

Self-employment and gainfully self-employed

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Self-employment introduction

Self-employment is an important contribution to the economy and Universal Credit provides support for self-employed people on lower incomes.

Universal Credit supports people to be self-employed only when this is the best route for them to become financially self-sufficient.

A claimant reports that they are self-employed

Claimants in the intensive and light touch regimes, who expect to have self-employed earnings, will be required to attend a Gateway interview. This is to determine whether they are in gainful self-employment. The same applies for claimants in the working enough regime because they have earnings above their individual threshold.

During this interview it must be considered whether the claimant is:

- self-employed or employed
- in the correct regime
- gainfully self-employed

- eligible for start-up period or the Minimum Income Floor applies

Establishing if a claimant is employed or self-employed

When establishing whether a claimant is employed or self-employed, there are two things to consider.

First, are the self-employed earnings received from carrying out a trade, profession or vocation where the claimant is not employed by someone else?

See examples below:

Trade – Person A buys some gold and silver in order to sell on using a short-term loan but cannot afford to pay the interest on the loan from her own resources. However, once they sell the gold and silver they then repay the loan and also make a profit. The Decision Maker determines that person A is engaged in a trade because they have a profit seeking motive. The assets were bought to sell on for a profit with the aid of the short-term loan.

Profession – Person B is an accountant. They work for themselves and complete accounts for a number of clients. The earnings that person B receives are from their profession as an accountant and are earnings from self-employment.

Vocation – Person C is a darts player. They play in tournaments around the country and compete for prize money on their own account. The Decision Maker determines that person C's dart playing is a vocation and the income derived from this vocation is self-employed earnings.

The second consideration is whether the earnings can be classed as self-employed earnings.

To assess if a claimant's earnings are self-employed earnings for the purposes of Universal Credit, there are a number of key indicators that should be considered:

- how is the claimant paid the earnings? (Where tax is deducted at source, this may suggest that the employment is not self-employment.)
- is the claimant's work supervised? (If they have control over agreeing to conduct work, fixing the price of work or how long the job may take this may suggest self-employment. If the claimant has own control over their costs, this may also suggest self-employment.)
- does the claimant have the power to appoint or dismiss and can they employ a substitute, for example to cover holidays or sickness? (A power to appoint a substitute may suggest self-employment.)
- how long in duration are the contracts of work? (Short contracts may suggest self-employment. Longer contracts with the same employer may suggest employment or possibly sub-contracting.)
- does the claimant provide their own equipment? (Provision of own equipment and tools may suggest self-employment.)

- where does the claimant work? (If they work from home, or a workshop or office they own or rent, this may suggest self-employment.)
- is the person who engages the claimant for work obliged to provide work? (If there is no obligation then this may point towards self-employment.)
- can the claimant decide the hours they work? (The greater the discretion then the more likely it is that the work is self-employment)
- is the claimant registered self-employed with HMRC and do they have a Unique Tax Reference?
- does the claimant already complete end of year assessments for HMRC?

It is not necessary for an activity to demonstrate all, or even a set number of these indicators. When discussing a claimant's earnings with them these questions should be used to build a general picture of the claimant's work.

This discussion should give an idea of how the claimant, their employer (in the case of sub-contractors) and HMRC view their employment and be able to decide if their earnings should be classed as employed or self-employed.

Sub-contractors

A sub-contractor is a self-employed person who enters into a contract with another contractor to do a particular job, for example, as found in the construction industry.

Although their earnings are from a contract of service and their patterns of work may demonstrate few of the self-employment indicators above, their work can still be considered self-employment.

In some cases a sub-contractor will have a proportion of their earnings deducted at source to pay tax, this will either be 20% or 30%, it will only be 30% in a small proportion of cases where the sub-contractor does not provide a Unique Tax reference number.

Despite tax being deducted at source the sub-contractor would still be considered as self-employed and will not be subject to the PAYE system. A sub-contractor will not have national insurance deducted at source.

Example of activity carried out on a self-employed basis (sub-contractor)

A firm of builders contract to build a house extension for a customer. They sub-contract the electrical work to person A. Person A is a sub-contractor and not an employee of either the building firm or the customer.

Person A uses his own tools but the agreement to conduct the work, price of work and length of the job were all agreed by the building firm. Person A is paid by the firm who deduct tax and national insurance but HMRC consider person A to be self-employed because they still complete a tax self-assessment.

Over the past year person A has only been contracted by this firm of builders. When the work finishes they will move to a different contract that may be for further work with the building firm or for a different contractor. The building firm is not obliged to provide further contracts for person A. If they have no new work after the house extension then person A could chose to work for a different contractor instead.

In this case it is decided that, although Person A's earnings are derived from employment under a contract of service they can still be classed as self-employed. Person A's work demonstrates a number of the self-employment indicators. By discussing future work, as well as their current employment, it is clear that their work is on a contractual rather than an employed basis.

Claimant is self-employed

If it is established during the gateway interview, that the claimant is self-employed a decision is then needed as to whether they are gainfully self-employed.

The gateway interview should also be used to:

- check the claimant is in the correct regime for a gainfully self-employed decision
- explain the self-employed earnings reporting requirements
- signpost the claimant to relevant support
- accept a claimant commitment.

Regardless of whether the claimant is or is not considered to be gainfully self-employed for Universal Credit purposes the claimant must be made aware of the need to still report any earnings from self-employment on a monthly basis.

Considering whether a claimant is gainfully self-employed

Deciding whether a claimant is considered to be in gainful self-employment is important as this determines whether the:

- Minimum Income Floor (MIF) applies to the claimant's self-employed earnings
- claimant is eligible for a start-up period

For Universal Credit purposes the decision of whether a claimant is gainfully self-employed is made by DWP (i.e. this is not for the claimant to decide and may be different from determinations by other government departments, including HMRC).

To determine if a claimant is gainfully self-employed they must be deemed self-employed and must be in the correct labour market regime. Claimants must be in either the intensive work search, light touch or working enough regimes.

Where the claimant has been placed in the; work preparation, work focused interview (WFI) or no work-related requirements (NWRR) regimes this will take priority. They will not be treated as gainfully self-employed and the MIF will not be applied, but they must still report their earnings at the end of each assessment period.

Claimants who are considered to be gainfully self-employed will always be placed in either the intensive or working enough regimes, as earnings from self-employment do not count towards the Administrative Earnings Threshold (AET). A claimant may only be in the light touch regime because their earnings from employed work is over the AET. This means that claimants deemed as gainfully self-employed should never be placed in the light touch regime as a result of self-employed earnings.

The information needed to make a decision on whether a claimant is gainfully self-employed is gathered by using the self-employment Agent Led Process (ALP).

For Universal Credit purposes a claimant is considered to be in gainful self-employment where all of the following apply:

- the claimant is carrying on a trade, profession or vocation as their main employment
- their earnings from that trade, profession or vocation are self-employed earnings
- the trade, profession or vocation is organised, developed, regular and carried out in expectation of profit

If any of these are not satisfied then the claimant cannot be in gainful self-employment.

Example of self-employment treated as main employment

Person B is a trained hairdresser, who lost their job at the salon where they worked. They do however, still cut hair for some private clients, on an ad-hoc basis and charge just a small fee to cover their costs. In the course of a week, person B probably spends about 18 hours on hairdressing and earns on average £80. They have stated that they are not looking to increase his client base or their earnings.

Person B spends more than half of their working hours on self-employment. The activity is seen as his main form of employment.

Example of self-employment not treated as main employment

Person B plays guitar and every fortnight performs at their local pub. They play for about two hours and receive £20 for each performance. The pub where they play

advertise the nights that person B performs. Person B does not play anywhere else and regards the fortnightly performances as a bit of fun.

Person B only spends a few hours on the self-employed activity and receives a low wage. The self-employment is not their main form of employment and they cannot be considered to be gainfully self-employed.

Person B will still need to self-report their self-employed earnings, even though they are not considered to be gainfully self-employed

Considering if the self-employment is organised, developed, regular and carried out in expectation of profit

When considering if the self-employment is organised, developed, regular and carried out in expectation of profit, the following should be taken in to account:

- whether the activity is undertaken for financial gain
- the number of hours spent each week on the work
- any business plan or steps taken to increase income from the activity
- how HMRC regard the activity
- how much work is in the pipeline
- whether the claimant is actively marketing or advertising for work

This is not a complete list.

Example of self-employment that is not regular, organised and developed

Person A has recently been given a modest sum of money by family members and is thinking about using this money to start a new small business. When claiming Universal Credit they have declared that they are currently looking at becoming a market trader. Person A is thinking about putting the money down for a market stall pitch in the local market next month. However, they haven't approached the local market office, are yet to buy any stock or identified any suppliers. Person A states they have designed some t-shirts themselves and have sold five or six to friends and family on an ad hoc basis but have not considered any next steps to extending this activity.

Person A's activity is a self-employed trade as they would provide the t-shirts and paints to illustrate the designs on them.

Person A has, to date, spent only around six hours in two weeks designing t-shirts and has not spent any other time on their business idea. Their new business is not

currently their main form of employment despite the fact it may be their main employment goal in the future.

Person A's activity currently is not developed, regular or organised as no steps have been taken to fully plan or realise the business idea. They have not shown that time has been spent planning and developing their business idea or that they have taken any substantial steps to progress the business beyond an idea. Although it is their main employment goal it cannot currently provide Person A with gainful self-employment.