

Advice NI Briefing Paper

Universal Credit and Redundancy Payments

June 2020

Universal Credit and Redundancy Payments

Advisers / clients: be aware that redundancy payments should be treated as capital and ignored as earnings for Universal Credit (UC). Carefully examine both the employer and UC information where there is cessation of employment and related payments - to ensure everything is correct.

Background

1. The Job Retention Scheme was introduced by the U.K. government 1 March 2020. Initially designed to last 3 months, it now runs to the end of October 2020. It enables employers to place staff on 'furlough'; similar to the employee being given a leave of absence. The government will ask employers to start 'sharing the cost' from August¹
2. This scheme provides grants to the employer from HMRC. HMRC – not the employer – covers up to 80% [to a max of £2500/month] of staff wages.
3. Benefits for UC that are usually treated as earnings: Statutory: Sick, Maternity, Paternity & Adoption Pay, and Shared Statutory Parental Pay².
4. However, new regulations have been issued, regarding statutory family benefits, for furloughed workers under the Coronavirus Job Retention Scheme: see index.
5. Post 30 June, and depending on social distancing rules, some businesses may not be able to operate at previous capacity. This may result in redundancies; see updated guidance for employees³.
6. You have redundancy rights if:
 - you're legally classed as an employee
 - you've worked continuously for your employer for 2 years before they make you redundant
7. During the coronavirus pandemic, you have the same redundancy rights, including redundancy pay. Up to £30,000 of redundancy pay is tax free. More information on whether elements of the payment, such as pay in lieu of notice, is taxable is available from HM Revenue and Customs. Pay in lieu of notice is money paid to you by your employer as an alternative to being given your full notice⁴:
<https://www.nidirect.gov.uk/articles/giving-or-getting-notice-your-job>
8. You may not be eligible for statutory redundancy pay if your employer offers you a suitable alternative job and you turn it down⁵.
9. How much redundancy pay you get depends on your wage, how long you have worked at the company and your age. When your employer gives you your redundancy

¹ <https://www.rightsnet.org.uk/welfare-rights/news/item/coronavirus-job-retention-scheme-extended-to-end-of-october>

² <https://www.legislation.gov.uk/nisr/2016/216/regulation/55/made>

³ <https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme>

⁴ <https://www.nidirect.gov.uk/articles/redundancy-pay>

⁵ <https://www.acas.org.uk/your-rights-during-redundancy>

payment they must also give you a statement showing how it was calculated⁶. This supporting letter is evidence for claiming Universal Credit.

10. If someone is made redundant, and was in receipt of Working Tax Credits, it is strongly recommended to seek independent advice, as they will not be able to return to Tax Credits: “HMRC will not accept people back on to Tax Credits. This is based on the legislation and recent upper tribunal and JR judgements supporting their stance.” DWP states that this is the case, ***even if the claim for UC is unsuccessful***⁷.

Universal Credit and Redundancy Payments

11. Check that any Real Time Information [RTI] provided by HMRC to UC is accurate; check that any redundancy payments are clearly identified as such otherwise the RTI may need to be challenged, regarding redundancy payments.
12. Advice NI asked whether a flag could be introduced, triggering a to-do (confirm earnings) if RTI info exceeds ‘Nil UC threshold’?
DfC response: ‘As we use the UK-wide benefit systems changes to the Universal Credit computer system would need to be agreed with DWP and if NI-specific funded by the Department.’
13. When calculating entitlement and depending on how the employer has set out the information to HMRC, UC may treat payments received as triggering the application of Reg 54⁸ [Surplus Earnings], of the UC regulations.
14. However, as it is a payment under ITEPA⁸ [see Reg 55⁹], it should not be counted as employed earnings: A redundancy payment is excluded from the meaning of earnings for the purposes of UC and should be treated as capital in the assessment period in which it is received¹⁰.
15. The ADM provides exact guidance on lump sum redundancy monies¹¹:
“16.2. a lump-sum or one-off payment such as 2.1 compensation for a personal injury 2.2 money which has been borrowed 2.3 one made by an employer to a person who is made redundant and the payment is not earnings 2.4 one made by the Home Office to people on the Refugee Resettlement Programme 2.5 one made to recompense people who have incorrectly had to pay care charges in the past”
16. And then just to provide further clarity in H3119:

⁶ <https://www.nidirect.gov.uk/articles/redundancy-pay>

⁷ <https://www.rightsnet.org.uk/welfare-rights/news/item/dwp-warns-people-that-applying-for-universalcredit-will-bring-any-tax-credit-claim-to-an-end-even-if-they-are-not-eligible-for-universal-credit>

⁸ <https://www.legislation.gov.uk/nisr/2016/216/regulation/54/made>

⁸ Income Tax (Earnings & Pensions) Act 2003:

<https://www.legislation.gov.uk/nisr/2016/216/regulation/54/made>

⁹ <https://www.legislation.gov.uk/nisr/2016/216/regulation/55/made>

¹⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/893721/admh3.pdf

¹¹ <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dm-adm-chapter-h1.pdf>

A redundancy payment is excluded from the meaning of earnings for the purposes of Universal Credit and falls to be treated as capital in the assessment period in which it is received. ADM Chapter H1 provides guidance on capital¹².

17. The **de minimis**¹³ amount for UC has been raised from £300 to £2500 on a temporary basis¹⁴, extended to 31 March 21: this means £2500 of surplus earnings will be ignored by UC when calculating entitlement, instead of the much smaller amount of £300. This will safeguard the efficient administration of Universal Credit by not reducing the de minimis to £300 as provided by the Universal Credit Regulations 2013 [NI equivalent Regulations are “Universal Credit Regulations (Northern Ireland) 2016”]
18. The **de minimis** period in N.I. is same as GB (£2,500) – so DM guidance needs to reflect that, so that both DMG and regs state that the department can extend.
DfC response: ‘guidance has been updated and Universal Credit computer system automatically applies the de minimis of £2,500.’
19. The surplus earnings policy was introduced to prevent people who are paid large amounts of earnings on an irregular basis from receiving a greater amount of benefit and earnings than claimants who for example earn the same annual salary but are paid over 12 regular salary payments.
20. This means that where a claimant receives a large payment of earnings within an assessment period which is sufficient to end their Universal Credit award, and then reclaims Universal Credit within 6 months of that award ending, earnings above the de minimis level will be taken into account as earnings for the new award¹⁶.
21. DWP states: ‘Redundancy payments [are] ignored, last wages taken into account is the basic rule. One issue is what claimants understand, and how they colloquially refer to “last payment”. some may see these as redundancy, when they are [in fact] last wages’.
22. Holiday Pay and Pay in lieu of notice is treated as earnings for UC¹⁷
23. If self-employed and meet the criteria for UC, you should be able to make a claim¹⁸
24. UC claimants can apply for Discretionary Support¹⁹
25. If a redundancy payment takes claimant’s capital to over £16,000 and claimant is under State Pension age, they will not qualify for UC.

¹² <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dm-adm-chapter-h3.pdf>

¹³ De minimis: surplus earnings that are ignored when calculating UC entitlement

¹⁴ “Transitional provision – temporary de minimis period

¹⁵ .—(1) For the purposes of applying regulation 54A (surplus earnings) of the Universal Credit Regulations 2013 in relation to a claim for universal credit made in respect of a period that begins before the end of the temporary de minimis period, the meaning of “relevant threshold” in paragraph (6) of that regulation is modified by substituting “£2,500” for “£300” <http://www.legislation.gov.uk/ukxi/2018/65/regulation/7/made>

¹⁶ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-03-05/HCWS147/>

¹⁷ http://data.parliament.uk/DepositedPapers/Files/DEP2017-0556/114_Treatment_of_earnings_v1.0.pdf

¹⁸ DfC, Advice NI Update 10.4.20

¹⁹ <https://www.nidirect.gov.uk/articles/extra-financial-support>

26. If a redundancy payment takes claimant's capital to between £6,000 and £16,000, the claimant may be entitled to means-tested benefits, however, it is assumed that the capital will generate some income, and the benefit amount is reduced as a result²⁰.
27. From 6 April 2020, the standard allowance for a single Universal Credit claimant (aged 25 and over) is £409.89 per month.
28. From 30 March 2020 for the next three months, work search and work availability requirements will be removed for new and existing claims to Universal Credit.
29. Self-employed people can claim Universal Credit. From 6 April the requirements of the Minimum Income Floor have been temporarily relaxed. This change applies to all Universal Credit claimants and will last for the duration of the outbreak.
30. The Self-employment Income Support Scheme will be treated as earnings in Universal Credit and your Universal Credit payment will be adjusted in response to changes in your earnings. This means payments will be taken into account in the Assessment Period (AP) in which they are received. In this way UC provides support whilst the claimant has no earnings²¹.

Universal Credit and Capital

31. Whether paid as a lump sum or over a given period, redundancy payments count as capital for UC purposes and not as earnings. So if a redundancy payment takes a claimant's savings over £16,000, they would no longer be entitled to UC from the beginning of the monthly assessment period in which they receive this payment. If it takes their savings to between £6,000 and £16,000 then the amount of UC they are entitled to will reduce due to the 'tariff income' that these savings are deemed to generate. If your capital is below £6,000, universal credit is unaffected.
32. Tariff income (between £6,000 and £16,000) is calculated by assuming a monthly income of £4.35 for each £250 above £6,000.

Universal Credit, Redundancy Payments and Deprivation of Capital

33. If you are held to have deprived yourself of capital in order to get or increase a means tested social security benefit (such as Universal Credit), you will be treated as if you still had it.
34. The rules are set out clearly in the ADM (Advice for Decision Making) on Deprivation of capital, specifically sections H1825-1846²².

²⁰ <https://www.turn2us.org.uk/Benefit-guides/Universal-Credit-income-and-capital/Capital-Savings>

²¹ <https://www.nidirect.gov.uk/articles/coronavirus-covid-19-and-benefits>

²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890315/admh1.pdf

35. The Universal Credit Regulations (Northern Ireland) 2016, Regulation 50, “Notional Capital”²³
- Reg 50 (2) A person is not to be treated as depriving themselves of capital if the person disposes of it for the purposes of—
- (a) reducing or paying a debt owed by the person, or
 - (b) purchasing goods or services if the expenditure was reasonable in the circumstances of the person’s case
36. The DfC has confirmed that there is nothing new in this area and that the current arrangements will apply and deprivation of capital will be looked at on a case by case basis.
37. There are a wide range of Commissioner’s Decisions which consider the issue of deprivation of capital²⁴.
38. The relevant NI Decision Making Guidance for Universal Credit regarding Notional Capital can be found at ADM Chapter H1, para 1795 et seq: <https://www.communitiesni.gov.uk/sites/default/files/publications/communities/dm-adm-chapter-h1.pdf>

²³ <https://www.legislation.gov.uk/nisr/2016/216/regulation/50/made>

²⁴ R(SB) 12/91; CJS/1425/2004; CIS/1775/2007

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The Universal Credit Regulations (Northern Ireland) 2016

<https://www.legislation.gov.uk/nisr/2016/216/contents/made>

Updated Regulations

The Social Security (Coronavirus) (Further Measures) Regulations (Northern Ireland) 2020:

These regulations provide further measures to deal with COVID-19 and are in addition to the ESA and UC Regulations: <http://www.legislation.gov.uk/nisr/2020/53/contents/made>

Regulation 2 looks at a number of measures regarding the minimum income floor as applied to self-employed claimants in UC; Regulation 3 modifies the amount of the standard allowance in UC; Regulation 6 makes provision for work search requirements in UC to be suspended for 3 months.

The Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay (Normal Weekly Earnings etc.) (Coronavirus) (Amendment) Regulations (Northern Ireland) 2020 (SR.No.70/2020) <https://www.legislation.gov.uk/nisr/2020/70/made>

<https://www.legislation.gov.uk/nisr/2020/69/made>

Discretionary Support

Online application: <https://www.nidirect.gov.uk/articles/extra-financial-support>

Universal Credit Contingency Fund Payment

Telephone Finance Support: <https://www.nidirect.gov.uk/contacts/contacts-az/financesupport-service-times-crisis-and-need>

Redundancy Pay: PQ: Written question - 46823

Q

Asked by Stephen Farry MP

(North Down)

Asked on: 13 May 2020

Department for Work and Pensions

Redundancy Pay

46823

To ask the Secretary of State for Work and Pensions, whether redundancy payments with limited tax liability under the Income Tax (Earnings and Pensions) Act 2003 are treated as capital in the assessment period in which they are received, as opposed to income under Regulation 54 of the Universal Credit Regulations 2013; whether those payments are not counted as earnings or surplus earnings for the purposes of a universal credit award; and whether those payments are assessed as capital for that award.

A

Answered by: Will Quince MP Answered
on: 22 May 2020

For those who are made redundant and make a claim to Universal Credit (UC), their redundancy payments, with limited tax liability under the Income Tax (earnings and Pensions) Act 2003, are treated as capital. A claimant's capital is taken into account to determine their entitlement to UC and in the calculation of their UC award.

If capital exceeds £16,000 (after having deducted allowable disregards, such as, personal injury compensation payments) there will be no entitlement to UC.

Redundancy payments treated as capital are therefore not taken into account as earnings, nor would the surplus earnings rules apply to them.

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Charlotte Brennan.

Contact: charlotte@adviceni.net

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Contact information:

**Advice NI Policy Team Kevin Higgins (Head of Policy) Advice NI Forestview Purdys Lance
Belfast BT8 7AR Tel: 028 9064 5919**

Advice NI Policy Team:

Name :

Email:

Kevin Higgins

kevin@adviceni.net

Charlotte Brennan

charlotte@adviceni.net

Bridget Meehan

bridget@adviceni.net

www.adviceni.net

@AdviceNI