

Self-employed and gainfully self-employed

Contents

Universal Credit and self-employment

Claimants who run their business through a company (including those acting as company directors and sub-contractors)

Self-employed Gateway Interview

Claimants required to attend a Gateway Interview

Claimants not required to attend a Gateway Interview

Considering whether a claimant is gainfully self-employed

Making the gainful self-employed decision

Is the claimant carrying out a trade, profession or vocation where they are not employed by someone else?

Deciding if earnings are self-employed earnings

Deciding if the self-employed activity is the main employment

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

Claimant is gainfully self-employed

Claimant is not gainfully self-employed

The date the gainful self-employment decision applies from

Self-employed claimants moving from other benefits to Universal Credit

Failure to attend self-employment interviews

Sub-contractors

Change of circumstances

Universal Credit and self-employment

Universal Credit aims to support claimants in self-employment when this is the right way for them to be financially self-sufficient.

In work self-employed people are a new claimant group for DWP and have different requirements to other claimants. However, staff must consider whether a claimant has complex needs or is vulnerable. This consideration has no impact on gainfully self-employed, minimum income floor or start-up period decisions.

To ensure that claimants are dealt with correctly, those who report self-employment are required to attend a gateway interview. The gateway Interview is only required for claimants in certain regimes where a claimant would normally be expected to look for or be available for work.

At the gateway interview a decision is made on whether the claimant is gainfully self-employed for Universal credit purposes. This is known as the gainful self-employment test.

This is a decision based on the claimant's circumstances and determines how they are treated in Universal Credit.

Claimants found gainfully self-employed during the gateway interview are exempt from job search requirements so that they can focus on growing their business.

Claimants who are found not to be gainfully self-employed may be required to look for employed work, depending on their regime.

Claimants who run their business through a company (including those acting as company directors and sub-contractors)

Claimants who run their business through a company and who are also likely to be a director of that company, may be treated as self-employed in Universal Credit.

Sub-contractors may also be treated as self-employed in Universal Credit. For claimants who run their business through a company, all company directors and all sub-contractors will be required to attend a gateway interview to decide if they are gainfully self-employed.

If they are found to be gainfully self-employed, either the start-up period or minimum income floor will apply.

Self-employed Gateway Interview

Claimants must bring information and evidence about their self-employment to the gateway interview so a gainful self-employment decision can be made.

During the gateway interview, it must be considered whether the claimant is:

- in the correct regime, for a gainfully self-employed decision
- self-employed or employed
- gainfully self-employed

If a claimant is found to be gainfully self-employed, a decision must then be made to determine whether they are eligible for either a start-up period or to have the minimum income floor applied.

The gateway interview must also be used to:

- explain the self-employed earnings reporting requirements
- signpost the claimant to relevant business support
- accept a Claimant Commitment

Claimants required to attend a gateway interview

Claimants in the following regimes who expect to have self-employed earnings, will be required to attend a gateway interview:

- intensive work search regime
- light touch regime
- working enough regime, because they have earnings above their individual threshold

Claimants with self-employed earnings who move into one of these regimes from the work preparation, work focused interview or no work related requirements regimes require a gateway interview as soon as possible following the move.

Claimants not required to attend a Gateway Interview

Claimants in the following regimes who expect to have self-employed earnings, can't be found gainfully self-employed and won't be required to attend a gateway interview:

- work preparation
- work focused interview
- no work related requirements
- The minimum income floor (MIF) cannot be applied to claimants in these regimes.

When a self-employed claimant who has had a MIF applied moves into one of these regimes, the MIF must be removed at that point.

Claimants in these regimes must still report their self-employed earnings at the end of each assessment period.

Considering whether a claimant is gainfully self-employed

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, the claimant is not considered gainfully self-employed.

Claimants must still report any earnings from self-employment on a monthly basis whether they are considered to be gainfully self-employed or not.

Making the gainful self-employment decision

When deciding if a claimant is gainfully self-employed, there are a number of things to consider:

Is the claimant carrying out a trade, profession or vocation where they are not employed by someone else?

Are the earnings self-employed earnings?

Is the self-employed activity the main employment?

Is the self-employment organised, developed, regular and carried out in expectation of profit?

Consideration must also be given to the impact that COVID 19 had or is having on the business, such as:

- what type of business do they run?
- which geographical area is it in and are there any local COVID 19 restrictions?

- do they expect to return to working at the pre-restriction level once these restrictions are lifted?
- are they taking reasonable steps to grow and improve their business after COVID 19?
- have the claimant's circumstances changed?

Is the claimant carrying out a trade, profession or vocation where they are not employed by someone else?

The following illustrate what is meant by, carrying out a trade, profession or vocation.

Trade, for example a self-employed plasterer or market stall holder, a claimant is likely to be trading if they:

- sell regularly to make a profit
- make items to sell for profit
- sell online, at car boot sales or through classified adverts on a regular basis
- earn commission from selling goods for other people
- are paid for a service they provide

A claimant is probably not trading if they sell some unwanted items occasionally or they don't plan to make a profit.

Profession, for example a self-employed accountant or consultant.

Vocation, for example a self-employed musician or actor.

Deciding if earnings are 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 important indicators that should be considered. The following table lists some of these indicators.

Indicators that a claimants earnings are from self-employment	Additional information
Pay their own tax and National Insurance.	Where tax is deducted at source, this may suggest that the employment isn't self-employment, however, special arrangements can apply for building sub-contractors.

<p>Are registered as self-employed with Her Majesty's Revenue and Customs (HMRC) for self-assessment and Class 2 National Insurance contributions and have a unique tax reference number.</p> <p>Can fix the price and/or duration of their work and have control over their costs.</p> <p>Have the power to appoint or dismiss and can employ a substitute, for example to cover holidays or sickness.</p>	<p>A unique tax reference number is issued by HMRC when a person registers for self-assessment and may be an indicator of self-employment.</p> <p>However having a unique tax reference number is not sufficient in itself to demonstrate whether a person is self-employed.</p> <p>A power to appoint a substitute may suggest self-employment</p>
<p>Length of work contracts.</p>	<p>Short contracts may suggest self-employment. Longer contracts with the same company may suggest employment or possibly sub-contracting.</p>
<p>Provide their own equipment.</p> <p>Work from home, a workshop or an office they own or rent.</p> <p>The person who engages the claimant for work has no obligation to provide further work.</p>	<p>Working from home is also increasingly common for some employees.</p> <p>If there is an ongoing obligation then this may point towards employment.</p>
<p>Can decide the hours they work.</p>	<p>The greater the discretion the claimant has, the more likely it is that the work is self-employment.</p>

Can choose which work they accept and/or work for a range of different employers.	The more choice / discretion a claimant has, the more likely it is that the work is self-employment.
---	--

No single indicator is likely to be conclusive. Instead, these indicators should be used together to:

- build a general picture of the claimant's work
- give an idea of how the claimant, their employer (in the case of sub-contractors) and HMRC view their employment
- help make the decision on whether their earnings should be classed as employed or self-employed

Deciding if the self-employed activity is the main employment

As part of the gainful self-employment test, a decision is needed on whether the claimant's self-employment is their **main** employment. This is important, especially for claimants who are either:

- undertaking self-employed activities but for only a few hours or on a low paid basis
- both self-employed and also working as an employed earner
- The following are indicators that the self-employed activity is likely to be a claimant's main employment if they:
 - spend more than half of their available work hours on self-employment
 - spend more time on, or earns more from, their self-employment than other activities, for example they work more hours in self-employment than as an employed earner
 - are starting a new business and business-related activities take up most of their expected number of hours per week
 - consider their self-employment as their main job goal
 - have significant self-employed earnings, even where self-employed hours are low
 - This is not a complete list.

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

The following are possible indicators that the self-employment is organised, developed, regular or carried out in expectation of profit and must be taken in to account when making a decision:

- whether the activity is undertaken for financial gain, the claimant does not need to have made a profit yet for the activity to be considered in expectation of profit

- the number of hours spent each week working and the regularity of the work
- any business plan or steps taken to increase income from the activity
- how Her Majesty's Revenue and Customs (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.

Claimant is gainfully self-employed

When a claimant is found to be gainfully self-employed, they will then be eligible for either a start-up period or to have the minimum income floor applied.

Claimants who are eligible for the start-up period will be placed in the intensive work search regime.

Claimants found gainfully self-employed and the minimum income floor applies will be placed in the working enough regime.

Gainfully self-employed claimants will stay in either of these regimes and **not** move into the light touch regime.

Claimant is not gainfully self-employed

Claimants who are not found to be gainfully self-employed will not have the minimum income floor applied.

They will be required to meet work-search conditions, where applicable, and must still report any self-employed earnings.

Their claimant commitment, including the expected hours of work-search, may be adapted to take account of their limited self-employment activity, if appropriate.

The date the gainful self-employment decision applies from

A claimant who is deemed to be gainfully self-employed (GSE) is treated as having started their self-employment at the beginning of the first assessment period in which they were found GSE. For example:

- new claimants found GSE - this will be the first day of the assessment period
- claimants already receiving Universal Credit who then become GSE - the start date is the first day of the assessment period in which the change happened

Where a claimant is found to be in gainful self-employment and is entitled to a start-up period, the start-up period applies from the beginning of the assessment period in which the gainful self-employment decision was made.

Where a claimant is found to be in gainful self-employment and is not entitled to a start-up period, the minimum income floor should be applied from the

beginning of the assessment period after the assessment period in which the gainful self-employment decision was made.

Self-employed claimants moving from other benefits to Universal Credit

Claimants deemed to be gainfully self-employed, and who move to Universal Credit through managed migration from other benefits, will not have the minimum income floor applied for a 6 month 'grace period'. If they have been self-employed for less than a year, they may qualify for a Start-up Period in the usual way.

Claimants who claim Universal Credit as a result of a **significant** change of circumstance that ends their existing claim to Legacy benefits, for example relocation, will not be eligible for a 6 months' grace period from the minimum income floor.

These claimants may still be eligible for a 12 months' start-up period but the same eligibility conditions apply as for other new claimants to Universal Credit. See Self-employed start-up period.

Failure to attend self-employment interviews

Existing claimants who fail to attend either a:

- gateway interview following a move into self-employment or ending self-employment
- quarterly interview during their start-up period

Will be subject to the same sanctions as if they failed to attend a work focused interview.

For new claimants who fail to attend see guidance on failure to attend a self-employed gateway interview

Sub-contractors

People who are contractors or sub-contractors may be treated as self-employed for Universal Credit purposes and will be required to attend a gateway interview to determine if they are gainfully self-employed.

Whether a contractor or sub-contractor is self-employed or employed must be determined as part of the gainful self-employment decision. Consideration of the same self-employment indicators must be made as for other claimants in making this decision.

A contractor who has a contract to provide goods or services to a client may sub-contract some of the work to other people known as sub-contractors. A sub-contractor is:

- not an employee of the contractor
- a self-employed person who enters into a contract with another contractor to do a particular job or provide a service as part of a larger project
- normally paid a fixed fee for the job or services they provide

- has control over how they do the work
- often found in the construction industry

In some cases, a building sub-contractor will have a proportion of their earnings deducted at source to pay tax under Her Majesty's Revenue and Customs (HMRC) Construction Industry Scheme (CIS) arrangements. 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 could still be considered as self-employed and will not be subject to the pay as you earn system. A sub-contractor will not have National Insurance deducted at source.

Consideration must be given to whether the self-employment activity is the claimant's main employment in the same way as for other claimants, for example where a sub-contractor:

- alternates between spells of self-employment with work as an employee
- tops up their self-employed earnings with employed earnings, depending on the work or terms of work available to them

If they are found to be gainfully self-employed either a minimum income floor is applied or they will be eligible for a start-up period.

Change of circumstances

A change of circumstances for self-employed claimants may affect whether they continue to be treated as gainfully self-employed or not.

A gainfully self-employed claimant reporting a significant change of circumstance in their employment, including:

- ending self-employment
- starting employed work as their main employment
- significant and continuing reduction in self-employed hours of earnings
- significant and continuing increase in employed hours or earnings, if both employed and self-employed
- significant and continuing health issues which impact on their ability to work

Must attend a Gateway Interview to re-assess if they are still in gainful self-employment.

The same gainful self-employment test is applied when ending gainful self-employment.

The claimant doesn't need to have ceased all self-employment to be found not gainfully self-employed. Claimants must provide evidence to assess whether they are no longer to be deemed gainfully self-employed.

Self-employed claimants that have previously been found not gainfully self-employed, who report a change in circumstances and / or move regimes, may be required to attend a Gateway Interview.

These changes can include but are not limited to, claimants who:

- have a significant and continuing increase in their self-employed earnings or activity
- move from work preparation, work focused interview or no work related requirements regimes to the intensive work search, light touch or working enough regimes, for example - due to a change in their youngest child's age

The gateway interview is used to determine whether the claimant is now gainfully self-employed. If the claimant is found to be gainfully self-employed, either the start-up period or the minimum income floor will be applied.

It is important that these changes are identified early and that claimants are given support if the change means the minimum income floor will be applied at a future date.