

**Our Ref:** Fol 2181**Date:** 25 May 2018Charles Ellinson <[request-481789-b884627a@whatdotheyknow.com](mailto:request-481789-b884627a@whatdotheyknow.com)>

Dear Charles Ellinson,

Thank you for your Freedom of Information request of 2 May 2018. You asked the following:

*“S.I. 2017/376 Reg. 4 provides for allowing claims for Income Support, Tax Credits and Housing Benefit by claimants with more than 2 children. However, no such exception seems to have been legislated for allowing such claimants to make claims for JSA(ib) and ESA(ir).*

*The existing provision in the No. 9 Commencement Order (Article 5A) allows claims for JSA(ib)/ESA(ir) to be made by people unable to claim UC because of a determination made by the Secretary of State under Regulation 4 of the Transitional Regs. However, this does not seem to have been amended to allow claims by claimants with more than 2 children.*

*Furthermore, claimants living in the SM5 2 postal sub-district with more than 2 children would not even seem to be allowed to claim IS/TC/HB, since their Commencement Order (No. 21) was not amended at all by 2017/376.*

*Please can you provide me with the legal basis relied on by the department to allow the above claims to be made.”*

**DWP Response**

The appropriate amendment was made by SI 2017/438, article 2 as follows:

**Amendment 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**

2.—(1) With effect from 6th April 2017, 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(1) is amended as follows.

(2) In the opening words of paragraph (1) of article 5A (transitional provision where Secretary of State determines that claims for universal credit may not be made: effect on claims for employment and support allowance and jobseeker's allowance)(2), before "and where the amending provisions" insert ", or by virtue of regulation 39 of those Regulations (restriction on claims for universal credit during the interim period)(3),".

(3) In sub-paragraph (e)(ii) of paragraph (1) of article 6(4), at the end insert ", or the claim is or would be one to which regulation 39 of those Regulations (restriction on claims for universal credit during the interim period) applies".

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Strategy Fol Team

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**Your right to complain under the Freedom of Information Act**

If you are not happy with this response you may request an internal review by e-mailing [freedom-of-information-request@dwp.gsi.gov.uk](mailto:freedom-of-information-request@dwp.gsi.gov.uk) or by writing to DWP, Central Fol Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF [www.ico.gov.uk](http://www.ico.gov.uk)