

Universal Credit legacy variations and appeals

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Contents

[Interaction between legacy benefits and Universal Credit](#)

[What happens if a Universal Credit claimant forms a couple with an ESA \(IR\), JSA \(IB\), Housing Benefit \(HB\), Income Support, Child Tax Credit \(CTC\) or Working Tax Credit \(WTC\) claimant?](#)

[What happens when a claimant is going through Mandatory Reconsideration \(MR\) or an appeal in respect of their old style ESA award and has not claimed Universal Credit?](#)

[What happens when a claimant's old style ESA is terminated after failure of WCA, they dispute the decision and are successful?](#)

[What happens if a claimant in receipt of Universal Credit and new style JSA reports they are sick?](#)

[What happens if a UCFS claimant closes their claim and moves to a Universal Credit Live Service \(UCLS\) area?](#)

[What happens if a Housing Benefit claimant reports a change of address into a UCFS area?](#)

[What happens if a legacy benefit claimant reports a change of address into a UCFS area and a new LA area, but does not have an existing claim to Housing Benefit?](#)

[What happens if a legacy benefit claimant in receipt of Support for Mortgage Interest \(SMI\) reports a change of address?](#)

[What happens if a legacy benefit claimant who lives in a Full Service area reports the birth of a child?](#)

[What happens if an ESA claimant fails WCA, claims UC \(which is decided\) and then appeals?](#)

[What are the Mandatory Reconsideration and appeal time limits for Universal Credit claimants?](#)

[What are the payment pending appeal rules in Universal Credit?](#)

[What happens if a Universal Credit claimant requests a multi-element Mandatory Reconsideration or appeal?](#)

[What are the important similarities and differences between new style JSA and legacy JSA?](#)

[What are the important similarities and differences between new style ESA and legacy ESA?](#)

[If an appeal is pending can migration to Universal Credit take place?](#)

[Who can request a MR and appeal in a Universal Credit joint claim?](#)

[Can Universal Credit claimants request an advance while awaiting the outcome of an appeal?](#)

What happens if a legitimate advance claim to JSA is made (the claimant does not satisfy UCLS gateway eligibility), but the area where the claimant lives becomes a Full Service area before the date of claim?

What happens if legacy benefit claimants who had a change of circumstances have not migrated to Universal Credit?

What happens if an ESA (IR) or ESA (C) claimant who has failed their WCA does not migrate to Universal Credit during the Mandatory Reconsideration period and then submits an appeal to HMCTS?

Interaction between legacy benefits and Universal Credit

Some claimants are entitled to both Universal Credit and contributory benefits. To enable Universal Credit and contribution-based ESA or JSA to be paid together, a “new style” of ESA and JSA has been introduced. As the “new style” benefits consist only of the contribution-based element, new style ESA and JSA can be paid even if the claimant is not entitled to Universal Credit.

New style ESA and JSA can be claimed independently of Universal Credit, even in a UCFS area, regardless of whether the customer is entitled to Universal Credit or not. The claimant does not need to have made a claim to Universal Credit, to be able to make a claim to ESA (C) or JSA (C). See New style ESA & JSA.

Where there is a change of circumstance for example change of address the claimant will have to report this separately for UC and new style ESA or JSA.

It is not possible to be entitled to a means-tested legacy benefit Income Support, ESA (IR) and JSA (IB) and Universal Credit.

Listed below are questions and answers relating to: the interaction between Universal Credit and legacy benefits, similarities and differences between legacy and new style ESA and JSA, and Mandatory Reconsiderations and appeals.

What happens when a Universal Credit claimant forms a couple with an ESA (IR), JSA (IB), Housing Benefit (HB), Income Support (IS), Child Tax Credit (CTC) or Working Tax Credit (WTC) claimant?

The change in circumstances must be reported to Universal Credit so that a joint claim to Universal Credit can be made.

What happens when a claimant is going through Mandatory Reconsideration (MR) or an appeal in respect of their old style ESA award and has not claimed Universal Credit?

If the MR or appeal is successful the claimant can revert to old style ESA.

What happens when a claimant's old style ESA is terminated after failure of WCA, they dispute the decision and are successful?

The claimant can claim Universal Credit pending dispute resolution ie through MR and appeal.

Arrears of ESA are paid up to the day before the Universal Credit claim started. The Universal Credit award will be revised to award any appropriate award elements; the arrears due will be paid as a lump sum. The claimant's conditionality should be reviewed as appropriate.

If the claimant qualifies for ESA(C), this can be paid but only as a converted new style ESA award. This will be taken into account in the Universal Credit award calculation.

What happens if a claimant in receipt of Universal Credit and new style JSA reports they are sick?

The claimant can claim ESA (C) and remain on Universal Credit.

Even if they do not claim ESA (C), a WCA referral is required. The claimant's Universal Credit claim will be updated to take this into account and their conditionality amended accordingly.

If it is going to be short-term sickness, the 13 week JSA sickness period comes into effect. However, if the claimant stays on JSA as sick then their Universal Credit conditionality must be reviewed.

What happens if a UCFS claimant closes their claim and moves to a Universal Credit Live Service (UCLS) area?

If the claimant wants to reclaim, they will continue to claim through UCFS and the claim will be managed remotely between UCFS and UCLS/Jobcentres, as there are no longer any non-Universal Credit areas in the country.

A former UCFS claimant remains a Full Service claimant due to the "Re-claim" provision in Full Service, as long as they satisfy the following requirements:

- have accepted a claimant commitment

- any temporary period of absence from Great Britain would be disregarded during the period of entitlement to Universal Credit
- the claimant is not excluded from entitlement by being a prisoner etc

However, this is only the case if the re-claim is made within six months of their previous award ending.

If the claimant does not meet these requirements or, it is more than six months since the award ended, they will need to make a Live Service claim, subject to the gateway conditions or, failing that a legacy claim.

What happens if a Housing Benefit claimant reports a change of address into a UCFS area?

If the claimant's change of address moves them into a new local authority (LA) area, they will need to make a new claim for UCFS and claim for housing costs within the claim. In UCFS, HB is no longer available to working age people (apart from those in "Specified Accommodation"), so the person would naturally migrate to UC.

However, if the claimant has more than 2 children they will continue on their legacy claim even if they have moved to a different local authority area.

If the person moves address within the same LA area and has an existing HB claim, this will only be a change of circs for HB purposes, and no natural migration will occur.

What happens if a legacy benefit claimant reports a change of address into a UCFS area and a new LA area, but does not have an existing claim to Housing Benefit?

If the claimant does not wish to claim Housing Benefit their legacy benefit claim will continue.

If they do wish to claim Housing Benefit, they need to make a claim to Universal Credit and this is the trigger to terminate any legacy benefits they are entitled to.

What happens if a legacy benefit claimant in receipt of Support for Mortgage Interest (SMI) reports a change of address?

SMI is paid through IS, ESA or JSA. If a legacy benefit claimant is either in receipt of SMI and wants to continue, or isn't in receipt and now needs to make a claim for SMI, this would be a CoC solely dealt with within the existing legacy benefit claim.

What happens if a legacy benefit claimant who lives in a Full Service area reports the birth of a child?

If the claimant does not have an existing CTC award (i.e. this is their first child) they will need to make a claim for UCFS. This is known as natural migration.

If the legacy claimant is already claiming CTC for one existing child, they can add the additional child to their CTC claim and continue to claim the legacy benefit.

If there are already 2 children in the family and a third is added, the claimant can apply to HMRC for the 3rd child. Families legislation will kick in and CTC is paid only if the 3rd child meets one of the exceptions. The same applies if the claimant reports the birth of more than 2 children.

What happens if an ESA claimant fails WCA, claims Universal Credit (which is decided) and then appeals?

If a claimant was previously claiming ESA but failed the WCA, claimed Universal Credit because they were not intending to appeal but then did so, the claimant remains on Universal Credit regardless of the outcome of the ESA appeal.

What are the Mandatory Reconsideration and appeal time limits for Universal Credit claimants?

In Universal Credit the standard time limits apply - one month to apply for a MR and make an appeal (extendable by 12 months in special circumstances). See Mandatory Reconsiderations.

DWP has 28 days to provide an appeal response to (Her Majesty's Court and Tribunal Service) HMCTS.

What are the payment pending appeal rules in Universal Credit?

The rules on ESA PPA (Payment Pending Appeal) are not changing.

ESA(C) is not to be paid during MR. Any LCW element being paid with a claimant's Universal Credit will stop during this period. The Universal Credit decision needs to be superseded for a change of circumstances.

Legacy rules state that no Work Related Activity (WRA) or Support component is paid during the PPA. Similarly, no LCW element should be paid because only the basic allowance of ESA is paid.

If the MR is unsuccessful and the claimant appeals, it can be requested that the ESA is re-instated pending appeal. This means no LCW element is payable. This will require a second supersession to the Universal Credit decision.

What happens if a Universal Credit claimant requests a multi-element Mandatory Reconsideration or appeal?

If a claimant disputes several elements of a decision the DM must consider all of them.

The decisions can be included in a single Mandatory Reconsideration Notice (MRN) under element headings. The exceptions to this are:

- LCW/LCWRA
- Sanctions
- Overpayment and Civil Penalties

These exceptions must always be done on a separate MRN.

What happens if a Universal Credit claimant requests a multi-element appeal?

Where a claimant appeals more than one element post-MR, HMCTS have agreed to deal with the multiple elements in one hearing wherever possible.

DWP will prepare a single response covering all elements. A separate response must be prepared for LCW/LCWRA/Sanctions and Overpayment & Civil Penalties.

The Tribunal may decide some elements at a hearing and adjourn the remaining elements to another day. An adjournment decision notice will be issued to reflect that.

If the appeal involves a mix of elements that includes LCW/LCSRA, Sanctions, Overpayment and Civil Penalties, they will be heard separately.

A multi-element appeal for example the result in a changed Universal Credit decision will not be implemented until all elements have been decided by the tribunal.

What are the important similarities and differences between new style JSA and legacy JSA?

The important similarities and differences are:

- a person on new style JSA cannot receive JSA (IB), or automatically get passported benefits
- new style JSA claimants are subject to JSA benefit rules, similar to legacy JSA, such as part time earnings and hours, occupational pension, domestic violence or abuse, periods of sickness, leaving voluntarily, misconduct etc
- claimants getting new style JSA and Universal Credit are subject to the Universal Credit Labour Market conditionality. They attend the office as

required under their Universal Credit claimant commitment but, are paid JSA (C) fortnightly via legacy systems

What are the important similarities and differences between new style ESA and legacy ESA?

The important similarities and differences are:

- a person on new style ESA cannot receive ESA (IR), or automatically get passported benefits
- new style ESA claimants are subject to legacy ESA benefit rules such as part time earnings and hours, occupational pension, permitted work etc
- claimants getting ESA (C) and Universal Credit are subject to Universal Credit Labour Market conditionality. They are required to attend interventions as agreed with the Work Coach. They are required to send in a Statement of Fitness For Work (SOFFW) known as a fit note, to support their claim, and undertake the Work Capability Assessment

If an appeal is pending can migration to Universal Credit take place?

Yes. If an appeal against a decision relating to an existing legacy benefit is underway, the organisation administering that legacy benefit will oversee both the migration to Universal Credit and the outcome of the appeal.

Where the appeal is allowed and the claimant's existing legacy benefit award is increased, two actions are needed:

- (i) legacy benefit arrears need to be calculated
- (ii) the Universal Credit award may need revising to take account of the tribunal decision - see question 2 above

Who can request a MR and appeal in a Universal Credit joint claim?

Either member of the couple or both jointly, can request a MR and/or make an appeal. It does not have to be the same individual that makes both requests.

When considering a MR request the partner who is directly affected (the data subject) should be encouraged to make the dispute, as they are better placed to challenge the original decision. This is particularly the case where the issue is around a health condition.

Can Universal Credit claimants request an advance while awaiting the outcome of an appeal?

A claimant cannot request an advance if they are awaiting the outcome of an appeal for UC, New style ESA, New style JSA, ESA (IR), JSA (IB), ESA (C), JSA (C) or IS.

Exceptions to this may be made where entitlement to benefit has been satisfied, but the amount of the benefit is being appealed.

What happens if a legitimate advance claim to legacy JSA is made (the claimant does not satisfy UCLS gateway eligibility), but the area where the claimant lives becomes a Full Service area before the date of claim?

As the claim is a legitimate legacy JSA claim, the claim will be processed.

What happens if legacy benefit claimants who had a change of circumstances have not migrated to Universal Credit?

If the claimant should have (naturally) migrated to Universal Credit but didn't, the legacy benefit, and CTC and HB, will remain in payment until there is another change in circumstances.

What happens if an ESA (IR) or ESA (C) claimant who has failed their WCA does not migrate to Universal Credit during the Mandatory Reconsideration Period and then submits an appeal to HMCTS?

The ESA (IR) or ESA (C) award can be reinstated at basic rate pending the appeal, without having to make a new claim.