

EXPLANATORY MEMORANDUM (SUPPLEMENTARY) TO
THE UNIVERSAL CREDIT (MISCELLANEOUS AMENDMENTS, SAVING
AND TRANSITIONAL PROVISION) REGULATIONS 2018

2018 No. 65

1. Introduction

- 1.1 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 instrument makes amendments to various pieces of legislation governing the operation of Universal Credit and its interaction with other benefits. The reasons for the amendments include the need to make changes to support delivery of Universal Credit, to introduce changes that were announced as part of the Autumn Budget 2017¹ and the Secretary of State for Work and Pension's oral statement the following day² and to ensure the legislation reflects the intended policy.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and is not a financial instrument that varies between provisions.

4. Legislative Context

- 4.1 The Welfare Reform Act 2012³ 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 who meet specified criteria ("the gateway conditions") in some specified postcode areas ("Live Service") and for the full range of claimants in other specified postcode areas ("Full Service"). This instrument makes changes to regulations which apply to all Universal Credit claimants, whether in Live Service or Full Service.
- 4.3 As set out in the Explanatory Note, this instrument makes changes to a number of existing statutory instruments relating to Universal Credit and related benefits, as follows:

¹ <https://hansard.parliament.uk/commons/2017-11-22/debates/B69FC1F9-C316-43AA-8FFF-B7D76587EA9D/FinancialStatement>

² <http://hansard.parliament.uk/Commons/2017-11-23/debates/36EF5FEE-7FB1-4841-A242-7625ED73FCA0/UniversalCredit#contribution-9D99F17A-3B9D-4DEE-96C5-07136C7CC394>

³ <http://www.legislation.gov.uk/ukpga/2012/5/contents/enacted>

- **The Discretionary Financial Assistance Regulations 2001 (S.I. 2001/1167)⁴**
- **The Universal Credit Regulations 2013 (S.I. 2013/376)⁵ (“the Universal Credit Regulations”)**
- **The Jobseeker’s Allowance Regulations 2013 (S.I. 2013/378)⁶**
- **The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (S.I. 2013/381)⁷ (“the Decisions and Appeals Regulations”)**
- **The Universal Credit (Transitional Provisions) Regulations 2014 (S.I. 2014/1230)⁸ (“the Transitional Regulations”)**
- **The Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015 (S.I. 2015/345)⁹**

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain. Separate legislation for Northern Ireland will be produced and led by the Department for Communities in Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement regarding human rights is required.

7. Policy background

What is being done and why

- 7.1 This instrument makes a number of changes to existing Universal Credit and related regulations, some of which were announced in the Autumn Budget 2017 on 22nd November 2017 and the Secretary of State for Work and Pension’s oral statement the following day. Other measures are changes, some of which are very technical by nature, which have been highlighted as part of the learning process of Universal Credit and will ensure the legislation reflects the intended policy. The policies contained in this instrument are:

Removal of Waiting Days

- 7.2 This instrument amends provisions in the Universal Credit Regulations and the Transitional Regulations to remove the requirement to wait seven days before entitlement to Universal Credit arises. This measure was announced in the Autumn Budget 2017 in order to reduce the time taken before claimants receive their first Universal Credit payment.

⁴ <http://www.legislation.gov.uk/ukSI/2001/1167/contents>

⁵ <http://www.legislation.gov.uk/ukSI/2013/376/contents>

⁶ <http://www.legislation.gov.uk/ukSI/2013/378>

⁷ <http://www.legislation.gov.uk/ukSI/2013/381/contents>

⁸ <http://www.legislation.gov.uk/ukSI/2014/1230/contents>

⁹ http://www.legislation.gov.uk/ukSI/2015/345/pdfs/ukSI_20150345_300617_en.pdf

Transition to Universal Credit Housing Payment

- 7.3 This instrument amends various provisions in the Transitional Regulations to allow payment of Housing Benefit to continue for two weeks after a claim for Universal Credit has been made, without it affecting a claimant's Universal Credit entitlement. This will allow claimants already receiving support towards their housing costs to receive an additional payment of two weeks Housing Benefit as they transition to Universal Credit. Announced as a Budget measure, this will help support those most vulnerable to avoid accruing rent arrears whilst awaiting their first Universal Credit payment.

Assessment Period Adjustment

- 7.4 When a claimant makes a claim for Universal Credit, their monthly assessment period cycle is set from their first date of entitlement for the entire duration of their award. For some people, however, the first date of entitlement may change, for example because the decision on their award has been revised. Currently this means recalculating the award for the whole period, and this can cause difficulty, disruption or some other disadvantage to the claimant or in the administration of their claim. To resolve this, the instrument amends regulation 21 of the Universal Credit Regulations to make provision for the length of the first assessment period to be adjusted as appropriate (to be more or less than one month) so that subsequent assessment periods remain as previously fixed.
- 7.5 This change is an administrative easement that allows the Department to adjust a claimant's entitlement to Universal Credit at the start of a claim where it is subsequently decided that entitlement should start from an earlier date. This allows for payment without resetting all subsequent assessment periods and recalculating awards paid in respect of subsequent assessment periods, which may be administratively difficult and cause confusion for claimants.
- 7.6 To give an example, if a claimant made a claim to Universal Credit on 9th October 2018, their assessment periods will run from the 9th to the 8th of each month. If it is subsequently decided that the claim should have been taken to start from an earlier date, for example 2nd October 2018, instead of amending each assessment period to run from 2nd to 1st of each month (and recalculating all of the awards already paid to the claimant), this amendment allows the Department to treat the period from the 2nd to the 8th October as the first assessment period and to pay the claimant their entitlement for this period accordingly. This will leave all subsequent assessment periods to run from 9th to the 8th of each subsequent month as previously set, therefore not disrupting any payments to the claimant.

Surplus-earnings

- 7.7 This instrument makes a number of changes to the Universal Credit (Surpluses and Self-employed Losses)(Digital Service) Amendment Regulations 2015 which make provision to smooth the peaks and troughs of losses and earnings so that a fairer assessment as to Universal Credit entitlement is made over a period of time, longer than one month. This has, however, proved difficult to operate and simplification is required.
- 7.8 The current provision provides that the carrying forward of surplus earnings will apply to both employed and self-employed claimants. Where there is an increase in earnings that means Universal Credit is lost, the amount of that increase over the

“relevant threshold” (which includes a de minimis of £300, but see below) will be taken into account and applied to future Universal Credit awards, for a maximum of 6 assessment periods. This ensures that those with fluctuating earning patterns are not unduly penalised or unfairly rewarded by receiving less or more Universal Credit than they would if they earned the same amount but were paid monthly. It also reduces the risk of claimants manipulating payment patterns to receive bigger payments of Universal Credit.

- 7.9 This instrument will also change the way that surplus earnings are applied when people reclaim Universal Credit within 6 months. Instead of taking account of earnings over the whole period of Universal Credit, only the earnings in the month where people make a claim will be counted. Where couples separate there will be more scope for flexibility in the way the surplus is apportioned. These changes will also increase the de minimis from £300 to £2500 for one year (which may be extended by the Secretary of State). This will assist the smooth implementation by the reducing the numbers affected in the early stages.
- 7.10 Currently, self- employed claimants may carry forward a loss from one assessment period into the next, for up to 11 assessment periods. This instrument will allow more losses for self-employed claimants to be taken into account by removing the limit of 11 assessment periods. Losses from a previous award can still be taken into account where the break is no longer than 6 months (but not the losses from the period off Universal Credit).

National Insurance contributions when calculating self-employed earnings

- 7.11 This instrument amends regulation 57(2) of the Universal Credit Regulations which deals with the deduction of income and National Insurance (NI) contributions in the calculation of self-employed earnings. In anticipation of the abolition of class 2 NI contributions and reform of Class 4 NI contribution, a general reference to NI contributions is substituted to cover both the current and the future positions, so that all relevant NI contributions paid in an assessment period can be deducted.

Students claiming Universal Credit

- 7.12 This instrument amends regulation 89 of the Universal Credit Regulations in relation to a claimant who is receiving education and who is entitled to Universal Credit because they are a member of a couple. Such claimants will not be subject to work-related requirements if they have student income taken into account in the calculation of their Universal Credit award. The change will provide consistency with the way in which conditionality is applied to other students who are in receipt of student income on Universal Credit. Without this amendment some claimants who are part of a couple may be subject to work related requirements, which would conflict with their academic commitments.

Work Search and Work availability requirements

- 7.13 At present, a claimant who is unwell for up to two periods of fourteen days in a rolling 12 month period is not required to meet work search and work availability requirements while they are unwell.
- 7.14 This instrument amends regulation 99 of the Universal Credit Regulations (and makes equivalent amendments to regulation 16 of the Jobseeker’s Allowance Regulations 2013) to prevent work search and work availability requirements being automatically

switched off for illness in certain circumstances. The amendments apply to claimants who have undergone a work capability assessment and been found not to have limited capability for work, and to claimants who have failed to attend a medical examination or comply with a request for information and are treated as not having limited capability for work. In other words, claimants who are, or are treated as being, fit for work. Where such claimants produce evidence that they are unfit for work and the condition mentioned in the evidence is the same, or substantially the same, as the condition for which they were assessed in the work capability assessment, work search and work availability requirements will only be switched off if they have been referred for another assessment as to their capability for work.

- 7.15 If such a claimant has not been referred for another assessment, regulations will continue to allow for work search and work availability requirements to be switched off if it would be unreasonable for a claimant to comply with such requirements.

Housing costs: ex-service personnel

- 7.16 Currently claimants aged 18-21 years are not generally entitled to the housing element of Universal Credit. This instrument amends paragraph 4B(1)(b) of Schedule 4 to the Universal Credit Regulations to add claimants who receive the Armed Forces Independence Payment (which is included in the definition of Attendance Allowance in regulation 2 of the Universal Credit Regulations) to the list of exemptions for vulnerable groups, so that such claimants can be awarded the housing element.

Providing evidence to verify advantageous changes in circumstances

- 7.17 This instrument amends regulation 33 of the Decisions and Appeals Regulations to reduce the number of days within which a claimant is required to supply information and evidence in relation to a change of circumstances that would result in an increase in benefit, from one month to 14 days.
- 7.18 This is an opportunity to formalise the procedure, to align the rules with requirements for reporting changes that would result in a decrease in benefit (which already stand at 14 days) and to provide a service that is more responsive to claimants' needs. This change will mean that a claimant is more likely to be able to benefit from an increase in benefit at the time it is required rather than a month later, and reduces the need to revise decisions and pay arrears of benefit.
- 7.19 Where the claimant cannot access information or evidence or would have problems supplying it to the Department, we still have discretion to allow a longer period for supplying the information and claimants will not be penalised. However with a digital service, 14 days is considered sufficient time in order to meet this reduced deadline.

The date from which legislative changes take effect for existing awards of Universal Credit

- 7.20 This instrument amends Schedule 1 to the Decisions and Appeals Regulations to create a new default date for new legislative provisions to come into effect for Universal Credit. The amendment provides that the default date on which any future new legislation will take effect will be the first day of the assessment period on, or immediately after, which, the new legislation comes into force. For example, if a new SI comes into force on 4th April it will affect a claimant from the start of their first

whole assessment period on or after 4th April. There will be no need to pay one month's benefit partly under old rules and partly under new rules.

- 7.21 The change will establish a clear rule for regulatory change and minimise the complexity associated with planning and implementing legislative change.

Tax Credits

- 7.22 This instrument amends regulation 11 of the Transitional Regulations to ensure that where a tax credit claimant makes a declaration under section 17 of the Tax Credits Act 2002 (c. 21) (either by the date specified in a final notice from HMRC, within 30 days after their tax credits payments have stopped or by 31 January in the following tax year) and has good reason for not making the declaration earlier, the claimant will be treated as entitled to a tax credit with effect from the start of the tax year.

Unearned Income

- 7.23 This instrument amends regulation 66 of the Universal Credit Regulations to allow for foreign state pension income and pension protection fund payments to be taken into account as unearned income in the Universal Credit assessment. These payments are similar to State Retirement Pension ("SRP") and personal and occupational pensions. It also amends regulation 66(1)(a) of the Universal Credit Regulations to take SRP into account in the Universal Credit assessment net of any deductions for overlapping benefits in the same way as other unearned state benefits are taken into account net of overlapping benefit deductions.

Temporary Accommodation

- 7.24 Local Authorities have a duty to house certain homeless people in their area. It is common practice to house people in temporary accommodation while the Local Authorities establish whether a duty is owed or, where it is, while a permanent housing solution is sought. Historically, Local Authorities have used Housing Benefit (which is assessed and paid daily) to recoup their costs where they can. However, Universal Credit is assessed and paid monthly based on the circumstances at the end of the assessment period and payments usually go direct to the claimant. This has led to Local Authorities experiencing a significant funding shortage. For example, a move into and then out of temporary accommodation in the middle of an assessment period is not recognised in a claimant's Universal Credit entitlement.
- 7.25 This instrument provides that Universal Credit claimants cannot get the housing cost element whilst living in temporary accommodation and will instead be able to claim Housing Benefit for their temporary accommodation rent liability. By allowing Housing Benefit to be paid, this change reinstates the previous process which ensures that Local Authorities recover the money as before. Claimants will retain an underlying entitlement to the housing cost element during the transition from Universal Credit to Housing Benefit to ensure they remain eligible to claim Discretionary Housing Payments should they require additional assistance.

This change will result in those who move in and out of temporary accommodation within an assessment period receiving more help towards their housing costs as, under current arrangements, these outgoings would not be recognised. Most other claimants in temporary accommodation are likely to receive a higher level of benefit as Housing Benefit is not restricted in temporary accommodation cases whereas in Universal Credit the Local Housing Authority cap applies. However, this increase in

entitlement is notional as Local Authorities pick up the short-fall between the Local Housing Authority level and the actual cost of the accommodation for those on Universal Credit.

- 7.26 Except in those cases where the claimant moves on the last day of their assessment period, someone with a housing liability in Universal Credit who moves to temporary accommodation will lose up to one month's housing element at the point of transition. It is for this reason that the transitional provisions have been amended to allow for Discretionary Housing Payments in such cases.
- 7.27 To give an example: George receives the housing element in Universal Credit and his assessment period runs from the 1st to the 31st of the month. His tenancy ends on the 15th of the month and his Local Authority place him in temporary accommodation. Currently, George would receive one month's rent at the appropriate local housing allowance rate for that assessment period.
- 7.28 Under the new arrangements, Universal Credit housing costs would be switched off for that month as George has entered temporary accommodation. Housing Benefit would be payable from the 15th onwards so the claimant receives no support with housing costs for the Private Tenancy between 1st to 15th of the month. By allowing an underlying entitlement to Universal Credit, George is able to seek a Discretionary Housing Payment, should one be required, for support with this period.
- 7.29 However, George moves out of temporary accommodation and into mainstream accommodation on the 15th day of the following month. He would receive Housing Benefit for the first 15 days and then, at the end of that month, would receive a whole month's rent even though he has lived at his new address for only two weeks. The Housing Benefit received in that period would not be taken into account in the Universal Credit assessment.

Work Allowances

- 7.30 This instrument amends regulation 22 of the Universal Credit Regulations in order to update the work allowances. Work allowances are the amount of money that people can earn before their benefit is affected. The work allowances are being updated by the CPI rate of 3% rounded to the nearest pound and this will take effect from Monday 9th April 2018. This change will reinforce the message that it pays to work by allowing claimants to keep more of their earnings before Universal Credit starts to taper their earnings. The higher work allowance will be set at £409 and the lower work allowance will be set at £198.

Consolidation

- 7.31 Informal consolidated text of instruments is available to the public free of charge via the 'National Archives' website legislation.gov.uk.

8. Consultation outcome

- 8.1 This instrument was subject to statutory consideration by the Social Security Advisory Committee. The Committee considered the amendments at their meetings which took place on 8th November and 13th December 2017. They agreed that they did not wish to have the instrument formally referred to them, except for the provisions that will provide for Universal Credit transitional housing payments to "run on" for two weeks at the point a claimant migrates on to Universal Credit and the changes concerning surplus earnings. The Department is publishing and laying a

response in respect of these measures to the Committee, along with the Committee's report and the supporting papers in an unnumbered Act Paper. The paper is available alongside this instrument.

- 8.2 The Local Authority Welfare Steering Group and Practitioners Operational Group were consulted on the policies concerning Temporary Accommodation and the Universal Credit Transitional Housing Payment. As a result of this consultation an amendment was made to this instrument and a clarification letter was sent to them.

9. Guidance

- 9.1 The Department will issue an Advice to Decision Makers memo to be published on the DWP Intranet to ensure that staff are aware of the changes introduced by this instrument. The memo will also be published on the Gov.uk website for the public in time for the coming into force of the instrument on 31st January 2018. Amendments are not required to the Decision Maker's Guidance as this instrument does not affect any benefits covered in the Decision Maker's Guidance.
- 9.2 Guidance will also be available for the housing policies in this instrument for Local Authorities and DWP staff in time for the coming into force of the instrument.

10. Impact

- 10.1 A regulatory impact assessment has not been produced for this instrument as it has no impact on business; and there will only be minor impact on some charities and voluntary bodies as they update their advice or guidance. However, an assessment has been made of the impact of the introduction of Universal Credit and has been published¹⁰.
- 10.2 There is a potentially positive impact on the public sector insofar as provisions on Housing Benefit will make more funds available to local authorities providing temporary accommodation, who will now be able to recover a greater proportion of the costs, although this has not been fully quantified. We have also worked with Local Authority Associations and IT suppliers to assess the cost of requirements to implement the changes. There may be some extra administration for local authorities arising from dealing with these changes. To address this we will make New Burden payments available to local authorities.
- 10.3 For the principal elements of this instrument, we estimate that around 750,000 claimants will benefit over five years from the removal of waiting days provision. Furthermore, an estimated 2.3m claimants will have considerable reduction in risk of rent arrears and other debt, with an average household gain of £233. This is part of a package costing Government £1.5billion. For the more minor and technical elements of the instrument there has been no impact assessment, but we expect the simplification and clarification of procedures will have a positive impact on claimants.

11. Regulating small business

- 11.1 The instrument does not apply to activities that are undertaken by small businesses.

¹⁰ <https://www.gov.uk/government/publications/universal-credit-impact-assessment>

12. Monitoring & review

- 12.1 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 10th December¹¹.

13. Contact

- 13.1 Lynne Isaacson at the Department for Work and Pensions can answer any queries regarding the instrument. Email: Lynne.Isaacson@dwp.gsi.gov.uk.

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220177/universal-credit-wr2011-ia.pdf