal Credit, not least the reduced work allowances. It is unclear to us whether, in light of these factors, the original assumptions made in support of the policy remain true.

¹ Section 174(1) of the Social Security Administration Act 1992.

Operational challenges

The new proposal is based on a number of assumptions, each of which appear open to question. Taken together there would be significant operational challenges in ensuring that the policy is implemented effectively. This may only be a small issue from April 2018 until March 2019 when the de minimis figure is to be set at a deliberately high figure in order to limit the number of cases affected and to facilitate test and learn arrangements. The real impact would therefore not be felt until the following year when it is intended that the de minimis level would revert to £300 a month.

One of our main concerns about these proposals is the assumption that claimants will have a detailed understanding of this complex policy, when in reality it seems likely most will not. Many may be disadvantaged simply due to that lack of detailed understanding of the complex rules underpinning this policy.

For example, the only way that claimants can successfully erode surplus earnings that have taken them off Universal Credit is to make repeated monthly claims. But these are destined to fail until the surplus is erased and entitlement resumes. Requiring claims to be made where it is known that they will be unsuccessful is, at best, counterintuitive and risks damaging the credibility of both this policy and Universal Credit more widely.

Claimants, some of whom would be self-employed and possibly working long hours to keep a business viable, would not be in a position where they could devote time to making successive unsuccessful claims for Universal Credit. It is likely that some would be deterred from persisting in making nugatory claims, but would then find that they were effectively penalised for not doing so.

There is also an assumption that it will be obvious to claimants making a repeat claim whether or not their circumstances have changed in a way that is likely to affect their Universal Credit entitlement. This may be the case where the only change is an increase or decrease in the claimant's earnings. But some changes of circumstances have less predictable outcomes, and multiple changes within a single assessment period are likely to create uncertainty. This might arise, for example, in situations where both members of a couple are in some form of paid work, one member's earnings can go up whilst the other member's goes down; or there may be changes in the household composition.

There are also likely to be cases where making a monthly claim would have a negative impact. For example, a self-employed worker with a steady income throughout the year apart from a peak seasonal spike over a period of, say, three months would be disadvantaged by making repeat claims during the period in which his earnings remained high. This is because their surplus would continue to accrue taking longer to erode. They would – unlike some others – be better off not claiming during the periods in which they are not eligible.

We are also concerned about the implications of introducing a high de minimis which will subsequently reduce sharply after 12 months. This has the potential to cause confusion and, as a consequence, to have a financial impact on claimants who may have unwittingly become accustomed to – and made longer term financial decisions based on – the initial higher de minimis figure.

We are not convinced that this proposal can be satisfactorily implemented in a way that is clear and fair to claimants. If it does go ahead, it is essential that the Department communicates the necessary messages implicit in this policy initiative effectively to claimants – a task that would not be easily achieved.

Equality impact

The Committee noted that an equality impact had shown that there were no adverse effects on anyone with a protected characteristic. However it is clear that having, by default, a simple 50/50 apportionment of surplus earnings in the event that a couple separate would adversely affect any non-working partner, or the partner earning a lower amount relative to the current situation of allocating the surplus in proportion to the earnings of each individual of a couple. Some of the non-working partners, or partners on lower wages, are likely to have a protected characteristic (for example gender or those with a mental health condition), therefore we were surprised by the Department's assertion. Although, as was made clear to us, the legislation would give discretion for a different apportionment to be applied, the default position would be 50/50 and it would fall to individual claimants to make a request for it to be changed. Some individuals adversely affected might lack the understanding to request a revision of that decision; others may be put under some pressure from their former partner to accept the Department's decision.

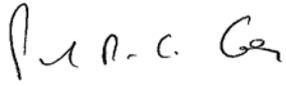
Conclusion

For all the reasons outlined above, the Committee has serious doubts about the potential for this detailed policy to operate effectively. The fact that the Department's original intention to use Real Time Information data supplied by HMRC to assess earnings during short periods of non-entitlement to Universal Credit has not yet proved possible also presents a further challenge in developing a satisfactory framework. Effectively the proposals, described to us by officials as an operational simplification, simply transfer to claimants the burden of overcoming operational challenges faced by the Department.

We recognise that, in the first year, the proposal to set a high de minimis level will greatly reduce the number of cases where the surplus earnings rule is triggered. We also note that these proposals will extend the carry-forward period for self-employed losses.

If the Department judges it is capable of operating the policy on this reduced scale during 2018-19, we strongly recommend rigorous processes are put in place to provide for effective test and learn arrangements, which should include communication of the necessary messages implicit in the policy. In particular, it would be important to capture learning around the formidable challenges in communicating changes to claimants; not least to those who could negatively impact their subsequent entitlement by making a claim now. Only if that test and learn phase provides compelling evidence that this detailed policy can be successfully operated at scale would it be prudent to continue with it, in particular with any

reduction to the de minimis limit. We recommend that such evidence be placed in the public domain before any reduction to the de minimis limit is effected.

A handwritten signature in black ink, appearing to read "Paul Gray". The signature is written in a cursive, slightly slanted style.

Paul Gray
Chair

**Extract from the minutes of the
Social Security Advisory Committee meeting held on
13 December 2017**

Surplus Earnings

2.7 This particular proposal was introduced by Ronnie Haynes (G6, UC Policy) Bridget Hornibrook (G6 lawyer, Universal Credit and Housing Support) and Fiona Kilpatrick (Head of Legislative Strategy). The Chair reminded Committee members and officials that he had agreed with the Department that the Committee would be notified as soon as this proposal had received PBL clearance so that the minutes could be published as soon as possible afterwards, and ahead of the regulations being laid.

2.8 Introducing this subject, Ronnie Haynes explained that the Department had identified a need to adopt a different strategy towards calculating surplus earnings in UC because the original intention to take into account all earnings in the period of up to six months between the termination of the earlier award of UC and the start of a repeat claim for UC could not be processed electronically. The RTI data had not proved capable of providing the information on a claimant's earnings in a way which would meet the original policy intention. After being twice delayed by 12 months, the Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015 was now due to come into force in April 2018. The proposed amendment was being put forward by the Department to ensure that it was workable.

2.9 The proposal was focused on calculating the surplus earnings as they stood when the claimant's award of UC ended and setting that surplus, subject to a de minimis amount of £300, against the earnings in the relevant assessment period when a repeat UC claim was made. This process might mean that a claimant receiving a substantial bonus in a particular month would need to make successive unsuccessful claims for UC in the succeeding months in order to ensure that their surplus earnings were fully eroded. Ronnie Haynes explained that the Department had decided to make a temporary and very substantial increase to the de minimis limit, possibly increasing it to £2,500, in order to ensure that the policy could be applied safely and that it could be tested during the 2018 to 2019 period. The intention was that in April 2019 the de minimus figure would return to £300 a month. In the period 2018 to 2019 an estimated 11,000 fluctuations would trigger the surplus earnings rules, although that would not necessarily equate to the number of claimants, as some claimants could trigger the surplus earnings rule two or three times in a year. The proposed amendment would also apportion a straightforward 50/50 split on the surplus earnings when a couple split rather than a split which sought to attribute the surplus earnings to the partner who had worked for them. It also removed the time bound element from the self-employed losses, which was previously set at 11 months.

2.10 The following main questions were raised in discussion by Committee members:

- (a) **The Explanatory Memorandum advised that an equality impact had been conducted and that the “amendments concerning Surplus Earnings and Waiting Days are considered beneficial measures, with no adverse impacts on those with protected characteristics identified”. If surplus earnings were to be apportioned on a 50/50 basis between partners who split, would that not impact more on women when the surplus earnings were more likely to be those of a man? The Department’s approach would appear to put the proposed legislation at risk of challenge.**

There were provisions within the draft regulations for a decision-maker to attribute a different split where it was reasonable to do so. This was a simplification measure that was easy to explain for claimants.

- (b) **Was it reasonable to require a partner with mental health difficulties – another protected characteristic – not only to make a claim for UC in their own right, but to represent that surplus earnings should be apportioned on a different basis than a simple 50/50 split?**

The Department would expect a claimant to report a drop in earnings if they had gone off UC so that their surplus earnings could be adjusted. This was not a new requirement of this policy. The Department always asked claimants to report changes in their circumstances.

- (c) **How would the possibility of having a different split be communicated to the partners, particularly as one of the partners would probably be making a claim in their own right for the first time?**

This was exactly why a 50/50 split would be more beneficial to claimants as it would help them understand the expectations on them. As part of the changes to this policy the Department would need to develop amended communications to claimants to ensure they were aware of the expectations on them at the point of claim and at the point a surplus was triggered.

- (d) **In developing the Equality Impact was any analysis done? An analysis was done in relation to the original Surplus Earnings etc Regulations that the Committee saw two years ago. Since then the test and learn approach in UC should have allowed for a further analysis of the impact of the proposals.**

The Department had calculated the numbers that were likely to be impacted by this proposal. It would also check further into the extent to which the original analysis had been conducted in relation to those with a protected characteristic. The Department would come back to the Committee with more information on that particular issue.

- (e) **Two years on and we were now in a different environment. The amount of the work allowance, for example, had been changed. Had the**

Department undertaken any up-to-date analysis which took into account the changes that had occurred?

The Department would again come back to the Committee on that question.

- (f) How would claimants know that they have to make a repeat claim if there had been a reduction in their earnings since going off UC?**

This would be made clear to them in the information they would receive when their earnings took them off UC.

- (g) Could the Department confirm that a claimant who deferred making a repeat claim for UC for three months could be better off than someone who had claimed in each of those three months?**

Yes, that would be true if, in the succeeding three months the earnings had continued to be high. That was why the information given to claimants by the Department would make it clear that they should make a repeat claim if their earnings reverted back to the level it was before they received the spike which took them off UC. Essentially the Department wanted people to report a change in circumstances and to reclaim when it would have a favourable impact upon any UC entitlement.

- (h) But that assumed a simple change of circumstances where it was easy to determine the effect. In practice there may be several changes in circumstances which may make it difficult to predict whether the impact on UC would be positive or negative. This would appear to present a problem for the Department in its messaging.**

Noted.

- (i) Would it be possible for a person to make a late claim for previous months when it became evident that it was in their interests to do so?**

The rules on backdating claims in UC were tightly prescribed and it was unlikely that these circumstances would allow the Department to backdate a claim.

- (j) Could a person make a repeat claim and, if it seemed likely that it would have a detrimental effect on any potential UC entitlement, withdraw it before it had been determined?**

Yes, provided that intention was communicated to the Department in a clear and timely manner.

- (l) This rule was likely to affect the self-employed more than others. Given that they were often tied up with trying to make the business viable, how realistic was it to expect them to repeat claims in order to reduce the level of their surplus earnings?**

It had been estimated that it would only take around eight minutes for a person to make a repeat claim in these circumstances where the only change was in earnings.

(m) Did it make sense to defer the introduction of these rules until the precise communications to claimants and staff could be worked out?

The regulations had already been deferred twice for a year. Putting it off for a further year would prevent the Department learning from the process and would also cause difficulties for the self-employed who had monthly assessment periods where there were significantly high expenses or a significant drop in income. A deferral in this policy would also defer the introduction of self-employed losses which was favourable to claimants. There would also be savings from this measure once the de minimis level had reverted to £300 a month, so that further deferral would probably be met with resistance.

(n) Was there not an issue when it came to reverting the de minimis figure back to £300? Claimants with highly fluctuating earnings would have got used to a far higher figure by that time.

The onus would be on the Department to explain the change effectively. The alternative would be to introduce the rule at the £300 level and this would be difficult during the period of test and learn.

(o) But would a de minimis figure set at a very high level as proposed in the interim period not give a different set of results since it would also extend to very different types of work and patterns of work?

Yes some of the claimant groups impacted would ultimately be different. However there was still the benefit of learning from the introduction of this policy now as well as the benefit of self-employed losses for claimants.

(p) The explanatory memorandum stated that this proposal would benefit claimants. Where was the benefit?

The gainers would be those who had subsequent months where there were further spikes in earnings. When they eventually reclaimed UC no account would be taken of further surplus earnings – it would only be the surplus earnings at the point at which they came off UC that would be factored in to the calculation. The Department did not estimate that there would be many in this category. Bonuses, for example, were typically paid annually.

(q) In which case what was the policy objective?

The policy objective was to find a fair way of managing UC, which was based on monthly assessment periods, when claimants experienced high levels of fluctuations in their earnings. The original intention was to use RTI data to assess earnings during short periods of non-entitlement to UC but this has not proved possible. In fact the entire UC programme would be put at risk if

Department tried to build in an RTI capture of this information.² That meant a different approach and the proposed solution had been devised as the simplest and fairest for all affected and the easiest to operate. As UC did not assess earnings on an annual basis, this was the fairest way to ensure that large increases in earnings that took a person off UC were not discounted in the event of a subsequent reclaim of UC.

- (r) **Returning to the communications the Department would need to provide for claimants, the message would have to be that a person coming off UC because of surplus earnings should continue to live at or near UC levels for six months in the event that they might need to make a repeat claim. They could, for example, find themselves in real financial difficulties if they used the surplus earnings to pay off rent arrears.**

The Department's approach was broadly in line with HMRC rules on tax credits where subsequent adjustments were made at a later date following spikes in earnings. It was reasonable to expect that benefits should be adjusted in line with earnings levels.

- (s) **In draft regulation 4(2) should the reference to "31st March 2018" not be "31st March 2019"?**

The Department undertook to check that date.

2.11 The Chair thanked the officials for attending the meeting and answering the questions that were put to them. He advised them that the Committee was concerned, as was evident from the discussion, about the difficulties faced by the Department in effectively communicating the rules to claimants as well as to members of staff. He further advised the officials that the Committee would inform the Department of a decision on formal reference as soon as the Committee had been informed that the proposals had been cleared by PBL and ahead of the regulations being laid.

² The Department subsequently clarified that using RTI data to assess earnings during short periods of non-entitlement to UC would require new functionality to be built in the UC Full Service that would keep claim information alive and running in the background and provide a platform to which RTI data could be attributed. To build it would require a significant shift of resource away from the core UC build which would significantly impact the continued development of the UC IT platform.

Members of the Social Security Advisory Committee

Paul Gray (Chair)

Rachael Badger

Bruce Calderwood

Carl Emmerson

Colin Godbold

Chris Goulden

Jim McCormick

Gráinne McKeever

Dominic Morris

Seyi Obakin

Judith Paterson

Charlotte Pickles

Liz Sayce

Victoria Todd

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