

EXPLANATORY MEMORANDUM TO
THE UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS)
REGULATIONS 2014

2014 No. 1230

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**

The Universal Credit (Transitional Provisions) Regulations 2014 (“The 2014 Regulations”) make provision for the second phase of the introduction of Universal Credit, a new benefit established by the Welfare Reform Act 2012¹. They revoke the Universal Credit (Transitional Provisions) Regulations 2013/386² (‘the 2013 Regulations’), which related to the first phase of implementation, subject to certain savings. Many of the provisions of the 2014 Regulations are similar to provisions included in Part 3 of the 2013 Regulations, which deals with the effect of transition to Universal Credit from other benefits.

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 (UC), and the abolition of certain “existing benefits”: income-based Jobseeker’s Allowance (JSA), income-related Employment and Support Allowance (ESA), Income Support (IS), Housing Benefit (HB), Working Tax Credit and Child Tax Credit.

4.2 The 2013 Regulations came into force on 29th April 2013 and provided for the introduction of UC to limited categories of claimant. A series of Commencement Orders³ have brought into force the provisions that relate to UC, and repeals of the legislation relating to JSA and ESA in relation to UC claimants in specified postcodes.

¹ <http://www.dwp.gov.uk/docs/a14-101.pdf>

² <http://www.legislation.gov.uk/ukxi/2013/386/contents/made>

³ <http://www.dwp.gov.uk/docs/a14-3201.pdf>; <http://www.legislation.gov.uk/ukxi/2013/1511/made>; <http://www.legislation.gov.uk/ukxi/2013/2657/article/6/made>; <http://www.legislation.gov.uk/cy/ukxi/2013/2846/made>; and <http://www.legislation.gov.uk/ukxi/2014/209/contents/made>

4.3 In preparation for widening the availability of UC, as announced in Parliament on 5th December 2013,⁴ the introduction of the 2014 Regulations is part of the Department’s changing approach to how legislation relating to the rollout of UC is structured.

4.4 This new structure means the 2014 Regulations will not specify any entry criteria to UC. Instead, “gateway conditions” for UC claimants will in future be included in Commencement Orders. The 2014 Regulations therefore deal only with the effects of transition to UC.

4.5 Accordingly, many of the provisions of Part 3 of the 2013 Regulations are broadly replicated in the 2014 Regulations but these provisions incorporate some changes to ensure that they will remain effective when the UC entry criteria are expanded or removed. In particular, the changes will ensure that the existing provisions can be applied effectively to UC claims from claimants of an existing benefit or credit and to all joint claims to, and joint awards of, UC. Under the 2013 Regulations, existing benefit claimants and couples were excluded from claiming UC.

5. Territorial Extent and Application

This instrument applies to Great Britain. The Department for Social Development in Northern Ireland will produce its own legislation.

6. European Convention on Human Rights

As this instrument is subject to the negative resolution procedure, and does not amend primary legislation, no statement is required.

7. Policy background

- **What is being done and why**

7.1 The Regulations revoke and replace the 2013 Regulations, subject to certain savings concerning claimants who claimed UC before the date on which the new Regulations will come into force. The savings relate to the treatment of invalid claims and recovery of advance payments of UC made under the 2013 Regulations. The intention is to ensure that the validity of a claim is judged in accordance with the provisions which were in force at the time the claim was made, and that advance payments made under the 2013 Regulations remain recoverable.

7.2 The Regulations broadly replicate Part 3 of the 2013 Regulations but do include a number of new provisions and changes. As described above, some of these changes relate to plans for the future rollout of UC. Some provisions, for example, that relate to the availability of advance payments have been amended to take account of claims being made by couples, as well as by single claimants.

⁴<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131205/wmstext/131205m0001.htm>

7.3 The scope of other provisions has been extended so that they apply where claims are made by claimants who are entitled to an existing benefit. Examples include provisions relating to entitlement to the Limited Capability for Work (LCW), or Limited Capability for Work and Work-related Activity (LCWRA), elements in UC where the claimant was previously entitled to ESA or other incapacity benefits. In the 2013 Regulations, entitlement to existing benefits was only taken into account in the context of “new claimant partners”. That is, claimants who become entitled to a joint award of UC on forming a couple with an existing UC claimant. Other changes from the 2013 Regulations are explained below.

7.4 The Regulations now include provision that acts as a safeguard to allow the Secretary of State discretion to stop taking UC claims temporarily in certain geographic areas or for certain groups of claimants, if he considers this necessary for reasons to do with the effective administration of UC. This provision is intended to be exercised on a temporary basis to ensure that any issues can be resolved before claims from the affected group are readmitted. Where this provision is exercised, anyone prevented from claiming UC would be able to claim existing benefits or credits.

7.5 The Regulations have also been amended to allow for new exceptions to the general rule that a UC claimant may not also claim, or have entitlement to existing benefits. In particular, where the claimant has previously notified their intention to make a claim for certain existing benefits, or has made a defective claim, and entitlement to the existing benefit would pre-date the date of entitlement to UC, the claim may now be completed, so that the claimant is not disadvantaged by the move to UC.

7.6 There is also provision for overlap of awards of UC and certain existing benefits during the first assessment period for UC, where this is necessary to protect the interests of a former partner of the UC claimant. In each case, it is intended that similar provision relating to JSA and ESA will be made by Commencement Order.

7.7 Chapter 2 of the Regulations also has new provision which caters for cases where a claimant has made a backdated UC claim or has formed a couple with a UC claimant i.e. become a new claimant partner and has previously been entitled to another welfare benefit⁵ (other than UC) and to HB during the first UC assessment period. It allows for this existing benefit entitlement to be disregarded for the purpose of calculating whether the benefit cap should be applied to the UC award. This is because the cap may already have been applied to the claimant’s HB award prior to that date.

7.8 New provision so overpayments of existing benefits which may arise on transition to UC can be offset as unearned income against the claimant’s entitlement to UC and may not then be recovered under other legislation has also been included in the Regulations. This is because it will be recovered as

⁵ <http://www.legislation.gov.uk/ukxi/2013/376/regulation/79/made>

unearned income from the UC award rather than as an overpayment under other legislation.

7.9 Regulations have been updated, to allow the outcome of an appeal or revision in respect of a previous IS, HB or tax credit⁶ claim to be applied, where appropriate, to the UC award or UC conditionality regime, for all claimants rather than just new claimant partners. New provision to cover cases where a UC claimant appeals a decision that they are not entitled to UC and have had that original decision reversed following an appeal or revision, but in the meantime have claimed IS, HB or a tax credit, has also been included, so any entitlement to these existing benefits (other than HB in respect of supported exempt accommodation) is terminated when an award of UC arises. If this was not the case there would be an overlap in benefit entitlement for this period.

7.10 It is intended that similar provision relating to appeals will be made by Commencement Order for JSA and ESA⁷.

7.11 Chapter 3 of the Regulations now has new provision that modifies regulation 26 of The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013⁸ (the "2013 Claims and Payments Regulations") to ensure that claimants who were previously in receipt of an existing benefit are able to backdate a UC claim for up to a month, where they were not notified of expiry of entitlement to their existing benefit in advance⁹. The intention is to ensure that the same rule applies to claimants making the transition to UC from existing benefits as will apply in relation to UC and other benefits after the transitional period.

7.12 New provision allowing for cases where a person has been appointed to act on behalf of an existing benefit or credit claimant has also been included so they can continue to do so, under the 2013 Claims and Payments Regulations, when an existing benefit or credit claimant makes the transition to UC. The provision also enables a person appointed under the 2013 Claims and Payments Regulations to be able to act for the claimant if they cease to be entitled to UC and claim an existing benefit or credit. In both cases this is especially relevant where claimants have mental health problems or where they suffer from conditions that make '*communication*' with the Department impossible. The aim is to make the process of transition between existing benefits and UC easier for claimants who are in this position.

7.13 Provision that allows claimants who were receiving existing benefits or credits within one month of making a UC claim, to request a recoverable advance payment of UC during their first assessment period to ease their

⁶ *Old style* JSA and *old style* ESA are covered in Commencement Order No. 9 (<http://www.legislation.gov.uk/uksi/2013/983/contents/made>).

⁷ *Old style* awards of contributory JSA and ESA are those available to claimants where they do not qualify for an income-related payment of UC. In these cases if an income-related payment is needed the claimant would receive income-based JSA and income-related ESA.

⁸ <http://www.legislation.gov.uk/uksi/2013/380/regulation/57/made>

⁹ This replicates the existing effect of Regulation 26 as it applies to *new style* JSA and *new style* ESA.

transition from shorter payment cycles to a monthly payment cycle, has also been updated. As a result new claimant partners will no longer be able to request such an advance. Instead if the new couple require support they will have to apply for a UC (change of circumstances) Advance¹⁰. This change has been made to reduce complexity in the advance payment process.

7.14 Regulations in Chapter 3 also ensure the LCW or LCWRA elements of UC can be applied to a UC award, with retrospective effect in most cases, from the beginning of the assessment period where an ex-Incapacity Benefit (IB), Severe Disablement Allowance (SDA), ESA or IS claimant makes or joins a UC claim, based on:

- decisions resulting from a previous Work Capability Assessment (WCA) or one undertaken when the claimant is in receipt of UC; or
- as a result of a set of criteria which uses receipt of certain components or levels of other benefits¹¹ where claimants are receiving IB or SDA and are approaching pension age

7.15 Regulations 21, 26 and 27 are new provisions which allow claimants with limited capability for work who are entitled to National Insurance credits only, to be treated in line with existing provisions for claimants receiving ESA, IS on the grounds of incapacity, IB or SDA (as outlined above) who transition to UC. That is, they may be entitled to the LCW or LCWRA element in UC from the start of the first assessment period, on the basis of a previous work capability assessment, an assessment whilst the claimant is in receipt of UC, or (in the case of claimants who are approaching pension age) entitlement to certain other benefits.

7.16 New provision has also been added to the Regulations to ensure dual provision is not made where a young person is entitled to an existing benefit or credit in their own right. In this case such persons cannot be 'claimed' for by a parent or carer for the purposes of the Universal Credit Regulations 2013¹².

7.17 To ensure a smooth transition to UC the Regulations have also been enhanced to ensure that all claimants do not have re-qualify or start their qualification period from scratch to receive Support for Mortgage Interest (SMI) payments if they meet the UC eligibility criteria. Therefore:

- SMI will continue to be paid from the first UC assessment period; or
- where the claimant has not yet qualified for SMI, any time served towards the SMI qualifying period via existing benefits is taken into account for the SMI qualifying period in UC.

7.18 Where a UC award is terminated and a claimant was subject to a UC sanction, new provision ensures the outstanding period of the UC sanction

¹⁰ These payments are made under the Social Security (Payments on Account of Benefit) Regulations 2013 <http://www.dwp.gov.uk/docs/a1-6563.pdf>

¹¹ Disability Living Allowance, the Personal Independence Payment, Attendance Allowance, Constant Attendance Allowance or the Armed Forces Independence Payment

¹² <http://www.legislation.gov.uk/ukxi/2013/376/regulation/5>

ceases where a claimant becomes entitled to *old style* JSA, *old style* ESA or IS. This has been introduced to reduce administrative complexity.

7.19 Finally, provision for the transfer of '*loss of benefit*' penalties for fraudulent offences to a UC award has been amended in relation to the transfer of penalties from joint-claim JSA awards to an award of UC. In these cases the amount of the penalty applied to the UC award is reduced by 60%, if only one of the joint JSA claimants is subject to a penalty. This reflects the position in JSA where the member of the joint-claim couple who is not the benefit fraud offender can be paid JSA at the single person's rate

- **Consolidation**

7.20 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available [here](#)."

8. Consultation outcome

The Department undertook a consultation on these regulations with Local Authorities between 7th March and 17th April 2014. By the end of this consultation period the Department had received no responses.

9. Guidance

Comprehensive guidance is under development to effectively support advisers and decision makers. In line with standard practice, the Advice for Decision Making (which has replaced the Decision Makers Guide) has now been published on the Departmental website¹³ and will be updated ready for the coming into force of the Regulations. Knowledge Management guidance is also being developed to further support staff in the administration of UC.

10. Impact

10.1 There is no impact on business, civil society organisations or the public sector.

10.2 An Impact Assessment has not been separately prepared for these Regulations. However, a full assessment has been made of the impact of the introduction of UC and has been published¹⁴. This also covers information concerning the Department's obligations regarding its Equality Duty.

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279094/admm1.pdf;
[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246212/Chapter_M2 - Pathfinder Group - Effects of transition to UC.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246212/Chapter_M2_-_Pathfinder_Group_-_Effects_of_transition_to_UC.pdf)

¹⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220177/universal-credit-wr2011-ia.pdf

11. Regulating small business

These Regulations do not apply to small business.

12. Monitoring & review

The Department is firmly committed to evaluating and monitoring the impact and effects of UC. A high level evaluation strategy was published by the Department for Work and Pensions on 10th December 2012¹⁵.

13. Contact

Fiona Fellows at the Department for Work and Pensions can answer any queries regarding the instrument. Tel: 020 7245 3780 or email: fiona.fellows@dwp.gsi.gov.uk

¹⁵ <https://www.gov.uk/government/publications/universal-credit-evaluation-framework>