EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (DIGITAL SERVICE) AMENDMENT REGULATIONS 2014

2014 No. 2887

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

This instrument makes amendments to the Regulations that were made in 2013 in connection with the introduction of Universal Credit.

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

None

4. Legislative Context

4.1 The Welfare Reform Act 2012[1] provided 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.

4.2 The legislation for Universal Credit is currently in force only for certain categories of claimant in specified postcode areas.

4.3 This instrument makes changes to a number of instruments relating to Universal Credit:

- The Universal Credit Regulations 2013 (SI 2013/376)[2] ("The Universal Credit Regulations")
- The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (SI 2013/380)[3] ("the Claims and Payments Regulations")
- The Universal Credit (Transitional Provisions) Regulations 2014 (SI 2014/1230)[4] ("the Transitional Regulations").

4.4 By virtue of the saving provision in Regulation 5 the amendments made by these Regulations are not applicable to claims in the postcode areas where Universal Credit is already in force ("the Live Service"). They will, however, have effect in the areas where the Department intends to test the new enhanced on line service ("the Digital Service"). Accordingly this instrument, along with the transitional regulations and commencement

[1] Welfare Reform Act 2012: http://www.legislation.gov.uk/ukpga/2012/5/contents
[2] The Universal Credit Regulations 2013: http://www.legislation.gov.uk/uksi/2013/376/contents
[3] The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013: http://www.legislation.gov.uk/uksi/2013/380/contents/made
[4] The Universal Credit (Transitional Provisions) Regulations 2014: http://www.legislation.gov.uk/uksi/2014/1230/contents/made

orders, forms an integral part of the secondary legislation providing for the gradual roll out of Universal Credit.

5 Territorial Extent and Application

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

6 European Convention on Human Rights

As the 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 enhanced on- line Digital Service

Currently, Universal Credit may only be claimed by a person who meets specified criteria ("the gateway conditions") and who lives in one of the postcode districts in which Universal Credit Live Service currently operates. However the Department will soon begin to test an enhanced online Digital Service, which will make provision for the full range of claimants' circumstances.

The amendments being made by these Regulations are part of a process of refining and improving the legislation. When considering those refinements, the Department took account of the likely impact on Live Service. Where it was judged that the changes would risk the ability of the Live Service to continue to deliver successfully it was decided not to implement the changes in Live Service.

The amendments contained in these Regulations are those that will reflect Universal Credit in the enhanced Digital Service but will not be implemented in the Live Service.

Amendment Subjects

7.2 Childcare costs

Regulation 2(2) provides for changes to the reporting period rules in the Universal Credit Regulations 2013. Universal Credit is paid in relation to an assessment period which runs from the first date of entitlement for one month, and monthly intervals thereafter. Currently a person has until the end of the next assessment period to report childcare costs paid out in the current assessment period. For consistency and ease of understanding for claimants and Jobcentre staff, substituted paragraph (2) of Universal Credit regulation 33 introduces similar late reporting rules for relevant childcare charges as are in place for late notification of a change of circumstances under regulation 36 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013[5]. The

[5] The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013: http://www.legislation.gov.uk/uksi/2013/381/contents/made

new reporting rule requires a claimant who wants to claim childcare costs for any assessment period to have to report their expenditure before the end of the assessment period.

Regulation 2(4) inserts regulation 34A which provides for changes for apportionment of childcare costs over more than one assessment period. Representations from parents and stakeholders during consultation raised an issue that most childcare providers charge fees in advance. The amendment enables payments of childcare costs made up to three months in advance to be taken into account and apportioned over the relevant assessment periods with costs reimbursed up to the cap of each assessment period. The vast majority of childcare users reported charges of one month in advance so the three month allowance is generous and should cover almost all arrangements. The reporting rule provided by Regulation 2(2) allows some flexibility for claimants whose childcare costs award is apportioned over more than one assessment period. Claimants are able to report their childcare costs in any assessment period that those costs are attributable to. However they will only receive the proportion of their childcare costs award attributable to the assessment period in which they report the costs, and subsequent relevant assessment periods. If a claimant reports their childcare costs in the assessment period in which they are paid, even if those costs cover childcare received in a previous assessment period, the claimant will receive the full childcare costs award for that payment, apportioned according to regulation 34A.

7.3 **Assessment periods**

Regulation 3 makes a number of changes to the process for making a new award where a claimant has previously been entitled to Universal Credit. They provide for cases where a new award results from a couple splitting or forming and cases where a new award is made with 6 months of a previous award ending ("the re-award"). The amendments ensure that continuity is preserved as far as possible by the adoption of an assessment period from a previous award.

Couples: Where couples separate or form and <u>all</u> parties are already in receipt of Universal Credit, their new awards will be processed as though they are a change in circumstance – that is without the need for a new claim. For example, where a new couple forms immediately after an existing couple splits or where a member of the couple dies and the surviving partner receives a new award of Universal Credit.

Where joint claimants separate they will both be able to retain their existing assessment period. This simplifies business processes and improves the customer experience. Under existing rules the claimant who first notifies DWP of the separation has to make a new claim to Universal Credit; whereas the other claimant simply confirms their circumstances and retains the original assessment period. The amendment means both claimants will continue to receive their benefit on the same date each month.

Where two existing Universal Credit claimants form a couple the assessment periods for their new award will be whichever of their previous awards ended earlier. This will provide a more straightforward customer experience as it removes the need for claimants to make a potentially complex decision regarding the selection of their new assessment period under the current Regulations. The amended provision selects the earlier

assessment period to reduce the likelihood of financial hardship by minimising the time before their next payment day.

Where an existing claimant forms a couple with a person not entitled to Universal Credit the couple are treated as making a joint claim to Universal Credit and the previous assessment period will apply to their new award. This is in line with existing policy. The change made by these Regulations ensures that the same will also apply where an existing claimant was part of a joint award before forming a new couple with a person not entitled to Universal Credit.

Re-claim within 6 months of previous award

Regulation 3 makes a substantial change to the re-award process where a person becomes entitled to Universal Credit within six months of their previous award ending. Currently this is covered by Regulation 6 of the Claims and Payment Regulations, which provides for a new award without a claim where a person ceases to be entitled on account of their earnings but regains entitlement within 6 months. Regulation 6 is revoked by these Regulations, which means the claimant will be required to make a claim. However, this will be a simplified claim process. If that person still meets the basic entitlement conditions, they will only need to contact the Department and provide updated information.

The new award will still adopt the previous assessment period. However, a new Regulation 22A is inserted into the Universal Credit Regulations 2013. This provides that those claimants who re-claim Universal Credit because their job has ended will only receive a payment of Universal Credit for their whole assessment period if a claim is made within 7 days of their job ending. This has been introduced to encourage claimants to re-claim Universal Credit as quickly as possible. Evidence has shown that where claimants enter a conditionality regime within two weeks of losing a job it significantly decreases their time between periods of employment.

Those who re-claim after 7 days will have to show 'good reason' for not doing so sooner in order to receive a payment for the whole assessment period. If they cannot, they will only receive a payment of Universal Credit from the day they re-claimed Universal Credit to the end of their assessment period. New regulation 22A(2) sets out how this will be calculated on a pro rata basis.

This principle ensures that although claimants will resume their previous assessment period and have a shorter wait until their payment date, they will not be able to receive Universal Credit for a period where they are neither working nor satisfying Universal Credit basic conditions.

7.4 **Calculation of unearned income**

Regulation 4 amends the treatment of unearned income in Regulation 73 of the Universal Credit Regulations so that for assessment periods in which an unearned income starts and/or finishes, the calculations will take into account an amount based on the actual number of days in the assessment period for which the income is paid. This changes the existing rule which provides that for all assessment periods a person's unearned income should be calculated as a monthly amount. The current position can mean that the

amount of unearned income taken into consideration in the assessment period, when it first comes into payment or when it ends, can bear little relation to the income a claimant actually receives in respect of that assessment period. This can prove confusing and in some circumstances lead to hardship. For assessment periods where an unearned income is paid throughout the existing rules will apply whereby a monthly equivalent amount is calculated and taken into account. The change will mainly affect regular income streams such as benefits and pensions. There will be no change made to the treatment of student income.

7.5 Saving

Regulation 5 is a saving provision that has the effect of dis-applying the amendments made by these Regulations to an award of Universal Credit that falls within the Live Service. It does this by excluding any award of Universal Credit made by virtue of an order bringing the Universal Credit provisions into force in a Live Service area (apart from certain awards that are made where a couple split or form). The amendments made by these Regulations will apply to any award where a claim is made in a Digital Service area or to a new award that is made without any break in entitlement as a result of a couple separating or forming if at least one member of the couple was already entitled to an award in the Digital Service.

7.6 Consolidation

Informal consolidation of these instruments will be provided in due course with other informal consolidated text of instruments which are 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

These amending Regulations were subject to statutory consideration by the Social Security Advisory Committee. The Committee considered the amendments at its meeting on 23 July 2014[6] and decided it did not wish to have the Regulations formally referred.

9. Guidance

Guidance is being developed for advisers and decision makers who administer Universal Credit. The Department will issue a Memo for the Advice for Decision Making guide to ensure that staff are aware of the changes.

10. Impact

There is no impact on business, civil society organisations or the public sector. Impact assessments have not been separately prepared for these Regulations. However, an assessment has been made of the impact of the introduction of Universal Credit and has been published[7]. This also covers information concerning the Department's obligations regarding its Equality Duty.

[6] http://ssac.independent.gov.uk/meetings/
[7] https://www.gov.uk/government/publications/universal-credit-impact-assessment

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 Universal Credit. A high level evaluation strategy was published by the Department for Work and Pensions on 10 December 2012[8].

13. Contact

Adrian Reed at the Department for Work and Pensions can answer any queries regarding the instrument. Tel: 020 7449 5095 or email: adrian.reed@dwp.gsi.gov.uk

[8] https://www.gov.uk/government/publications/universal-credit-evaluation-framework