

# **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 subcontractors)
- 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
- Date the gainful self-employment decision applies from
- Failure to attend
- Subcontractors
- 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.

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 when 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 subcontractors)**

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.

Subcontractors may also be treated as self-employed in Universal Credit.

For claimants who run their business through a company, all company directors and all subcontractors 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 that 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 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 only or No Work-related Requirements regimes require a Gateway Interview as soon as possible following the move.

See Fail to Attend for information on failure to attend a Gateway Interview or Quarterly Review interview.

### **Claimants not required to attend a Gateway Interview**

Claimants in the following regimes who expect to have self-employed earnings, cannot be found gainfully self-employed and will not be required to attend a gateway interview:

- Work Preparation
- Work Focused Interview
- No Work-related Requirements

The Minimum Income Floor cannot be applied to claimants in these regimes.

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

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

Although claimants in these regimes cannot be deemed gainfully self-employed and are not required to attend a gateway Interview, agents will still need to book the 'Other, Other' appointment type.

The 'Other, Other' appointment must be booked as a telephone interview as the claimant may be unable to attend a face to face interview due to work and/or caring commitments.

### **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?

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

The following information illustrates 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 must be considered. The following table lists some of these indicators:

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

Can choose which work they accept and/or work for a range of different employers.	The more choice or 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 to 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 their 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 into 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 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.

Where applicable, they will be required to meet work search conditions 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 this is appropriate.

## **Date the gainful self-employment decision applies from**

A claimant who is deemed to be gainfully self-employed is treated as having started their self-employment at the beginning of the first assessment period in which they were found gainfully self-employed. This date must be used for the purposes of the 'Verify self-employment' to-do.

Where a claimant is found to be in gainful self-employment, the Minimum Income Floor or the Start-up Period (where eligible) applies from the beginning of the assessment period in which the gainful self-employment decision was made.

A gainfully self-employed decision cannot be applied retrospectively even where a claimant fails to declare self-employment at:

- the start of their claim, or
- later during their claim

Only the claimant's current circumstances can be considered when considering whether the claimant is gainfully self-employed. Once the decision has been made, the claimant will be required to provide details of their income and expenses for the past periods that they have been self-employed.

In cases where a claimant has failed to declare self-employment, agents must consider whether this is due to claimant error and continue with the claim in the usual way or whether a fraud referral is appropriate.

## **Failure to attend**

For claimants who fail to attend the Gateway Interview, see failure to attend a self-employed Gateway Interview or Quarterly Review interview.

Existing claimants who fail to attend a Quarterly Review interview during their Start-up Period will be subject to the same sanctions as if they failed to attend a Work Focused Interview.

## **Subcontractors**

People who are contractors or subcontractors 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 subcontract some of the work to other people known as subcontractors. A subcontractor 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 subcontractor will have a proportion of their earnings deducted at source to pay tax under 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 subcontractor does not provide a unique tax reference number.

Despite tax being deducted at source, the subcontractor could 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.

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 subcontractor:

- 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 or 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. They must provide evidence to assess whether they are no longer to be deemed gainfully self-employed.

Self-employed claimants who have previously been found not gainfully self-employed and 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 the Work Preparation, Work Focused Interview only 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 that the Minimum Income Floor will be applied at a future date.