OPENING THE GATEWAY TO UNIVERSAL CREDIT CLAIMS
The Gateway and the Lobster Pot – who can claim universal credit?

In order for a claimant to obtain universal credit then they must:

1. Live within a universal credit postcode.
2. Meet the other gateway conditions that apply in that postcode at the time of claim.

Which postcodes?

The exact postcodes affected are listed in various Commencement Orders.

The first list of affected postcodes was listed in the No.14 Order.\(^1\) This was known at the time as a ‘Pathfinder’ test area, where UC was initially “made available” to a limited group of single jobseekers without children. The term ‘Pathfinder’ is no longer used, and has been replaced by the very similar ‘gateway’ conditions.

From 30 June 2014, UC was extended to couple claimants in various areas.\(^2\)

From 26 January 2015, UC in some areas was extended to claimants responsible for a child or qualifying young person, excluding where a child or young person is entitled to DLA or PIP, or is certified blind or severely sight impaired, or is looked after by a local authority.\(^3\)

As part of the national expansion, UC was extended to further areas from 16 February 2015. The legislation refers to postcodes and part-postcodes districts which are found in the Index to Relevant Districts, published online by the DWP, along with other documents which show the areas by local authority.\(^4\)

There is also a useful map provided by EntitledTo that allows entry of a postcode to see whether it is a universal credit area.\(^5\)

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2. The Welfare Reform Act 2012 (Commencement No. 9, 11, 13, 14, 16 and 17 and Transitional and Transitory Provisions (Amendment)) Order 2014, SI No. 1661 amended the gateway conditions for selected areas by omitting the requirement to be a single person.
3. The Welfare Reform Act 2012 (Commencement No. 9, 11, 13, 14, 16, 17 and 19 and Transitional and Transitory Provisions (Amendment)) Order 2015 SI No. 32 amended the gateway conditions for selected areas by omitting the requirement not to be responsible for child or young person, with exclusions as specified.
What is the UC gateway?

The UC gateway is a set of rules which determine whether or not a claimant who lives in a UC area is able to make a claim for UC. If they satisfy the gateway conditions, they come under the rules that apply in the UC system, including the UC claimant commitment, UC work-related requirements and sanctions, etc.\(^6\)

Living in a UC area and passing through the UC gateway means that the claimant comes under the UC system. It does not in itself mean that the claimant is actually entitled to UC: entitlement rules are separate from the gateway rules.\(^7\) If the claimant does not pass through the UC gateway, they cannot make a claim for UC and may instead be entitled to one or more of the means-tested benefits that UC replaces (the so-called ‘legacy’ benefits, in particular income-based JSA or income-related ESA). Note that where on the date of claim a claimant both lives in a UC area and satisfies the gateway conditions, a claim for UC, JSA or ESA results in the abolition of income-based JSA and income-related ESA for that claimant regarding that claim, i.e. so that they cannot be claimed instead of UC.\(^8\)

Once the gateway rules are met

Where it is believed the claimant lives in a UC area and meets the gateway conditions and they make a claim for UC, and it is subsequently discovered that the claimant gave ‘incorrect information’ regarding where they live or meeting the gateway conditions, but UC has been awarded and a payment made, they remain in the UC system.\(^9\)

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\(^6\) The basic rule is that the UC rules only take effect where a claimant both lives in a UC area and satisfies the gateway conditions: see Article 3 of The Welfare Reform Act 2012 (Commencement No.9 and Transitional and Transitory Provisions and Commencement No.8 and Savings and Transitional Provisions (Amendment) Order 2013, SI 2013 No.983(C.41), (‘the No.9 Order’) as reproduced, with amendments for dates for when UC is introduced in a given area, by subsequent Commencement Orders.

\(^7\) The main UC entitlement rules are contained in The Universal Credit Regulations 2013, SI 2013 No.376.

\(^8\) See in particular Article 4 of the No.9 Order, as inserted by The Welfare Reform Act 2012 (Commencement No.9, 11, 13, 14 and 16 and Transitional and Transitory Provisions (Amendment) Order 2014, SI 2014 No.1452. This basically provides for abolition if IBJSA and IRESA ‘in relation to the case of a claim [for UC, JSA or ESA]...and any award that is made in respect of such a claim’ where on the date of claim the claimant lives in a UC area and satisfies the gateway conditions.

\(^9\) Article 3(3)(b) No.9 Order.
Another set of rules governs the relationship between those entitled to UC and the ‘legacy’ benefits that UC replaces. In particular, a UC claimant cannot be entitled to IS, housing benefit (except in ‘specified accommodation’), tax credits or pension credit.\(^\text{10}\)

Once the claimant has passed through the UC gateway, the general principle is that a UC claimant remains under the UC system even if their circumstances later change so that they no longer satisfy the gateway conditions, or no longer live in a UC area. For example, a current common gateway condition is that the claimant does not have limited capability for work. But if they pass through the gateway and *later* develop limited capability for work, that does not mean that they are no longer under the UC system (and indeed may well be entitled to an increase in their UC, via entitlement to the limited capability for work element). This principle is sometimes referred to as the ‘lobster pot’ principle.

How effective the ‘lobster pot’ actually is, will be investigated below.

**What are the gateway conditions?**

There are a number of gateway conditions. Because these conditions are set out in a set of rules that can be varied by subsequent Commencement Orders, it is possible that the gateway conditions can vary in different UC areas.\(^\text{11}\) A stark example is the so-called ‘Digital Service’ UC area (currently specified postcodes in Sutton, Croydon and Southwark only) in which the only gateway condition is, until 10 June 2015 only, to be a British citizen.\(^\text{12}\)

So far, most of the gateway conditions are common to all UC areas, with the exception of conditions about *not* being a member of a couple and *not* having a child, which currently apply in all UC areas introduced from February 2015 under the so-called UC ‘national expansion’, but which do *not* apply in any of the UC areas (including in Scotland, Inverness) introduced before February 2015.

In summary, the main gateway conditions require that a claimant:

- is not entitled to IS, JSA or ESA or certain other disability benefits;

\(^{10}\) Regulation 5, The Universal Credit (Transitional Provisions) Regulations 2014, SI 2014 No.1230. Note that the income-related forms of JSA and ESA are not mentioned in this rule; that is because for a UC claimant who satisfies the gateway conditions they will already have been abolished.

\(^{11}\) The main rule setting out the gateway conditions is in Schedule 5 to the No.9 Order. But subsequent Commencement Orders can apply this in different areas with conditions added, removed or amended. So the first Commencement Order in the February 2015 ‘national expansion’ includes an amendment to Schedule 5 to the effect that there is a requirement that the claimant is a single person: The Welfare Reform Act 2012 (Commencement NO.22 and Transitional and Transitory Provisions) Order 2015, SI 2015 No.101

\(^{12}\) The Welfare Reform Act 2012 (Commencement No.23 and Transitional and Transitory Provisions) Order 2015, SI 2015 No.634
• is aged 18 - under 60 years and 6 months;
• is not a student, ill or disabled, or a carer;
• is a British citizen;
• except in the pre-February 2015 national expansion areas, is single and does not have children; and
• is either not working or not expecting to earn more than £338 a month.

In more detail, the gateway conditions require that a claimant:

• is not entitled to IS, JSA or ESA (including contributory forms), incapacity benefit, SDA, DLA or PIP;

• is not awaiting the outcome of a claim for IS, JSA, ESA, CTC, WTC or HB, or the outcome of a revision following refusal of IS, JSA or ESA or HB, or the outcome of an appeal against a refusal of IS, JSA or ESA. If the appeal has been decided, there must not be the possibility of a further appeal;

• is a single person (except in pre-February 2015 expansion areas, i.e. including Inverness)

• does not have a child living with them (except in pre-February 2015 expansion areas, i.e. including Inverness, where the gateway includes children except children entitled to DLA or PIP, certified as severely sight impaired or blind or looked after by a local authority);

• is aged at least 18 but under 60 years and six months;

• is a British citizen who has resided in the UK throughout the two years before the claim (excepting continuous breaks of up to four weeks);

• does not have a medical certificate and has not been found to have limited capability for work;

• is not pregnant or within 15 weeks of having given birth;

• has less than £6,000 capital;

• is not expecting to earn £338 in the month after UC is claimed (in a joint claim £541);

• is not self-employed;

• is not in education or training or planning to be;
• is not liable to pay Child Support Maintenance under the Child Support Act 1991;
• is not adopting a child placed with them in the preceding 12 months, or expecting to have a child placed with them in the next two months;
• is not a foster parent;
• is not a carer (except as part of paid or voluntary employment);
• is not homeless or in temporary or supported accommodation;
• is not an owner-occupier;
• has a national insurance number and a bank/building society/Post Office/credit union account;
• does not live in the same household as a member of the armed forces who is absent from the household in connection with that role.

**What is the ‘lobster pot’?**

The principle is that once someone becomes entitled to UC, they stay on it even if their circumstances change or they move to an area where UC has not yet been introduced. The gateway conditions only apply to the ability to make a new claim - once someone is entitled to UC, there is no requirement to continue to meet the gateway conditions. There should not be a choice, as the rules are intended to prevent a UC claimant from claiming legacy benefits. For someone who comes under the UC gateway conditions, income-based JSA and income-related ESA are abolished so that it is not possible to make a new claim.\(^{13}\) Someone who is entitled to UC is not entitled to IS, HB (except for exempt accommodation), PC or tax credits in respect of any period when they are entitled to UC.\(^ {14}\) Someone who is waiting to hear about a UC claim, or can be treated as making a UC claim, or has requested a revision or appealed against a UC decision, is not entitled to IS, HB or tax credits.\(^ {15}\)

There is no exclusion on people who are entitled to HB or tax credits from claiming UC if they meet the gateway conditions (although for tax credits this is currently unlikely except for during the four week run-on or term-time workers during holiday periods, or in the Inverness

\(^{13}\) The Welfare Reform Act 2012 (Commencement No.9 and Transitional and Transitory Provisions and Commencement No.8 and Savings and Transitional Provisions (Amendment) Order 2013, SI No.983

\(^{14}\) Reg 5, The Universal Credit (Transitional Provisions) Regulations 2014, SI No. 1230

\(^{15}\) Reg 6, The Universal Credit (Transitional Provisions) Regulations 2014, SI No. 1230
area, people on CTC only). If they meet the basic conditions for UC, their existing award of HB or tax credits will be terminated on the day before entitlement to UC begins – this happens even if they are not entitled to UC because they do not meet the financial conditions.\(^\text{16}\) However, there is nothing to prevent someone who has made an unsuccessful claim for UC subsequently claiming tax credits or HB again in future.

**Escaping the lobster pot?**

If a claimant meets the UC conditions at the point of claiming UC (and therefore passes through the gateway), but then has a change of circumstances such that if they were not on UC would not be able to pass the gateway conditions again (for example starts to receive PIP) then they should be able to end their award of UC. They would then be able to reclaim a “legacy benefit” (for example ESA). That might be advantageous to a claimant (for example because they may receive a severe disability premium on ESA).

The DWP information on this is not entirely clear: [https://about.universalcredit.service.gov.uk/kms/Pages/Closing_a_claim.htm](https://about.universalcredit.service.gov.uk/kms/Pages/Closing_a_claim.htm)

However, it is clear from previous cases\(^\text{17}\), that a person can have an award of benefit ended by way of supersession on the grounds that, although they remain entitled, they simply no longer wish to receive the award. Once an award has ended, then the person would not be required to claim UC again provided they did not meet the gateway conditions and hence could access legacy benefits.

**Moving area**

A UC claimant who moves to another part of Great Britain remains entitled to UC, and should notify their change of address to the UC Helpline 0345 600 0723 (Textphone: 0345 600 0743). If a claimant who has moved out of a UC area then ceases to be entitled to UC, they can subsequently make a new claim for legacy benefits. UC has not been introduced in Northern Ireland. UC cannot be exported abroad, although there are rules on temporary absence from GB.

**Changes of circumstances**

A UC claimant who has a change of circumstances can remain on UC, but there may be changes to the amount they receive, their work-related conditions and their work allowance.

**Start living with partner as a couple:**

- Treated as making a joint UC claim
- Couple rate payable (from start of assessment period)

\(^\text{16}\) Reg 8, The Universal Credit (Transitional Provisions) Regulations 2014, SI No. 1230

\(^\text{17}\) See for example CJSA/3979/1999
• New partner’s old means-tested benefits and tax credits terminated
• Claimant commitment and work-related requirements for new partner
• Work allowance is same for single/couple

**Become responsible for a child (or children):**

• Child element payable
• Work-related requirements may change if child under 5
• Claimant commitment should be varied to allow for childcare responsibilities
• Work allowance increases

**Become sick or disabled**

• Contributory ESA counts as income for UC
• If assessed as having limited capability for work:
  – LCW or LCWRA element payable
  – work allowance increases
  – work-preparation requirement or no work-related requirements if LCWRA
• If already in work and weekly earnings over 16 x minimum wage, can only be newly assessed for LCW if also get DLA/PIP.

**Become a carer**

• Carer element payable
• No work-related requirements
• Carer’s allowance counts as income (but no requirement to claim CA)

**Changes that may end entitlement to UC**

**Income reduces UC to nil**

A person is not entitled to UC if income (non-disregarded income and 65% of earnings over work allowance) in the monthly assessment period is too high for any UC to be payable. In practice, DWP says it will not ‘terminate’ a claim until earnings are too high for six consecutive months. If a decision is made that a claimant is not entitled to UC, or entitlement ends, because earnings are too high, there is a provision to allow entitlement to UC to resume without the requirement for a new claim. The claimant must notify the DWP of their income within six months of the date of claim or last day of entitlement.18

**Capital over £16,000**

A claimant is not entitled to UC if capital is over £16,000. There is no transitional protection as yet, as this will only apply to claimants who are transferred by the DWP.

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18 Reg 6, The Universal Credit, PIP, JSA & ESA (Claims and Payments) Regulations 2013 SI No. 380
**Becoming a full-time student**

Full-time students are not entitled to UC, with some exceptions for those\(^\text{19}\):

- responsible for a child
- under 22 (under 21 when started) on a non-advanced course and without parental support
- have limited capability for work and also get DLA or PIP
- single foster parents
- partner is over PC age
- couple where one is not a student
- not eligible for a grant or loan after taking time out because of illness or caring responsibilities

**Leaving Great Britain**

One of the basic conditions for UC is to be in Great Britain, but there are rules allowing temporary absence.\(^\text{20}\) Claimants can be treated as in GB during a temporary absence of:

- One month
- Two months in connection with death of partner/child/close relative, and it would be unreasonable to expect to return within one month
- Six months in connection with medically approved care, convalescence or treatment of claimant, partner or child.

**Reach PC age**

A single UC claimant who reaches PC age is no longer entitled to UC and can claim PC. A couple where one is over and one is under PC age would have to stop claiming UC before a PC claim could be made.

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\(^{19}\) Regs 3(2)(b), 12, 13 (4) and 14, The Universal Credit Regulations 2013, SI 2013 No.376

\(^{20}\) Section 4, Welfare Reform Act 2012 & Reg 11, Universal Credit Regulations 2013, SI No. 376
What is the UC gateway?

• Rules on whether someone is able to make a claim for UC
• Depends on meeting two tests:
  – Living in a UC postcode area
  – Meeting the other “gateway conditions” (schedule 5 of No. 9 Order)
• If in UC area + gateway conditions satisfied at point of claim = IBJSA and IRESA abolished
If gateway conditions are met

- UC awarded if UC entitlement conditions satisfied (and possibly CBJSA or CESA under UC system)
- UC claimant not entitled to ‘legacy benefits’
- Intention is that once in UC system, UC claimant remains in it, e.g. even if later develops LCW or moves out of UC area (‘lobster pot’ principle)

Gateway conditions and incorrect information

- Still end up on UC if despite not meeting gateway conditions at date of claim:
  - have received a payment of UC already; and
  - have given incorrect information as to meeting the gateway conditions
- Rules do not expressly deal with those who get paid UC but not because they gave incorrect information: could they appeal against the UC award?
- Remember those who do not meet conditions at date of claim but have not been paid should be refused UC if this discovered before payment made: can reclaim legacy benefits and date of claim is date they tried to get UC.
Main gateway conditions - summary

• Not entitled to IS, JSA or other disability benefits
• Aged 18 – under 60 years and 6 months
• Not a student, ill or disabled or a carer
• Is a British citizen in UK for last two years
• Except in pre-February 2015 areas, is single and does not have children
• Not working or expecting to earn no more than £338 a month

Detailed gateway conditions - legacy benefits

• Only meet gateway conditions if:
  – Not entitled to IS, JSA, ESA, PIP, DLA, IB or SDA
  – Not awaiting outcome of claim for IS, JSA, ESA, CTC, WTC or HB,
  – Not awaiting revision of refusal of IS, JSA, ESA or HB,
  – Not pursuing appeal of refusal of IS, JSA or ESA
• Note- a potential UC claimant who has merely shoved in a claim for HB and not received a decision does not meet gateway conditions
Detailed gateway conditions
- fitness to work

- Only meet gateway conditions if:
  - Not pregnant
  - Not have been pregnant with date of confinement within 15 weeks of UC claim date
  - Not have obtained from Doctor a Fit Note (unless that issued prior to a subsequent LCW decision) *think about this in context of someone whose ESA has just ended*
  - Not have applied for a Fit Note
  - Must declare that do not consider self to be unfit for work
  - Must be no current decision that has LCW

UC and changes of circumstances

- Move to a non-UC area
- Start living with partner as a couple
- Become responsible for a child (or children)
- Become sick or disabled
- Become a carer
What is the lobster pot?

• The principle that once you are entitled UC, you stay on it, even if you move area or circumstances change.

• Change of circumstances may mean changes to:
  – Amount of UC
  – Work-related requirements
  – Work allowances

Can you escape the lobster pot?

• Welfare rights workers will likely be asked to join the Escape Committee: because UC is often worse.

• Some tools that might help:
  – CJSA/3979/1999- ending awards on request
  – Article 4 of the No. 9 Order repeals legislation providing machinery for legacy benefits but only *in relation to cases of claims and awards.*
  – Is that legislation also repealed in relation to that claimant forever more?
Changes that may end UC

- Income reduces UC to nil
- Capital over £16,000
- Become a full-time student
- Leaving Great Britain
- Reach PC age

Discussion

- What is your experience of universal credit so far?
- How is it working for claimants?
- What issues/problems need to be addressed?