EXPLANATORY MEMORANDUM TO

THE JOBSEEKER'S ALLOWANCE AND UNIVERSAL CREDIT (HIGHER-LEVEL SANCTIONS) (AMENDMENT) REGULATIONS 2019

2019 No. 1357

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 reduces the maximum duration of a higher-level sanction in Universal Credit (UC) and Jobseeker's Allowance (JSA), in relation to a claimant aged over 18, from 1095 days or 156 weeks for third and subsequent failures (within 365 days but not 14 days of a previous failure) to 182 days or 26 weeks. It also makes transitional provisions in both UC and JSA in relation to people subject to a 1095 days or 156 weeks higher-level sanction on the date of change.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Social security legislation enables the Secretary of State for Work and Pensions to require claimants receiving JSA or UC to comply with work-related activity. Work-related activity means activity which makes it more likely that a person will obtain, or remain in work or do more or better paid work.

6.2 Sanctions, or reductions in the amount of benefit paid to a claimant, are imposed if a claimant fails to comply with work-related activity without good reason. The length of a sanction is provided in regulations and increases depending on the number of

previous occasions that a claimant has failed to comply with work-related activity and the period between such failures.

6.3 Higher-level sanctions are imposed for the most serious failures such as not taking up an offer of paid work, or losing or ceasing paid work voluntarily and for no good reason, or through misconduct.

6.4 The duration of higher-level sanctions in the Universal Credit Regulations 2013 and the Jobseeker's Allowance Regulations 2013 is currently 91 days for a first failure, 182 days for a second failure (within 365 days but not 14 days of a previous failure) and 1095 days for third and subsequent failures (within 365 days but not 14 days of a previous failure).

6.5 The duration of higher-level sanctions in the Jobseeker's Allowance Regulations 1996 is currently 13 weeks for a first failure, 26 weeks for a second failure (within 365 days but not 14 days of a previous failure) and 156 weeks for third and subsequent failures (within 365 days but not 14 days of a previous failure).

6.6 This instrument amends the Jobseeker's Allowance Regulations 1996, the Universal Credit Regulations 2013 and the Jobseeker's Allowance Regulations 2013 to amend the duration for third and subsequent failures so that the maximum length of a higher-level sanction will be 182 days or 26 weeks, as the case may be.

6.7 The instrument also contains transitional provisions to enable higher-level sanctions to be terminated once a claimant's award has been reduced for at least 182 days or 26 weeks from the date that the reduction took effect. This means that a person with a three-year sanction will have that sanction terminated after 182 days or 26 weeks. If the person's award has already been reduced for longer than 182 days or 26 weeks, the sanction will be terminated immediately.

7. Policy background

What is being done and why?

7.1 As mentioned above, a sanction is a reduction in benefit for a period of time as a result of a claimant failing to comply with work-related activity without good reason.

7.2 There are different levels of sanctions, depending on the severity of the failure. Higher-level sanctions are applied for the most severe failures and are only applicable in UC and JSA.

7.3 The policy intention is for claimants who persistently fail to meet their responsibilities to incur longer penalties. Therefore, claimants receive longer sanctions for second and third failures of the same type. This is called 'escalation' and only occurs if the next failure occurs within 12 months (but not within 14 days) of the last. Otherwise, the claimant will still receive a second sanction but it will be the same duration as the first.

7.4 The duration of higher-level sanctions is set out above and, broadly, the maximum duration is 3 years. This SI would reduce the maximum duration of a higher-level sanction from three years to six months. If sanctioned for three years, there is a risk that claimants may decide to disengage entirely from the employment support on offer. This increases the likelihood of financial hardship for these claimants, for the duration of the sanction and afterwards. In light of this, the potential incentive

provided by the three-year sanction has been weighed against the significant negative consequences for claimants.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Informal consolidated text of instruments is available to the public free of charge via the National Archive website: www.legislation.gov.uk

10. Consultation outcome

10.1 This instrument makes a minor change to existing policy and so no public consultation was undertaken as part of the development of this policy.

11. Guidance

11.1 All public guidance that specifies sanction durations will be updated when this instrument comes into force. The Department for Work and Pensions will also be issuing internal guidance and memos to work coaches and decision makers. This is in development and will be ready ahead of 27 November when this instrument is due to come into force.

11.2 No further public communication is planned, either to claimants or to external stakeholders. Work coaches will be expected to make claimants aware of the change if it is relevant to them (i.e. if they have previously received a higher-level sanction). This instrument makes a minor change to existing policy and does not alter processes or expectation of claimants, and it therefore does not need to be communicated to all claimants.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. There may be a nominal impact on some charities in the need to update guidance to reflect the new duration.

12.2 There is no, or no significant, impact on the public sector. There is a small impact on the Department for Work and Pensions, in admin costs for implementation as well as the cost of the actual policy change in benefits paid to individuals. The estimated Annually Managed Expenditure (AME) cost of reducing higher-level sanctions to six months is around £340,000 over five years from November 2019. The estimated AME cost of claimants who are subject to existing high level sanctions having their sanction reduced or cancelled would be a one-off cost of around £60,000.

12.3 An Impact Assessment has not been prepared for this instrument because the change is expected to impact only a small number of claimants. Therefore, we expect the wider impact on business, charities, voluntary bodies or the public sector to be negligible.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it will be reviewed as part of the ongoing monitoring of sanctions. Regular statistics releases are available on GOV.UK and StatXplore.

14.2 The regulation does not include a statutory review clause because it is not expected to have an impact on small businesses.

15. Contact

15.1 Chris Barnes at the Department for Work and Pensions (Telephone: 0114 204 4897 or email: chris.barnes13@dwp.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Victoria Hogan, Deputy Director for Labour Market Policy at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mims Davies, the Minister for Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.