

Benefits Bulletin

Benefits Update...

14th December 2021 **[REVISED]**

Issue **8** [2021]

1. Introduction

This Benefits Bulletin brings news on the key Social Security benefit related changes that have recently taken place or that are up coming. It includes information on:

- The change to the way earned income is calculated for Universal Credit purposes. This will mean that working individuals and families who are in receipt of Universal Credit will be 'better off' and that some working people will be able to qualify for Universal Credit where in past they have missed out
- The change in the rules regarding the circumstances in which disabled students may access Universal Credit
- The recent European Court of Justice and Supreme Court rulings which will affect the rights of EEA Nationals with Pre-Settled Status to apply for Universal Credit
- The latest developments in expanding the terminal illness (special rules) time period beyond six months.

We have also included in this Benefits Bulletin a reminder about the problem faced by many Universal Credit claimants who work and get

paid wages early due to the Christmas holidays, often leading to a loss of Universal Credit entitlement.



We have also taken this as an opportunity to provide advanced notice that as from the New Year we will be running a number of short workshops on 'managed migration' - the system that will, from April 2022, see those who are presently getting 'legacy benefits' being selected and then expected to make the transition on to Universal Credit.

Merry Christmas and a happy New Year from everyone at the Welfare Rights Service...

We hope you find the information useful and please do get in touch should you require any further information or clarification.

2. Universal Credit: Help for Working People

The DWP, as was announced in the Autumn Budget, have from **24th November 2021** increased the Work Allowance and reduced the taper used in the calculation of wages for the purposes of Universal Credit.

- The Work Allowance (Higher) has been increased from £515.00 per month to £557.00 per month
- The Work Allowance (Lower) has been increased from £293.00 per month to £335.00 per month
- The taper has been reduced from 63% to 55%.

This means that those who are working and getting Universal Credit should see an increase in the amount of Universal Credit they are paid. It also means that those who have historically been unable to obtain Universal Credit because their wages were considered too great, could now qualify.



Those seeking to apply for Universal Credit can do so through the following link:

[Apply for Universal Credit](#)

The Work Allowance is basically an earnings disregard. It is the amount of money (net wage - the amount of earnings after tax and National Insurance) a person can earn before it affects the amount of Universal Credit they are entitled to.

To qualify for a Work Allowance the person must either have a child and/or have been assessed as being too sick to work (i.e. assessed as having 'limited capability for work with or without an assessment of 'limited capability for work-related).



The Higher Work Allowance is awarded in cases where the person working has no Universal Credit 'housing costs' because they have a mortgage or are mortgage free or perhaps, because they live with relatives. The Lower Work Allowance is awarded to people who live in rented accommodation.

The taper is the actual amount of a person's net wage that is taken into account / deducted from any Universal Credit entitlement. If the person is entitled to a Work Allowance, then it is 55% of the balance after the Work Allowance has been applied.

Case Study: Ardy and Petra have two children aged 8 and 7. They live in rented accommodation and their rent is £498.50 per month. Ardy works full-time. His net take home pay is £1,459.03 per month. The couple's maximum Universal Credit entitlement is £1,527.99 per month.

- BEFORE the 24.11.2021 the amount deducted from the couple's overall Universal Credit entitlement would have been £724.43 per month (£1,459.03 less £293.00 Work Allowance = £1,166.03 @ 63% Taper = £734.60).
- AFTER the 24.11.2021 the amount deducted from the couple's overall Universal Credit entitlement would be £618.21 per month (£1,459.03 less £335.00 Work Allowance = £1,124.03 @ 55% Taper = £618.21).

Therefore, before 24.11.2021 the couple's award of Universal Credit would have been £793.39 per month (£1,527.99 maximum Universal Credit less £734.60 = £793.39). However, after 24.11.2021 the couple's award of Universal Credit will be £909.78 per month (£1,527.99 maximum Universal Credit less £618.21 = £909.78).

The couple will be £116.39 per month 'better off' under the new rules (After New Rule £909.78 less Before New Rule £793.39 = £116.39).



The couple will be entitled to a Work Allowance because they have children but will only get the Lower Work Allowance because they live in rented accommodation.

In addition to their Universal Credit the couple will also get £35.15 per week Child Benefit.

See [Statutory Instrument 2021 No. 1283](#) for further details on the new rules.

3. Disabled Students and Universal Credit....

The Department for Work and Pensions (DWP) have introduced a further set of new rules which will mean that from **15th December 2021** it will be tougher for 'disabled students' (meaning: see below) to qualify for Universal Credit.

When Universal Credit was first introduced, the rules stated that people who may be deemed to be 'receiving education' may not qualify unless given the nature of the course they were attending and their personal circumstances, they fell into one of the exempt categories.

One of the exempt categories enabled 'disabled students' to qualify providing, they could be assessed under the Work Capability Assessment as having 'limited capability for work' (with or without an assessment of 'limited capability for work-related activity'). The wording, therefore, enabled disabled students to claim and qualify for Universal Credit both before embarking on a course of education and during their studies.



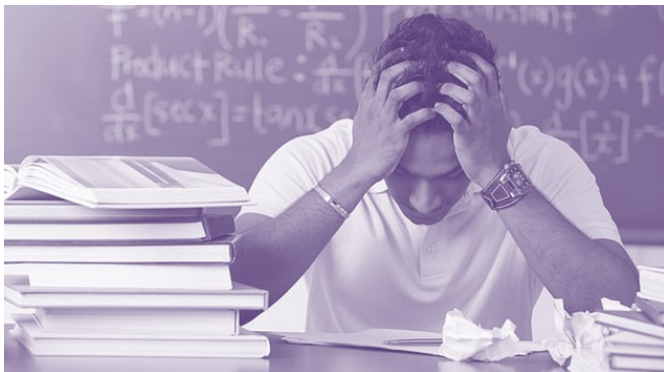
However, as explained in [Benefits Bulletin 3.1 Disabled Students and Universal Credit](#) (8th September 2020), the DWP changed the rules from **5th August 2020** which stated that from this date a disabled student could only apply for Universal Credit if the assessment of 'limited capability for work' was in place before they applied for Universal Credit.

The premise here being that the DWP only wanted disabled students to be able to receive Universal Credit whilst studying in circumstances whereby they were, in effect, getting Universal Credit before they started their studies and not after.

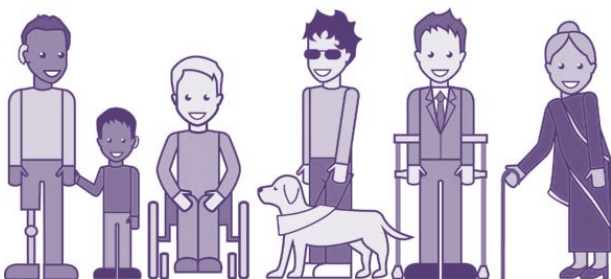


However, the actual wording of the rule change left a loophole. This loophole meant that a disabled student could apply for New Style ESA, get an assessment of 'limited capability for work' under that benefit (even if they did not qualify) and then apply for Universal Credit.

Anyway, the new rules are set to close the loophole and will mean that from **15th December 2021** disabled students will only be able to apply for Universal Credit in circumstances whereby the assessment of 'limited capability for work' (with or without an assessment of 'limited capability for work-related activity') has been made **BEFORE** they start their studies.



This all means that disabled young people and mature students who have an award of Personal Independence Payment (PIP) or Disability Living Allowance (DLA) or Attendance Allowance (AA), will need to ensure they are getting Universal Credit (and/or New Style ESA) with an assessment of 'limited capability for work' (with or without an assessment of 'limited capability for work-related activity') prior to starting a course of education.



Moreover, if a person is studying and suffers ill-health whereby they become entitled to Personal Independence Payment (PIP) or Disability Living Allowance (DLA) or Attendance Allowance (AA), then they would inevitably need to take time out from their studies to apply for Universal Credit and then only return to continue their studies once they have been assessed as having Personal Independence Payment (PIP) or Disability Living Allowance (DLA) or Attendance Allowance (AA) should they wish to get Universal Credit whilst studying.

The DWP have made it clear that it has always been its view that the original policy objective was that Universal Credit would provide some financial support to enable those with 'limited capability for work' to be encouraged to enter full-time education as a means of improving their job prospects, the viewpoint being that someone already in education did not need that encouragement.

The problem is that many disabled students seek to apply for Universal Credit as they enter education or as a result of the onset of a health condition (or deterioration of an existing condition) during their education.

The award of / entitlement to Universal Credit to disabled students who are presently in education will be preserved. Moreover, and perhaps with 'managed migration' in mind, the new rules provide that if a disabled student is getting Income-related Employment and Support Allowance and moves from this to Universal Credit whilst studying, they will be treated as though they had 'limited capability for work' before their application for Universal Credit.

Disabled Student: For the purposes of this article, by 'disabled student' we mean a person in non-advanced education (e.g. GCSEs / A-levels) or advanced education (e.g. degree course) who is getting Personal Independence Payment (PIP) or Disability Living Allowance (DLA) or Attendance Allowance (AA).

Please see [Statutory Instrument 2020 No. 827](#) for details of the 5.8.2020 rule change and [Statutory Instrument 2021 No. 1224](#) for details on the rule change from 15th December 2021.



4. Fratila: Universal Credit - EEA Nationals...

We have been updating you as best as we have been able on the impact Brexit has had on the rights of EEA Nationals living in the United Kingdom to Social Security benefits.

In the information provided we have explained that whilst those who have obtained SETTLED STATUS have the same access to Social Security benefits as British citizens, the position of those with PRE-SETTLED STATUS is not so straightforward.

See [Benefits Bulletin 4 \[2021\]: EEA Nationals and Benefits](#) (22.6.2021) in which we have outlined the benefits that may be available to those with PRE-SETTLED STATUS and the circumstances which must prevail before an entitlement may be established.



Moreover, in Benefits Bulletin 4 [2021] we have explained that in the ongoing saga there have been two important test cases seeking to establish whether EEA Nationals with PRE-SETTLED STATUS should be afforded the same access to Social Security benefits as those who have been granted SETTLED STATUS. One of the test cases was being heard in the European Court of Justice ([C-709/20](#)) and the other was being heard in the Supreme Court of the United Kingdom ([Fratila and Another v Secretary of State for Work and Pensions \[2021\] UKSC 53](#)). Both cases involved Universal Credit and both argued that it was discriminatory to refuse access to Universal Credit (and other means-tested benefits - see page 7) to those with PRE-SETTLED STATUS (who were not a 'worker' or 'self-employed person' or who had no other form of 'qualifying right to reside' in the United Kingdom).

The argument was that those with PRE-SETTLED STATUS should be given the same access to Social Security benefits as those with SETTLED STATUS.



We can now report that both cases have been concluded and that in both cases it was held that it was not unlawful for those with PRE-SETTLED STATUS to be treated differently than those with SETTLED STATUS.

However, in its judgement the European Court of Justice held that in the case of Universal Credit, that providing the EEA National claimant was residing legally in the United Kingdom (which someone with PRE-SETTLED STATUS would be), then before refusing Universal Credit the DWP needed to 'check' that in turning them down it did not expose the claimant and any children from whom they were responsible for to any actual violation or the risk of violation of their rights under the [Charter of Fundamental Rights of the European Union](#) in relation to human dignity, respect for family life and/or the well-being and best interests of the child. Although the Supreme Court had full details of the judgement in the European Court of Justice it did not deal with this issue other than to say that the circumstances of the claimants in its case were different. The European Court of Justice concerned a single mother with two young children. Whereas the case considered by the Supreme Court concerned a severely disabled man and his carer.



We are aware that in many cases the DWP have been withholding making a decision on claims whilst waiting for the outcome of the judgements in the European Court of Justice and the Supreme Court. This practice is known as 'staying' a case. It is also sometimes referred to as 'stockpiling' and is perfectly lawful.



However, now these decisions have been settled the question is what to advise those with PRE-SETTLED STATUS who have been refused Universal Credit (and/or access to other means-tested benefits - see page 7).

It seems clear that the argument that those with PRE-SETTLED STATUS should be afforded the same access to Social Security benefit rights as those with SETTLED STATUS, has been fully exhausted.

Therefore, the advice to those with PRE-SETTLED STATUS who are affected by these issues should at least be to see if they are able to argue that they should be given access to Universal Credit (and/or access to other 'means-tested benefits' - see page 7) because they have a 'qualifying right to reside' in the United Kingdom or they are a family member of a person who has a 'qualifying right to reside'.



A person with PRE-SETTLED STATUS will have a 'qualifying right to reside' if they may be considered to be, for example, a 'worker' or 'self-employed person'.

Similarly, a person will have a 'qualifying right to reside' if they are not now a 'worker' or 'self-employed person' but they are able to establish that they should be able to retain their 'worker' or 'self-employed person' status because they are no longer employed / self-employed involuntary or because they are no longer able to work due to ill-health or because they are in the later stages of pregnancy or because they have recently given birth.



The question of who has a 'qualifying right to reside' can be complicated. We will bring more news on this in the New Year.

Moreover, a person could seek to argue that they should have a right to Universal Credit (and/or access to other 'means-tested benefits' - see page 7) upon grounds of the findings in the European Court of Justice. They could argue that to deny them benefit leaves them without sufficient funds to provide basic necessities and in consequence violates their right to dignity, a family life and/or impacts on the welfare and well-being of their children. We cannot be certain whether such an argument would succeed in particular in relation to any claims made after 31st December 2020 when the United Kingdom left the European Union.



In any event such steps could prove futile least not because it is unlikely that the DWP would concede to such an argument (pre or post 31.12.2020) and therefore it could take many, many months for such a case to conclude through the various appellant courts.

Means-tested Benefits: For the purposes of this article, by 'means-tested benefits' we refer to Universal Credit, Income-based Jobseeker's Allowance, Income-related ESA, Income Support, Pension Credit, Child Benefit, Child Tax Credit, Housing Benefit and Council Tax Support.

Note: Following the introduction of Universal Credit it is not now possible for a person to make a fresh claim for Income-based Jobseeker's Allowance, Income-related ESA, Income Support, Child Tax Credit. It is equally not possible for a person to make a new claim for Housing Benefit unless they (and their partner, if they have one) have attained State Pension Age or they live in certain supported accommodation.

Thank you to Child Poverty Action Group (Martin Williams) for its work in this area and for the information it has shared on this subject.

5. Special Rules - Terminally Ill...

In [Benefits Bulletin 6 \[2021\] The Budget and Benefits](#) (3.11.2021) we reported that it had been announced in the Autumn Budget that the Special Rules for Terminal Illness were to be extended from six months to 12 months.

We can now report that Chloe Smith (Minister for Disabled People, Health and Work) has announced ([see Hansard Volume 703: 8th November 2021](#)) that revised measures would be forthcoming in relation to Universal Credit and Employment and Support Allowance (by way of a change in secondary legislation), from April 2022 and that amendments to other benefits (e.g. Disability Living Allowance, Personal Independence Payment and Attendance Allowance) would (by way of a change to primary legislation) be introduced as 'soon as the parliamentary timetable' allowed.

6. Two Wages in One Assessment Period...

It is the time of the year again when workers will often be paid wages early due to the holiday period. As reported in [Benefits Bulletin 20 \[2018\] Universal Credit: Making Sure Workers do Not Lose Out](#) (20th December 2018) this can create problems for those who get Universal Credit.

This is essentially because Universal Credit is paid on a month-to-month assessment period of need and income. Therefore, if someone is paid monthly but receives a payment of wages early then it could end up with them being treated for Universal Credit purposes as though they have twice the level of earnings that they normally would in one month and nothing in the following month.



You would think that things would even themselves out. However, the system does not work like that and it could end up costing workers dear for reasons explained in [Benefits Bulletin 20 \[2018\]](#).

Anyway, in June 2020 the Court of Appeal held ([\(R \(Johnson and Others\) v Secretary of State for Work and Pensions \[2020\]](#)) that the rule which meant that double payments of this type should be attributed to one 'assessment period' was unlawful.

In consequence the DWP changed the rules as from 16th November 2020 ([Statutory Instrument 2020 No. 1138](#)) as a remedy and to reflect the judgement of the Court of Appeal.

The rule in question ([Regulation 61 of the Universal Credit Regulations 2013](#)) has now been amended to include the following:

“Where a person is engaged in an employment where they are paid on a regular monthly basis and more than one payment in relation to that employment is reported in the same assessment period, the Secretary of State may, for the purposes of maintaining a regular pattern, determine that one of those payments is to be treated as employed earnings in respect of a different assessment period.”

This consequently gives the DWP the power to attribute a double payment of wages to the respective assessment periods in which the payments were intended. Guidance on the issue has been provided to DWP staff on the rule change and overall issue in [DMG Memo 27/20](#).

In an attempt to address the problem HMRC have provided guidance to employers in its [Employer Bulletin Issue 80](#) (October 2019). See page 4: Guidance for employers on reporting PAYE information in real time when payments are made early at Christmas.

Anyone caught out by things should either message the DWP using their Journal or speak with their Work Coach in an attempt to get things resolved.

7. Managed Migration...

Just to say that as we understand, according to the DWP the process of Managed Migration is due to start in April 2022. Managed Migration is the process through which the DWP will be contacting people who remain on 'legacy benefits' advising them of the need for them to apply for Universal Credit.

As things stand, we do not know where the process will begin. Whether it will be by regional area or by benefit (e.g. people who are getting Income-based JSA or Income Support).

However, what we do know is that many people, in particular the most vulnerable and disadvantaged, will find the process difficult to navigate.



Moreover, we know that those who do not make an application for Universal Credit when asked to do so, stand to lose their 'legacy benefits' and will not be entitled to Universal Credit until they make an actual claim for it.

In preparation for the roll out of Managed Migration we will, early New Year be producing information designed to inform you of what is happening / what to expect. Moreover, we will be putting on a number of short workshops between February 2022 and May 2022 on the topic which will be conducted on Microsoft Teams.

The information / workshops will cover how people will be being contacted, the period that will be given to people to apply for Universal Credit, how people will be expected to apply and what will happen if they fail to do so. Moreover, it will cover what people can do in circumstances whereby they have had a good reason for not applying for Universal Credit and the transitional arrangements that will be in place to protect people who may otherwise find themselves financially worse off under Universal Credit because the basic total value of their Universal Credit is less than the total value of their 'legacy benefits'.

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