

## Childcare Costs and Universal Credit

Many home educating families are in receipt of, or need to claim, means tested benefits, others are migrating from other benefits to Universal Credit (UC). Those families report to Education Otherwise that they often come up against hurdles when claiming the childcare costs element of UC, most usually refusal on the basis of childcare being within school hours.

### Universal Credit Basics

Universal Credit is composed of several different elements. These elements combine into a single monthly payment that adapts to the claimant's circumstances:

Standard Allowance: This is the basic component of Universal Credit, which every claimant receives. The amount varies depending on age and whether the claimant is single or part of a couple.

Child Element: This provides additional extra support for those with children, with higher rates for the first child if born before April 6, 2017. There is also an additional amount for disabled children.

Housing Element: This covers housing costs, including rent and some service charges. For homeowners, it can help with mortgage interest payments, although this is in the form of a loan that needs to be repaid.

Childcare Costs Element: This helps working parents with the cost of approved childcare, covering up to 85% of childcare expenses, with a cap on the maximum amount that can be claimed.

Limited Capability for Work and Work-Related Activity Element: This is for those who have a disability or health condition which affects their ability to work. Claimants in this category receive extra financial support and are not required to look for work.

Carer Element: This provides additional support for those who are caring for a severely disabled person for at least 35 hours a week.

The Childcare Costs Element of Universal Credit is designed to help working parents manage the expenses associated with approved childcare. The essential features of it are:

Eligibility: To qualify for the childcare cost element, both parents in a couple (or a single parent) must be working or have a job offer. This includes self-employment. Additionally, the childcare provider must be registered or approved.

**Covered Costs:** The element covers up to 85% of the childcare costs. There are upper limits to the amount that can be claimed: up to £646.35 per month for one child and up to £1,108.04 per month for two or more children.

**Claim Process:** Claimants need to report their childcare costs regularly to receive this support. They must provide details of the costs incurred and confirm that the childcare is provided by an approved provider.

## The Law

Home education does not necessarily follow school term-times or traditional school hours. There is no legal requirement that it does so.

Education Otherwise raised concerns with the Department of Work and Pensions (DWP) about childcare element being refused for parents of school age, home educated children. It responded simply to state that '*For school age children, eligible childcare costs should be outside of school hours*'. This appears to be an assertion which the DWP has developed and is becoming widespread, but for which there is no legal foundation.

The Universal Credit Regulations 2013 set out the law in relation to the relevant provisions for the childcare costs.

Regulation 31 prescribes that a UC payment will include an element for childcare costs where the 'work condition' and the 'childcare cost condition' are both met.

Regulation 32, the 'work condition', requires that in the relevant period the claimant is in paid work, or has had an offer of work. If a couple, the other partner must also be in work, or unable to provide childcare by reason of their limited capability to work, have substantial caring responsibilities for a severely disabled person or be absent. Those whose work has ceased and are yet to start or are in receipt of sickness-type benefits can also qualify.

**Regulation 33,** The childcare costs condition is met for an assessment period if the claimant has paid charges for relevant childcare which are attributable to that assessment period and those charges have been reported to the DWP before the end of the assessment period that follows the assessment period in which they were paid. Charges must be in respect of:

- (i) a child, or
  - (ii) a qualifying young person who has not reached the 1st September following their 16th birthday, for whom the claimant is responsible; and
  - (b) the charges are for childcare arrangements
    - (i) that are to enable the claimant to take up paid work or to continue in paid work,
- or

(ii) where the claimant is treated as being in paid work by virtue of regulation 32(2), that is to enable the claimant to maintain childcare arrangements that were in place when the claimant ceased paid work or began to receive those benefits.

Regulation 34 deals with the amount of the childcare costs.

Regulation 35 defines 'relevant childcare' and outlines the eligibility for additional amounts for childcare costs:

**35.** (1) 'Relevant childcare' means any of the care described in paragraphs (2) to (5) other than care excluded by paragraph (7) or (8).

(2) Care provided in England for a child

(a) **by a person registered under Part 3 of the Childcare Act 2006; or**

(b) by or under the direction of the proprietor of a school as part of the school's activities

(i) **out of school hours, where a child has reached compulsory school age, or**

(ii) at any time, **where a child has not yet reached compulsory school age; or**

(c) by a domiciliary care provider registered with the Care Quality Commission in accordance with the requirements of the Health and Social Care Act 2008

(3) Care provided in Scotland for a child

(a) .....

(4) Care provided in Wales for a child

(a) **by a person registered under Part 2 of the Children and Families (Wales) Measure 2010;**

(b) in circumstances in which, but for article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010, the care would be day care for the purposes of Part 2 of the Children and Families (Wales) Measure 2010;

(c) **by a childcare provider approved in accordance with a scheme made by the National Assembly for Wales under section 12(5) of the Tax Credits Act 2002** or made by the Welsh Ministers under section 60 (promotion etc. of well-being) of the Government of Wales Act 2006;

(d) **out of school hours, by a school on school premises or by a local authority;**

(e) by a person who is employed, or engaged under a contract for services, to provide care and support by the provider of a domiciliary support service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016; or

(f) by a foster parent in relation to the child (other than one whom the foster parent is fostering) in circumstances in which the care would be child minding or day care for the purposes of Part 2 of the Children and Families (Wales) Measure 2010 but for the fact that the child is over the age of the children to whom that Measure applies.

(5) Care provided anywhere outside Great Britain by a childcare provider approved by an organisation accredited by the Secretary of State.

(5A) **In paragraph (2)(b), 'school means a school that Her Majesty's Chief Inspector of Education, Children's Services and Skills is, or may be, required to inspect.**

(6) In paragraphs (2)(b) and (4)(d)—

(b) 'school premises' means premises that may be inspected as part of an inspection of the school.

(7) The following are not relevant childcare

(a) care provided for a child by a close relative of the child, wholly or mainly in the child's home; and

(b) care provided by a person who is a foster parent of the child.

(8) Care is not within paragraph (2)(a) if it is provided in breach of a requirement to register under Part 3 of the Childcare Act 2006.

## Childcare Element

The regulation **does not state that childcare must be outside of school hours**. Instead, it focuses on the type of childcare (registered) and the claimant's employment status.

## DWP Public Guidance

The DWP Guidance states as follows:

'Your childcare must be with 'registered' childcare providers. Usually that means they registered with OFSTED, the Care Inspectorate in Scotland or the Care Inspectorate Wales. That could include nurseries, preschools, after-school clubs, breakfast clubs, childminders, nannies and holiday clubs.'

Nothing within the legislation or guidance states that the timing of childcare, such as whether it is during school hours or outside, is a determining factor for eligibility. Therefore, childcare does not have to be outside of school time to qualify for support. The critical criteria are the registration of the childcare provider and the claimant's engagement in work or work-related activities.

## In a Nutshell

If a parent is working during school hours and using childcare, childcare element of UC will be payable provided that they meet the general criteria and that the childcare is provided by registered child care provider which is not a school.

If the childcare provider is registered as a school, the parent cannot claim childcare element for care during school hours.

Should a parent be refused UC childcare element for a school age child during school hours, whose care is provided by a registered child carer which is not a school, the parent should immediately appeal that decision.