

EXPLANATORY MEMORANDUM TO
THE UNIVERSAL CREDIT (CONSEQUENTIAL, SUPPLEMENTARY,
INCIDENTAL AND MISCELLANEOUS PROVISIONS) REGULATIONS 2013

2013 No. 630

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This negative instrument supports the introduction of Universal Credit and of the new Jobseeker's Allowance and Employment and Support Allowance that will be based only on National Insurance contributions. The Regulations make amendments to Department for Work and Pensions and other Government Department primary and secondary legislation that are consequential to these changes and make the required supplementary, incidental and miscellaneous provision.

2.2 It also makes a small number of miscellaneous amendments to the Universal Credit Regulations 2013 and the Jobseeker's Allowance Regulations 2013.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Welfare Reform Act 2012 provides for the introduction in Great Britain of a new working age income-related social security benefit, Universal Credit, and the abolition of income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, and Child and Working Tax Credits. The abolition of income-based Jobseeker's Allowance and that of income-related Employment and Support Allowance are to take place together on the same timeline as the introduction of Universal Credit. This means that Jobseeker's Allowance and Employment and Support Allowance will, going forward, be contributory only benefits. Housing Benefit, and Child and Working Tax Credits are not to be abolished until 2017. Universal Credit and new contributory Jobseeker's Allowance and Employment and Support Allowance are being introduced alongside other existing benefits that are not changing, except to the extent that there are interactions with Universal Credit.

4.2 Universal Credit and new contributory-only Jobseeker's Allowance and Employment and Support Allowance will be introduced on a "Pathfinder"

basis from 29 April 2013. The intention is that those benefits will be introduced in a limited geographical area and to a limited range of claimants.

4.3 Most of the Regulations in this instrument are made under the powers in section 32 of the Welfare Reform Act 2012, to make consequential, supplementary and incidental provision in relation to Part 1 of that Act dealing with Universal Credit and the abolition of income-based Jobseeker's Allowance and income-related Employment and Support Allowance. The power allows for the amendment of either primary or secondary legislation, and both types of legislation are amended by these Regulations.

4.4 Regulations 38 and 39 amend the Universal Credit Regulations 2013 and the Jobseeker's Allowance Regulations 2013, made under powers in Part 1 of and paragraph 4(3) of Schedule 1 to the Welfare Reform Act 2012.

4.5 That Act also amends primary legislation

- in Part 2 to make amendments to the Jobseekers Act 1995 and the Welfare Reform Act 2007;
- in Schedules 2 (Universal Credit: amendments) and 5 (Universal Credit and other working-age benefits) to make consequential amendments that support the introduction of Universal Credit;
- in Schedules 3 (Abolition of Benefits: consequential amendments) and 14 (Repeals) to make supplementary and consequential amendments, and repeals as a result of the abolition of benefits.

4.6 The Scottish and Welsh Governments will amend Scottish or Welsh legislation or any legislation where they have competence to take account of the introduction of Universal Credit and the abolition of other benefits. Many other Government Departments are amending their own secondary legislation to support the introduction of Universal Credit and the impact on their legislation and "passport benefit" schemes. Some Departments do not need to amend legislation for the Universal Credit pathfinder and have arrangements in place to deal with people who receive Universal Credit during the pathfinder

Amendments to primary legislation

4.7 The consequential amendments to primary legislation in Part 2 of the instrument supplement the amendments in the Welfare Reform Act 2012. For the most part, these provisions accommodate Universal Credit by expanding the interaction between existing benefits and legislation providing for the administration of: court and justice procedures; housing; employment tribunal awards; data protection; tax and childcare. They also amend references to include the new Jobseeker's Allowance and Employment and Support Allowance.

Amendments to secondary legislation

4.8 The consequential, supplementary and incidental amendments to secondary legislation are to numerous extant DWP and other Government

Department statutory instruments. The Regulations insert into these statutory instruments references to the primary and secondary legislation underpinning Universal Credit and the new Jobseeker's Allowance and Employment and Support Allowance. Many Departments are amending their own legislation for the introduction of Universal Credit and the impact on their legislation and passported benefits. Some Departments do not need to amend legislation for the Universal Credit Pathfinder.

4.9 The Committee's attention is drawn to section 7 below which details the more substantive changes to primary and secondary legislation. Paragraphs 7.10 to 7.16 explain the miscellaneous amendments to the Jobseeker's Allowance Regulations 2013 and the Universal Credit Regulations 2013, including changes made in response to the report by the Joint Committee of Statutory Instruments on the latter.

Social Security Advisory Committee

4.10 This statutory instrument is made within 6 months of the commencement of the relevant powers in the Welfare Reform Act 2012. The Regulations do not need to be formally referred to the Social Security Advisory Committee. However, the Committee is aware of their existence and purpose.

5. Territorial Extent and Application

The legal extent of this instrument depends on the extent of the legislation it amends. In some cases the amendments extend to jurisdictions such as England and Wales, and Scotland, but only apply in relation to England. The legislation amended does not include legislation within devolved competence. The Department for Social Development in Northern Ireland will be producing its own legislation for Northern Ireland.

6. European Convention on Human Rights

No issues.

7. Policy background

7.1 Most of the regulations ensure that Department for Work and Pensions and other Government Department legislation that remains in force after the introduction of Universal Credit, is correctly referenced to Universal Credit and the new Jobseeker's Allowance and Employment and Support Allowance; and to benefits that will eventually be abolished under section 33 of the Welfare Reform Act 2012 where these continue to need to be referenced. These consequential amendments have no substantive effect and do not bring about a material change to the nature of the existing regime being amended.

7.2 There are, however, a number of areas where there are more substantive changes. These arise in part as a result of the wider scope of Universal Credit which is payable to people in work, as well as out of work.

In some circumstances this necessitates the identification of the group within the Universal Credit caseload that is analogous to people currently receiving out of work benefits. This has resulted in some more substantive supplementary and incidental amendments.

Amendments of primary legislation (Part 2)

Employment Act 1989

7.3 Section 8 of the Employment Act 1989 provides a power to exempt discrimination in favour of lone parents in connection with training and cross-references social security legislation for a definition of “lone parent”. Universal Credit legislation does not provide a definition of this term and, once migration to Universal Credit is complete and existing income-related benefits are abolished, all definitions of “lone parent” will be removed from social security legislation. Regulation 7 therefore amends the Act to replicate the existing definition without a social security cross reference.

Recoupment from Employment Tribunals Awards

7.4 Sections 16 and 17 of the Employment Tribunals Act 1996 and the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 enable any Income Support, Jobseeker's Allowance or income related Employment and Support Allowance paid to a person during any period for which they receive an Employment Tribunal Award to be recouped from that award before it is paid, thereby recovering any benefit which would not have been paid had the person's earnings not been reduced or stopped. Regulations 11 and 50 amend this legislation to similarly enable recoupment of any Universal Credit that was paid which would not have been paid had the person's earnings remained the same.

7.5 Universal Credit is both an in and out of work benefit and replaces Housing Benefit and Working and Child Tax Credits, which it is not currently practical to recoup. The amount of benefit recouped will therefore increase, but it remains the case that only benefit which the person would not have received had their earnings remained the same will be recouped.

Housing

7.6 The amendments to the Housing Act 2004 and the Rent Repayment Orders (Supplementary Provisions) (England) Regulations 2007 enable the Residential Property Tribunal to make a Rent Repayment Order where a House in multiple occupancy has been rented without a licence. The Rent Repayment Order provides for recovery from the unlicensed landlord of a sum equal to the amount of Housing Benefit paid. Regulations 18 and 58 amend these provisions to enable the Tribunal to make a Rent Repayment Order equivalent to the amount of the housing costs element included in the calculation of an award of Universal Credit or the amount of Universal Credit that was paid if that was lower.

Housing Grants

7.7 The Housing Grants, Construction and Regeneration Act 1996 provides for disabled people to receive a disabled facilities grant to make necessary adaptations to their homes. Once a grant application is approved the amount payable is subject to a means test. The Housing Renewal Grants Regulations 1996 provide for this. Regulations 13 and 57 amend the Act and regulations so that people in receipt of Universal Credit will be treated as having no income. People in receipt of Universal Credit will therefore not be expected to contribute towards the costs of any necessary adaptations.

Amendments of secondary legislation

Part 3, Chapter 1 Social Security Benefits

Housing Benefit

7.8 Where a Housing Benefit recipient has a non-dependant living with them that person is usually expected to contribute towards the rent and the claimant's benefit is reduced accordingly. If that person is under 25 and receiving an income-related benefit they are exempted from making this contribution. A similar provision applies with respect to the housing costs paid to owner occupiers as part of Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, and State Pension Credit.

7.9 The following Regulations make amendments in order to provide an exemption for young recipients of Universal Credit:

- Regulation 28 amends the Income Support (General) Regulations 1987;
- Regulation 30 amends the Jobseeker's Allowance Regulations 1996;
- Regulation 33 amends the State Pension Credit Regulations 2002;
- Regulations 35 and 36 amend the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006; and
- Regulation 37 amends the Employment and Support Allowance Regulations 2008.

These amendments provide that a deduction will not be made in respect of a non-dependant who is aged under 25, is entitled to Universal Credit and is not in receipt of any earned income.

Universal Credit and Jobseeker's Allowance

7.10 Regulation 38 amends the Universal Credit Regulations 2013. Four of these amendments are in response to comments made in the Joint Committee on Statutory Instruments report. Regulations 38(3) and (5) clarify the meaning of "course". Regulations 12 and 14 of the Universal Credit Regulations make provision that refers to a person undertaking a course of full time study or training which is not a course of advanced education. The Joint Committee on Statutory Instruments queried whether the provision in Regulation 13(1) was intended to apply for the purposes of those regulations.

7.11 Regulation 38(7) amends Regulation 111(4) to remove the reference to Regulation 111(3). Regulation 111(4) currently sets out the rounding rule for calculating daily sanction amounts. It refers to the different formulae for calculating the daily amount set out at Regulation 111(4) (1) and (2). At present it also refers to Regulation 111(3) which provides that a reduction rate will be nil if the claimant falls into the no work related requirements group on the grounds of limited capability for work and work related activity. As the rounding provision has no effect in this situation (where the reduction rate is nil) the amendment removes the reference.

7.12 Regulation 38(9) amends Regulation 117 to clarify how the start and end of a period of hardship payment is arrived at, to calculate the number of days for which a daily rate of hardship is payable. The period starts when all the conditions in Regulation 116(1) are met, and ends on the day prior to the claimant's "next full payment" being due.

7.13 The Universal Credit Regulations 2013 provide for a person in hospital to be treated as having Limited Capability for Work. Regulation 38(10) corrects a reference to "patient" in paragraph 2(1)(a) of Schedule 8 to those Regulations to align with the equivalent provision in the Employment and Support Allowance Regulations 2013. The policy and regulatory intent remains the same.

7.14 Regulation 38(2) amends Regulation 3 of the Universal Credit Regulations to make it clear that a person who is a member of a couple may make a claim for Universal Credit as a single person if the other member of the couple is subject to immigration control and excluded from benefits under Section 115 of the Immigration and Asylum Act 1999.

7.15 Regulation 38(6) amends Regulation 83 to ensure that it supports the policy intent that the exemption from the benefit cap for those in receipt of Disability Living Allowance or Personal Independence Payment continues to apply while the person is not receiving those benefits due to their hospitalisation or their residence in a care home.

7.16 Regulations 38(8) and 39 amend Regulation 114 of the Universal Credit Regulations and Regulation 29 of the Jobseeker's Allowance Regulations 2013. Regulations 114 and 29 prescribe Mandatory Work Activity as a work placement which would give rise to a higher level sanction if a claimant fails to participate. The amendments provide further detail on the Mandatory Work Activity Scheme.

Part 3, Chapter 2 Child Support

7.17 The general aim of these amendments is to amend child support Regulations to take account of the introduction of Universal Credit, and in particular to provide that where parents are awarded Universal Credit on the basis that they have no earned income, they are treated similarly to those who are awarded the current out of work benefits.

7.18 Regulations 40 and 41 amend the Child Support (Maintenance Assessment Procedure) Regulations 1992 and the Child Support (Maintenance Assessment and Special Cases) Regulations 1992 to incorporate Universal Credit within the calculation of a 1993 scheme maintenance liability. It makes amendments to exclude Universal Credit from a parent's income, subject to the provisions referred to below concerning payment of a minimum amount of maintenance. Where a parent is paid Universal Credit in prescribed circumstances they are treated as having no "assessable income". Where an absent parent has no "assessable income" then, subject to certain exceptions, they are liable to pay the minimum amount of maintenance (£7.20 a week, as from April 2013). The amendments provide that the circumstances in relation to Universal Credit are where the award of Universal Credit is made on the basis that the parent has no earned income. They also provide for the determination of the effective date of a superseding decision in these circumstances.

7.19 Regulation 42 amends the Child Support Departure Direction and Consequential Amendment Regulations 1996 in relation to the qualifying criteria for an application to depart from the standard 1993 maintenance formula (a "departure"). In any scenario where receipt of an out of work benefit by one of the parties to the case would cause an application to depart from the standard maintenance formula to fail, Regulation 42 brings in a similar provision in respect of an award of Universal Credit made on the basis that the claimant has no earned income.

7.20 Regulations 43 and 44 amend the Child Support Maintenance Calculation and Special Cases) Regulations 2000 and the Child Support Maintenance Calculation Regulations 2012 to incorporate Universal Credit within the calculation of a 2003 and 2012 scheme maintenance liability. The Regulations provide that where an award of Universal Credit is made on the basis that the claimant has no earned income, and that person is a non-resident parent in a 2003 or 2012 scheme child support case, they shall be liable to pay a flat rate of maintenance unless certain exemptions apply.

Part 3, Chapter 10 National Insurance Contributions and Credits

7.21 National Insurance credits help to preserve a person's contribution record. They are generally available to people who are unable to work and pay contributions, for example because they are unemployed, incapable of work or caring for others. Class 1 credits count towards entitlement to all contributory benefits. Class 3 credits count towards entitlement to the basic State Pension and bereavement benefits only. In certain cases an earnings factor credits may also be awarded which count towards the State Second Pension.

7.22 Regulation 70 amends the Social Security (Credits) Regulations 1975 to provide that a person entitled to Universal Credit will be credited with only a Class 3 contribution, in order to simplify the range of contributions credited under the current benefit system. These changes will extend crediting arrangements to claimants who, under the current benefit system, would not

have been credited, for example, Housing Benefit claimants or non-working partners of people in low-paid jobs. This is a step towards realising the Government's objective of a more comprehensive State Pension coverage.

7.23 Because Class 3 credits do not count towards contributory benefits entitlement, this policy strengthens the link between those contributory benefits and work, between paying into the system and receiving support. A Universal Credit claimant who has concurrent contributory benefit entitlement will be credited with a Class 1 contribution until their entitlement to the contributory benefit is exhausted. This may mean that some people will not be entitled to a contributory benefit whereas they would in the current system. However, the only people who would not be able to access benefits are those not entitled to Universal Credit on the basis of their savings, capital or income from other sources.

7.24 The Regulations also provide for the credit of an 'Earnings Factor Credit' to Universal Credit claimants whose award calculation includes the limited capability for work, limited capability for work and work-related activity, or carer element. This means that a person unable to work through sickness, disability or caring responsibilities may become entitled to Additional State Pension at state pension age based on those credits.

7.25 Unlike with certain labour market sanctions in Jobseeker's Allowance, National Insurance contributions will continue to be credited for the duration of a sanction where entitlement to Universal Credit continues to subsist. This is a simplification measure, to allow more effective administration of Universal Credit.

Other Government Department secondary legislation

7.26 The consequential amendments to other Government Department legislation, apart from those referred to above, include amendments to regulations governing schemes such as exemption from payment of court fees and the disabled facilities grant and assistance with water industry charges, to add Universal Credit to the benefits that currently provide entitlement.

7.27 The amendments also expand legislation providing for the interaction between existing benefits and legislation providing for the administration of: housing, council tax; student support and loans; the national minimum wage; tax; court fees, costs and fines; immigration and asylum; childcare; military benefits; agricultural tenancies; police benefits; adoption support services; guardianship and transport to encompass Universal Credit.

Consolidation

7.28 None.

8. Consultation outcome

8.1 A public consultation was undertaken on the draft Universal Credit Regulations by the Social Security Advisory Committee between 15 June 2012 and 27 July 2012. There has been no public consultation on these Regulations. This statutory instrument is made within 6 months of the commencement of the relevant powers in the Welfare Reform Act 2012 and is therefore exempt from formal referral to the Social Security Advisory Committee.

8.2 Representatives of the Local Authority Associations have confirmed that they are content not to be consulted formally on the minor consequential amendments to the Housing Benefit Regulations.

9. Guidance

The majority of the Regulations contain consequential amendments and no guidance is needed or required. Work is underway to draft guidance to provide effective support for decision makers in administering Universal Credit, including for claimants on new Jobseeker's Allowance and Employment and Support Allowance. This guidance will cover the substantive changes made by this instrument.

10. Impact

10.1 There is no significant impact on business and civil society organisations in terms of regulatory burdens. However, the Department is aware that claimants will seek advice from voluntary sector organisations and recognise the valuable support charities provide. That is why throughout the design and development of Universal Credit the Department has worked with stakeholder organisations, including charities, to ensure their expertise is utilised.

10.2 There are no significant costs to the public sector.

10.3 A separate Impact Assessment has not been prepared for these Regulations. However, an assessment has been made of the impact of the introduction of Universal Credit and was published on the Department for Work and Pensions website.¹ This also covers information concerning the Department's obligations regarding its Equality Duty.

11. Regulating small business

The legislation does not apply to small business.

¹ <http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-act-2012/impact-assessments-and-equality>.

12. Monitoring & review

No monitoring or review is needed or required in relation to this instrument.

13. Contact

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