

Section 5: The response

1. The relevant law for making a claim to Universal Credit, the date of claim for Universal Credit, and the time limit within which a claim for Universal Credit is to be made, is outlined below.
2. A claim for universal credit must be made by means of an electronic communication in accordance with the provisions set out in Schedule 2 to the UC, PIP, JSA and ESA (Claims and Payments) Regulations 2013 and completed in accordance with any instructions given by the Secretary of State for that purpose.

The exception to the above provision, is that a claim for universal credit may be made by telephone call to the telephone number specified by the Secretary of State if the claim falls within a class of case for which the Secretary of State accepts telephone claims or where, in any other case, the Secretary of State is willing to do so.

Regulation 8(1)(2) of The UC, PIP, JSA and ESA (Claims and Payments) Regulations 2013

3. In the case of a claim made by means of an electronic communication in accordance with Regulation 8(1), the date on which a claim for UC is made is the date on which the claim is received at an appropriate office.

Regulation 10 of The UC, PIP, JSA and ESA (Claims and Payments) Regulations 2013

4. Where at any time a claim for a relevant benefit is decided by the secretary of state
 - a) The claim shall not be regarded as subsisting after that time; and
 - b) Accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances beyond that time.

In effect, once a decision is made in respect of a claim, it no longer exists as such in law and is replaced by an award or a disallowance. A claimant can seek a revision of the award within the time scales allowed (1 month in most cases) but that revision can only affect the claim for the period decided. The revision cannot add dates to the claim that were not part of the original decision. In other words, you can change the award from the date the claim begins but you cannot backdate a claim to an earlier period by means of a revision.

If a claim has been decided, a request for backdating can only be by means of a further claim which in the case of Universal Credit, would lead to backdating being considered from the date of the second claim.

Section 8(2) of the Social Security Act 1998

5. Subject to the provisions within Regulation 26 of The UC, PIP, JSA and ESA (Claims and Payments) Regulations 2013, a claim for universal credit must be made on the first day of the period in respect of which the claim is made.

Regulation 26(1) of The UC, PIP, JSA and ESA (Claims and Payments) Regulations 2013

6. Where the claim for UC is not made within the time specified in Regulation 26(1), the Secretary of State is to extend the time for claiming it, subject to a maximum extension of one month, to the date on which the claim is made, if –
- (a) any one or more of the circumstances specified in regulation 26(3) applies or has applied to the claimant; and
 - (b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier.

Regulation 26(2) of The UC, PIP, JSA and ESA (Claims and Payments) Regulations 2013

The prescribed circumstances in Regulation 26(3) are as follows:

- a) The claimant was previously in receipt of;
 - a. Jobseekers Allowance (Income Based), or
 - b. Employment and Support Allowance (Income Related), or
 - c. Income Support, or
 - d. Housing Benefit, or
 - e. Child Tax Credit, or
 - f. Working Tax Credit;
 and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that entitlement expired, or
- b) The claimant has a disability, or
- c) The claimant has supplied the Secretary of State with medical evidence that satisfies the Secretary of State that the claimant had an illness that prevented the claimant from making a claim, or
- d) The claimant was unable to make a claim electronically because the official computer system was inoperative, or
- e) an award of UC is not made to members of a couple jointly because one of the couple do not accept a claimant commitment, and the other member makes a new claim to UC as a single person, or
- f) an award of UC to joint claimants is terminated because one of the couple has not accepted a claimant commitment, and the other member makes a new claim to UC as a single person.

Regulation 26(3) of The UC, PIP, JSA and ESA (Claims and Payments) Regulations 2013.

(Regulation 26(3) (aa) Inserted by modification as per Regulation 15 of The Universal Credit (Transitional Provisions) Regulations 2014 (SI 2014/1230) as from 16 June 2014)

7. Miss _____ is appealing against the decision made on 11 Feb 2021 not to extend (backdate) her Universal Credit (UC claim). Her grounds for appeal are that due to her illness/ disability, she meets the criteria for backdating.

8. Before considering whether the claimant satisfies one of the prescribed circumstances, which would allow a claim to be backdated; as per **Section 8(2) of the Social Security Act 1998**, the date that the backdating request was made, in relation to the claim made on 25 Nov 2020 and the date that claim was determined on 25 Dec 2020 must be considered.

A claim can only be amended before it is decided. Where a request for backdating is made after a decision has been made on a UC claim, it should be treated as a new claim

If a claim has been decided, a request for backdating can only be by means of a further claim which in the case of Universal Credit (UC), would lead to backdating being considered from the date of the second claim.

In this case UC was claimed on 25 Nov 2020 and the decision to award UC was made on 25 Dec 2020. At this point the claim ceased to subsist and was replaced by an award.

The earliest date I can determine that the request to extend the time for claiming (backdate) was made is on 25 Jan 2021 and therefore has to be treated as a further claim from that date. There is no evidence to support that Miss. made the request prior to 25 Jan 2021. Mr Letsae requested that her UC claim be backdated to 01 Apr 2020.

As per law, the maximum period for which backdating can be considered is 1 month.

This means for the backdating request made on 25 Jan 2021, I can only consider backdating Miss UC claim as far back as 25 Dec 2020.

As such the period 01 Apr 2020 to 24 Dec 2020 cannot be considered for backdating as it is outside the maximum time limit of 1 month for backdating a claim.

The period 25 Dec 2020 to 24 Jan 2021 cannot be allowed because it covers a period for which Miss has already been given entitlement in the claim made on 25 Nov 2020.

9. I am therefore satisfied that the request to have the UC claim extended (backdated) cannot be allowed and I respectfully invite the First-tier Tribunal Judge to uphold the Secretary of State's decision of 11 Feb 2021; not to extend (backdate) Miss claim to UC.

Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/advisers/docs/lawvois/bluevol/>

Reported decisions of the Social Security Commissioners from 1991 can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/advisers/docs/commdocs/>