

**Advice NI
Briefing Paper**

**Backdating Universal
Credit Claims**

December 2019

Background:

Claimants' ability to get claims backdated under Universal Credit has changed considerably compared to the backdating that was available under legacy benefits. For means tested benefit claims, such as income based jobseekers and income support, there was the possibility for claims to be backdated for 1 month or even 3 months if there was good cause which included things like wrong advice given by a department, bereavement, illness/disability, caring responsibilities or domestic emergency. Other benefits such as carer's allowance, child benefit and employment support allowance could be backdated for up to three months without special reason needing to be provided, with state pension even being able to be backdated for 12 months without needing special reason.

Backdating a claim is still possible under universal credit however the scope for backdating claims under universal credit has been restricted. It has been cut down to only allow for claims to be backdated for a maximum of one month and no longer allows for good cause backdating in cases of wrong advice given to claimants, bereavement or domestic emergency. There are still a few limited circumstances in which a claim can be backdated, which this paper will look at as well as looking at defective claims which can be backdated if corrected within a given time scale and advance claims which are allowed to be made a month in advance of eligibility in limited circumstances. This paper will also look at some recommendations that could expand the criteria for backdating and advance claims so that these are options that are available in a wider range of circumstances for vulnerable claimants.

Backdating:

Universal credit claims can be backdated for a maximum of one month however, the circumstances in which backdating can happen are much more limited than they previously were under legacy benefits. Claims can be backdated for a maximum of one month given that the claimant meets one of the prescribed circumstances and as a result of that could not have been expected to make the claim earlier.

These circumstances are covered in **The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016** and are as follows:

- (a) The claimant was previously in receipt of a jobseeker's allowance or an employment and support allowance and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that the claimant's entitlement expired;

- (b) The claimant has a disability;

- (c) The claimant has supplied the Department with medical evidence that satisfies the Department that the claimant had an illness that prevented the claimant from making a claim;

- (d) The claimant was unable to make a claim in writing by means of an electronic communication used in accordance with Schedule 1 because the official computer system was inoperative;

- (e) Where —
 - (i) The Department decides not to award universal credit to members of a couple jointly because one of the couple does not meet the basic condition in Article 9(1)(e) of the 2015 Order,
 - (ii) They cease to be a couple, and

(iii) The person who did meet the basic condition in Article 9(1)(e) of the 2015 Order makes a further claim as a single person;

(f) Where—

(i) An award of universal credit to joint claimants has been terminated because one of the couple does not meet the basic condition in Article 9(1)(e) of the 2015 Order,

(ii) They cease to be a couple, and

(iii) The person who did meet the basic condition in Article 9(1)(e) of the 2015 Order makes a further claim as a single person.

The circumstances for backdating have been greatly reduced under the universal credit system, governments' response to the reasons for this are - **“Universal Credit will be a dynamic online service that will allow claimants to make their claim as soon as they need. This increased access should mean that backdating is only required for claimants experiencing specific circumstances as set out in the regulations.”** However the regulations do not take into account the wide array of circumstances that can affect claimants that could in turn delay them from making a claim sooner.

Defective Claims:

Although not under the circumstances for backdating in a way defective claims can be backdated to the date they are initially made. A defective claim is a claim which is not completed in accordance with instructions provided by the department. Essentially if all the information that the department requires is not provided by the claimant it is considered a defective claim.

If the claim made is defective the department must notify the claimant of the defect in the claim and allow them one month to correct the defect. If the claimant corrects the defect within the given time period the claim must be considered to be made correctly in the first instance. This means the claim should be backdated to the date of the initial claim, *not* just from the date which the defect is corrected by the claimant.

Also in cases where a claimant has not been able to complete a telephone claim but has requested assistance from the department – e.g. request a home visit for assistance completing digital claim, request interpretation services, etc. The date of these claims should be backdated to the initial phone call requesting the assistance, *not* just from the date claim is then completed with the assistance requested, as long as the claim is completed within one month.

Advance Claims:

Although this is not a way in which a claim can be backdated it is a way in which a claim can be set up in advance for claimant in certain circumstances. This means the claim will be up and running when the claimant becomes eligible and cuts out waiting period after making the claim for first payment.

An advance claim for UC can be made a maximum of one month in advance of a claimant becoming eligible to claim UC in certain circumstances. There are two circumstances in which an advance claim can be made; these are for care leavers a month before their 18th birthday and for a prisoner who will be released within one month.

The circumstances are very limited for advance claims but are beneficial for advisers who deal with care leavers or ex-prisoners to keep in mind as they can get claims set up for clients in

advance. However the scope for advance claims would need to be expanded so that the most vulnerable claimants such as those with disability, learning difficulties or those facing addiction problems could benefit from being able to get claims set up in advance for them.

Recommendations:

The scope for backdating claims has been greatly reduced under universal credit compared to what previously existed under legacy benefits and the scope under universal credit for advance claims is very narrow. This excludes many vulnerable claimants from being able to get claims backdated to when they should have made a universal credit claim but could not do so due to a wide range of unforeseen circumstances and prevents many vulnerable claimants getting claims set up in advance of eligibility when assistance to make a claim would still be available to them.

A few changes would allow for the backdating of claims or advance claims to be available in a wider range of circumstances that affect vulnerable claimants, such as:

- Retain ‘good cause’ backdating, this allows for claims to be backdated in a wider range of circumstance that would prevent a claim being made sooner - e.g. if a claimant received misleading benefits advice, in cases of a domestic emergency, in cases of bereavement, etc.
- Include the circumstance where the claimant could not access a computer / did not have the skills to use a computer in order to make a Universal Credit claim online in a timely manner.
- Expand criteria for advance claims so it is available to more vulnerable claimants – e.g. in cases where a young person with learning difficulties/disabilities will stop being classed as a child/QYP in one month so parent/guardian could help make advance claim for the young person in their own right before benefits the parent/guardian get for them end.
- Allow longer than one month time period in cases where a claimant is waiting for assistance from the department to make the claim – e.g. through home visit, interpreting service, etc. - as getting this arranged may take longer than given time period.
- Consult on other potential scenarios for the backdating of claims or advance claims.

Advice NI believes these measures were to be put into place it would safeguard the most vulnerable claimants from missing out on payments of universal credit they would have been entitled to but were unable to claim sooner due to personal circumstance.

References

Background:

CPAG – Chapter 51, page 1166-1172

Backdating:

<http://www.legislation.gov.uk/nisr/2016/220/regulation/25/made>

<https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dm-adm-chapter-a2.pdf>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/185958/ssac-universal-credit-report.pdf

Defective Claims:

<http://www.legislation.gov.uk/nisr/2016/220/regulation/7/made>

<http://www.legislation.gov.uk/nisr/2016/220/regulation/9/made>

Advance claims:

CPAG – Chapter 3, page 48

<http://www.legislation.gov.uk/nisr/2016/220/regulation/31/made>

<https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dm-adm-chapter-a2.pdf>



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