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STATUTORY INSTRUMENTS

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**2015 No. 345**

**SOCIAL SECURITY**

**The Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015**

<i>Made</i>	- - - -	<i>23rd February 2015</i>
<i>Laid before Parliament</i>		<i>26th February 2015</i>
<i>Coming into force</i>	- -	<i>6th April 2016</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred by section 42(2) and (3) of, and paragraph 4(1), (3)(a) and (4) of Schedule 1 to, the Welfare Reform Act 2012<sup>(1)</sup>, 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. These Regulations may be cited as the Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015 and come into force on 6th April 2016.

**Carry forward of surplus earnings**

2.—(1) The Universal Credit Regulations 2013<sup>(2)</sup> are amended as follows.

(2) After regulation 54 (calculation of earned income – general principles) insert—

**“Surplus earnings**

**54A.**—(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, the amount of any surplus earnings in a month—

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(1) 2012 c.5.  
(2) S.I. 2013/376.

- (a) that would have been an assessment period for the old award had it continued (including the month which is the assessment period in which the old award terminated); and
- (b) is the last such month preceding the first assessment period for a new award,

is to be treated as earned income for the purposes of determining whether there is entitlement to a new award or, if there is entitlement to a new award, calculating the amount of the award.

(3) Whether there are surplus earnings in the assessment period in which the old award terminated or 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 claimant 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 a new award; and
  - (b) if—
    - (i) a single claimant in relation to a new award was entitled to the old award as a joint claimant, or
    - (ii) either of the joint claimants in relation to a new award was entitled to the old award as a member of a different couple,

the original surplus is to be apportioned 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 assessment period in which the old award terminated bears to the total earned income in that assessment period.

(5) A person is not to be treated as having earned income by virtue of this regulation if, at the time that person makes a claim for universal credit, he or she has recently been a victim of domestic violence (within the meaning of regulation 98).

- (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 above which there would be no entitlement to universal credit, expressed by the following formula—

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

where—

M is the maximum amount of an award of universal credit<sup>(3)</sup>;

U is unearned income<sup>(4)</sup>;

WA is the work allowance<sup>(5)</sup>,

and, in determining those amounts in relation to the first and any subsequent months after the termination of the old award, the Secretary of State may make such assumptions as to the claimant’s circumstances as the Secretary of State considers appropriate;

“the relevant threshold” is the nil UC threshold plus £300.”

(3) In regulation 62 (minimum income floor)<sup>(6)</sup> 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 54A (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.”

### **Self-employed earnings – treatment of losses**

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

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

3.—“(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.

#### *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*

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(3) The maximum amount of an award of universal credit is determined by section 8(2) of the Welfare Reform Act 2012(c.5).

(4) For the meaning of “unearned income” see Chapter 3 of Part 6.

(5) For the meaning of “work allowance” see regulation 22.

(6) Regulation 62 was substituted by [S.I. 2014/2888](#).

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(2), (6) or (8) of the Contributions and Benefits Act or Class 4 contributions under section 15 of that Act; or
- (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).

#### *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 regulation 57(2), a person has an unused loss if—

- (a) in calculating the person's self-employed earnings for any of the previous 11 assessment periods, the amount resulting from steps 1 to 3 in regulation 57(2) was a negative amount (a “loss”); and
- (b) 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 that 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, the Secretary of State may, for the purposes of this regulation (provided 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).

#### **Savings**

**4.**—(1) The amendments in regulations 2 and 3 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(7);
- (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(8);
- (c) the Welfare Reform Act 2012 (Commencement No. 13 and Transitional and Transitory Provisions) Order 2013(9);
- (d) the Welfare Reform Act 2012 (Commencement No. 14 and Transitional and Transitory Provisions) Order 2013(10);
- (e) the Welfare Reform Act 2012 (Commencement No. 16 and Transitional and Transitory Provisions) Order 2014(11);
- (f) the Welfare Reform Act 2012 (Commencement No. 17 and Transitional and Transitory Provisions) Order 2014(12);
- (g) the Welfare Reform Act 2012 (Commencement No. 19 and Transitional and Transitory Provisions and Commencement No. 9 and Transitional and Transitory Provisions (Amendment)) Order 2014(13);
- (h) the Welfare Reform Act 2012 (Commencement No. 22 and Transitional and Transitory Provisions) Order 2015(14),

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 couple,

where either member of the couple in question is a digital service claimant.

(3) A “digital service claimant” is a person who has become entitled to an award of universal credit—

- (a) by reference to residence in the postcode part-district SM5 2;
- (b) by forming a couple with a person who became entitled to an award of universal credit by reference to residence in that postcode;
- (c) by forming a couple with a person who became entitled to an award of universal credit by virtue of sub-paragraph (b); or
- (d) by forming a couple with a person who became entitled to an award of universal credit by virtue of sub-paragraph (c).

(4) In regulation 54A of the Universal Credit Regulations 2013 (as inserted by regulation 2(2)) “the old award” does not include an award the last day of which fell before 6th April 2016 and in regulation 57A (as inserted by regulation 3(4)) “unused loss” does not include the loss from an assessment period that ended before that date.

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(7) S.I. 2013/983 (C. 41).  
(8) S.I. 2013/1511 (C. 60).  
(9) S.I. 2013/2657 (C. 107).  
(10) S.I. 2013/2846 (C. 114).  
(11) S.I. 2014/209 (C. 7).  
(12) S.I. 2014/1583 (C.61).  
(13) S.I. 2014/2321 (C.99).  
(14) S.I. 2015/101 (C.6).

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

23rd February 2015

*Freud*  
Parliamentary Under Secretary of State  
Department for Work and Pensions

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## EXPLANATORY NOTE

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

These Regulations amend the Universal Credit Regulations 2013 (S.I. 2013/376) by making further provision for the calculation of earned income for the purposes of calculating an award of universal credit.

Regulation 2 provides for past earnings to be taken into account where a claimant has ceased to be entitled to universal credit within the past 6 months because of excess earnings. Paragraph (1) inserts a new regulation 54A which determines the circumstances in which an amount of earnings during the period when the person was not entitled to universal credit may be treated as earned income in calculating a new award. Paragraph (3) amends regulation 62 (minimum income floor) so that where such an amount is taken into account it is added to earned income before that regulation is applied and, in the case of a joint claim, apportioned in the way that is most favourable to the claimants.

Surplus earnings are not applied in the case of a claimant who has recently been the victim of domestic violence.

Regulation 3 amends regulation 57 of the Universal Credit Regulations 2013 (which sets out how self-employed earnings are calculated for each assessment period) so as to allow unused losses from previous assessment periods to be taken into account. Unused losses are defined in the new regulation 57A. These are any losses from the previous 11 assessment periods that have not yet been set off against subsequent profits. For this purpose the months in any break between awards (not exceeding 6) may be treated as if they were assessment periods and, accordingly, losses for that period can be taken into account.

Regulation 4 (savings) provides that the amendments in regulations 2 and 3 only have effect in relation to those awards (collectively known as “the digital service”) arising from claims made by persons living in the postcode specified in that regulation or from such persons subsequently forming new couples. Regulation 4 also provides for the exclusion of surpluses and losses arising before the regulations come into force.

The report of the Social Security Advisory Committee dated 12th December 2014 in relation to the Secretary of State’s proposals to make these Regulations, together with a statement showing the extent to which these Regulations give effect to the recommendations of the Committee and, in so far as they do not give effect to them, the reasons why not, are contained in an Act Paper published by The Stationery Office Ltd.

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