

STATUTORY INSTRUMENTS

2013 No. 376

The Universal Credit Regulations 2013

PART 8

CLAIMANT RESPONSIBILITIES

CHAPTER 1

WORK-RELATED REQUIREMENTS

The work-related requirements

Work search requirement and work availability requirement - limitations

97.—(1) Paragraphs (2) to (5) set out the limitations on a work search requirement and a work availability requirement.

(2) In the case of a claimant who is a relevant carer or a responsible carer or who has a physical or mental impairment, a work search and work availability requirement must be limited to the number of hours that is determined to be the claimant's expected number of hours per week in accordance with regulation 88.

(3) A work search and work availability requirement must be limited to work that is in a location which would normally take the claimant—

- (a) a maximum of 90 minutes to travel from home to the location; and
- (b) a maximum of 90 minutes to travel from the location to home.

(4) Where a claimant has previously carried out work of a particular nature, or at a particular level of remuneration, a work search requirement and a work availability requirement must be limited to work of a similar nature, or level of remuneration, for such period as the Secretary of State considers appropriate, but only if the Secretary of State is satisfied that the claimant will have reasonable prospects of obtaining paid work in spite of such limitation.

(5) The limitation in paragraph (4) is to apply for no more than 3 months beginning with—

- (a) the date of claim; or

- (b) if later, the date on which the claimant ceases paid work after falling within section 19 of the Act by virtue of regulation 90 (claimants subject to no work-related requirements - the earnings thresholds).

(6) Where a claimant has a physical or mental impairment that has a substantial adverse effect on the claimant's ability to carry out work of a particular nature, or in particular locations, a work search or work availability requirement must not relate to work of such a nature or in such locations.



Welfare Reform Act 2012

2012 CHAPTER 5

PART 1

UNIVERSAL CREDIT

CHAPTER 2

CLAIMANT RESPONSIBILITIES

Application of work-related requirements

19 Claimants subject to no work-related requirements

- (1) The Secretary of State may not impose any work-related requirement on a claimant falling within this section.
- (2) A claimant falls within this section if—
 - (a) the claimant has limited capability for work and work-related activity,
 - (b) the claimant has regular and substantial caring responsibilities for a severely disabled person,
 - (c) the claimant is the responsible carer for a child under the age of 1, or
 - (d) the claimant is of a prescribed description.
- (3) Regulations under subsection (2)(d) may in particular make provision by reference to one or more of the following—
 - (a) hours worked;
 - (b) earnings or income;
 - (c) the amount of universal credit payable.
- (4) Regulations under subsection (3) may—

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

- (a) in the case of a claimant who is a member of the couple, make provision by reference to the claimant alone or by reference to the members of the couple together;
 - (b) make provision for estimating or calculating any matter for the purpose of the regulations.
- (5) Where a claimant falls within this section, any work-related requirement previously applying to the claimant ceases to have effect.
- (6) In this Part “responsible carer”, in relation to a child means—
 - (a) a single person who is responsible for the child, or
 - (b) a person who is a member of a couple where—
 - (i) the person or the other member of the couple is responsible for the child, and
 - (ii) the person has been nominated by the couple jointly as responsible for the child.

could benefit from the extension. Perhaps the main category would be those who are paid for the caring, who are expressly excluded from the scope of s.19(2)(b) by the definition in reg.30 above.

(c) Claimants who are pregnant in the period from 11 weeks before the expected date of confinement and 15 weeks after the date of confinement.

(d) Claimants who are “adopters” (i.e. who have been matched with a particular child for adoption under the complicated conditions in para.(3)) within 12 months or so of placement. It does not matter how old the child is, so long as below the age of 16. Any person who is actually the responsible carer of a child under the age of one is already covered by s.19(2)(c). It appears that para.(d) can continue to apply after the child has actually been adopted, for the 12 months following placement. See para.(f) for foster parents.

(e) Claimants who, by virtue of reg.14(1)(a), do not have to meet the basic condition in s.4(1)(d) of the WRA 2012 of not receiving education or who have student income (see regs 68–71) that is taken into account in the award of universal credit.

(f) Claimants who are the responsible foster parent (there can only be one under reg.85) of a child under the age of one. It appears that such a person cannot get within s.19(2)(c) because reg.4(6)(a) prevents their being treated as responsible for the child while the child is “looked after” by a local authority under s.22 of the Children Act 1989 or s.17(6) of the Children (Scotland) Act 1995.

Claimants subject to no work-related requirements—the earnings thresholds

2.231 90.—(1) A claimant falls within section 19 of the Act (claimants subject to no work-related requirements) if the claimant’s [¹monthly] earnings are equal to or exceed the claimant’s individual threshold.

(2) A claimant’s individual threshold is the amount that a person of the same age as the claimant would be paid at the hourly rate applicable under [²regulation 4 or regulation 4A(1)(a) to (c)] of the National Minimum Wage Regulations for—

(a) 16 hours per week, in the case of a claimant who would otherwise fall within section 20 (claimants subject to work-focused interview requirement only) or section 21 (claimants subject to work-preparation requirement) of the Act; or

(b) the expected number of hours per week in the case of a claimant who would otherwise fall within section 22 of the Act (claimants subject to all work-related requirements)[¹,

converted to a monthly amount by multiplying by 52 and dividing by 12].

(3) A claimant who is a member of a couple falls within section 19 of the Act if the couple’s combined [¹monthly] earnings are equal to or exceed whichever of the following amounts is applicable—

(a) in the case of joint claimants, the sum of their individual thresholds; or

(b) in the case of a claimant who claims universal credit as a single person by virtue of regulation 3(3), the sum of—

(i) the claimant’s individual threshold, and

(ii) the amount a person would be paid for 35 hours per week at the hourly rate specified in [²regulation 4] of the National Minimum Wage Regulations[¹,

converted to a monthly amount by multiplying by 52 and dividing by 12].

(4) A claimant falls within section 19 of the Act if the claimant is employed under a contract of apprenticeship and has [¹monthly] earnings that are equal to or exceed the amount they would be paid for—

- (a) 30 hours a week; or
- (b) if less, the expected number of hours per week for that claimant, at the rate specified in [² regulation 4A(1)(d)] of the National Minimum Wage Regulations^[1], converted to a monthly amount by multiplying by 52 and dividing by 12].

(5) A claimant who is treated as having earned income in accordance with regulation 62 (minimum income floor) in respect of an assessment period is to be taken to have weekly earnings equal to their individual threshold in respect of any week falling within that assessment period.

(6) [¹ A person's monthly earnings are]—

- (a) [¹the person's] earned income calculated or estimated in relation to the current assessment period before any deduction for income tax, national insurance contributions or relievable pension contributions; or
- (b) in a case where the person's earned income fluctuates (or is likely to fluctuate) the amount of that income^[1], calculated or estimated before any deduction for income tax, national insurance contributions or relievable pension contributions, taken as a monthly average]—

(i) where there is an identifiable cycle, over the duration of one such cycle, or

(ii) where there is no identifiable cycle, over three months or such other period as may, in the particular case, enable the [¹monthly] average to be determined more accurately,

[¹and the Secretary of State may, in order to enable monthly earnings to be determined more accurately, disregard earned income received in respect of an employment which has ceased.]

(7) [²...]

AMENDMENTS

1. Universal Credit and Miscellaneous Amendments Regulations 2015 (SI 2015/1754) reg.2(6) (November 4, 2015).

2. Social Security (Jobseeker's Allowance, Employment and Support Allowance and Universal Credit) (Amendment) Regulations 2016 (SI 2016/678) reg.5(4) (July 25, 2016).

DEFINITIONS

"the Act"—see reg.2.

"assessment period"—see WRA 2012 ss.40 and 7(2), and reg.21.

"claimant"—see WRA 2012 s.40(1).

"couple"—see WRA 2012 ss.40 and 39.

"earned income"—see regs 2 and 52.

"joint claimants"—see WRA 2012 s.40.

"National Minimum Wage Regulations"—see reg.2.

"single person"—see WRA 2012 ss.40 and 1(2)(a).

GENERAL NOTE

Regulation 90 prescribes additional circumstances, beyond those prescribed by reg.89, in which a claimant falls within s.19(2)(d) of the WRA 2012 and therefore can be subject to no work-related requirements. The basic test under para.(1) is that the claimant's monthly earnings are at least equal to his or her "individual

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threshold". This provision is necessary because universal credit, in contrast to the terms of pre-existing benefits, can be payable while a claimant is in work. The policy is that if a claimant is already earning above a minimum level there is no need to require them to do anything to seek further paid work. Entitlement then depends on the income calculation under s.8 of the WRA 2012. See further the notes to reg.99.

Paragraph (3) applies the para.(1) test to couples. For joint claimants their individual thresholds are added together, as are their monthly earnings. The threshold is calculated under para.(2) by multiplying the hourly rate of National Minimum Wage by, in the case of a claimant who would otherwise be subject to all work-related requirements under s.22 of the WRA 2012, the expected number of hours per week (see reg.88, usually 35). In the case of a claimant who would otherwise fall within s.20 or 21, the multiplier is 16.

Under para.(6) monthly earnings are earned income as calculated under Chapter 2 of Part 6 of the Universal Credit Regulations (i.e. regs 51–64) in each monthly assessment period but without deductions for income tax, national insurance contributions or pension contributions, subject to an averaging provision in sub-para.(b) where earned income fluctuates or is likely to fluctuate. The ordinary calculation in regs 51–64 involves the use of "real time" information. In the case of both employment and self-employment the calculation of earned income in respect of any assessment period (i.e. month) is to be based on amounts received in that assessment period (regs 54, 55 and 57). There will be obvious difficulties in carrying out that process, on which see the notes to those regulations. If the process does work, it may be proper for the amount of universal credit to fluctuate month by month or for the claimant to fall in and out of entitlement on the means test. However, if entitlement continues there are plainly arguments against a claimant drifting in and out of exemption from all work-related requirements on the basis of the amount of earned income. That is presumably the thinking behind para.(6)(b). The reference to fluctuation of earned income must be to fluctuation over more than one assessment period, because fluctuation within each assessment period does not affect the total for that month. Under sub-para.(i) it is not clear whether the identifiable cycle refers merely to the pattern of receipts or to the pattern of the employment or self-employment or other paid work that produces the income. It would appear that there cannot be an identifiable cycle until it has started and come to an end, which is by definition the start of the next cycle, at least once. Given the difficulties that the notion of a recognisable cycle has given in other contexts it may be that most cases will be dealt with by sub-para.(ii), which requires the taking of an average over the previous three months or such other period as in the particular case enables the weekly average to be determined more accurately. That gives a very wide discretion.

Claimants subject to work-focused interview requirement only

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91.—(1) For the purposes of section 20(1)(a) of the Act (claimant is the responsible carer for a child aged at least 1 and under a prescribed age) the prescribed age is [13].

(2) A claimant falls within section 20 of the Act if—

- (a) the claimant is the responsible foster parent in relation to a child aged at least 1;
- (b) the claimant is the responsible foster parent in relation to a qualifying young person, and the Secretary of State is satisfied that the qualifying young person has care needs which would make it unreasonable to require the claimant to comply with a work search requirement or a work availability requirement, including if such a requirement were limited in accordance with section 17(4) or 18(3) of the Act;
- (c) the claimant is a foster parent, but not the responsible foster parent,