

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (No.2)
REGULATIONS 2013

2013 No. 1508

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 The purpose of this instrument is to make amendments to a number of Regulations that support the introduction of Universal Credit and the new Jobseeker's Allowance and Employment and Support Allowance.

2.2 The Universal Credit Regulations 2013 (SI 2013/376)¹ make provision for determining entitlement to, and calculation of, an award of Universal Credit. The Jobseeker's Allowance Regulations 2013 (SI 2013/378)² and the Employment and Support Allowance Regulations 2013 (SI 2013/379)³ make provision for these benefits to be only payable based on a person's National Insurance contribution record and no longer through the alternative route of means testing.

2.3 The amendments to the Universal Credit Regulations 2013 include a change to what constitutes "relevant childcare" so that all statutory references are up to date with regard to registered or approved childcare. The amendments also broaden the definition of "domestic violence" in line with the new cross-Government definition of domestic violence and abuse. The remaining amendments are mainly minor or of a technical nature and include changes to the definition of "Attendance Allowance", the removal of a now redundant reference to "exceptional leave to remain", an alignment with Her Majesty's Revenue and Customs rules relating to self-employed earned income, and an amendment that will allow certain "looked after children" to be supported via the child element in Universal Credit.

2.4 The amendments to the Jobseeker's Allowance Regulations 2013 and the Employment and Support Allowance Regulations 2013 contain the same changes to the definition of domestic violence. There are also some minor changes to the definition of the fire and rescue service in Scotland, reflecting new Scottish legislation, and to provide a £20 earnings disregard for share fishermen.

2.5 The remaining changes to other Regulations clarify the date on which a couple are treated as claiming Universal Credit, when only one of them was claiming Universal Credit prior to them claiming as a couple. They also simplify the rounding rules when calculating rates of deductions for third party payments, and the maximum rates of deductions for recovering benefit and tax credit overpayments. They also

¹ Universal Credit Regulations 2013: <http://www.legislation.gov.uk/uksi/2013/376/contents/made>

² Jobseeker's Allowance Regulations 2013: <http://www.legislation.gov.uk/uksi/2013/378/contents/made>

³ Employment and Support Allowance Regulations 2013:
<http://www.legislation.gov.uk/uksi/2013/379/contents/made>

prevent duplicate deductions being made for Eligible Loans and Flat Rate Child Support Maintenance, when a claimant is in receipt of benefits paid under the Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968)⁴ (“the 1987 provisions”) at the same time as being paid benefits under the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (SI 2013/380)⁵ (“the 2013 provisions”). Finally they disapply the Minimum Income Floor provisions from the calculation of earned income for the purposes of an application for a Budgeting Advance.

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

3.1 None

4. Legislative Context

4.1 The Welfare Reform Act 2012⁶ 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 Universal Credit Regulations 2013 provided much of the detail in relation to Universal Credit.

4.3 Amendments were made to the Jobseekers Act 1995⁷ and the Welfare Reform Act 2007⁸ to enable the conversion of Jobseeker’s Allowance and Employment and Support Allowance into contribution-based benefits only. These amendments also introduced the statutory framework for the conditionality and sanctions regime in relation to those benefits. The detailed provisions for entitlement to the benefits and the conditionality and sanctions regimes applicable to each benefit are set out in the Jobseeker’s Allowance Regulations 2013 and the Employment and Support Allowance Regulations 2013.

4.4 A number of other Regulations that supported the introduction of Universal Credit were also made in February 2013. These include:

- The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013;
- The Social Security (Overpayments and Recovery) Regulations 2013; and

⁴ Social Security (Claims and Payments) Regulations 1987:

<http://www.legislation.gov.uk/ukxi/1987/1968/contents/made>

⁵ Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013:

<http://www.legislation.gov.uk/ukxi/2013/380/contents/made>

⁶ Welfare Reform Act 2012: <http://www.legislation.gov.uk/ukpga/2012/5/contents>

⁷ Jobseekers Act 1995: <http://www.legislation.gov.uk/ukpga/1995/18/contents>

⁸ Welfare Reform Act 2007: <http://www.legislation.gov.uk/ukpga/2007/5/contents>

- The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013.

4.5 The legislation for Universal Credit currently applies only to certain categories of claimant in the “Pathfinder” areas. In other cases, and other areas outside of the Pathfinder, the previous legislation continues to apply, including Regulations for “old style” Jobseeker’s Allowance and Employment and Support Allowance.

5. Territorial Extent and Application

5.1 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

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

7. Policy background

7.1 This instrument will come into force on either the 29 July 2013 or, in the case of the domestic violence and attendance allowance provisions, the 29 October 2013. The reason for the latter date is to coincide the introduction of these provisions with similar ones being proposed for the old style Jobseeker’s Allowance.

Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968)

7.2 Regulation 2 makes amendments relating to the administration of deductions made from a claimant’s benefits for an Eligible Loan or Flat Rate Child Support Maintenance. These deductions can be made both from benefits paid under the 2013 provisions and benefits paid under the 1987 provisions. The amendment provides that deductions would only be made from benefits paid under the 1987 provisions if there is insufficient benefit in payment under the 2013 provisions to take the appropriate deduction amount.

Universal Credit Regulations 2013 (SI 2013/376)

7.3 Regulation 3(2) amends the definition of “Attendance Allowance”. Constant Attendance Allowance was paid under section 111 of, and Schedule 8 to, the Social Security Contributions and Benefits Act 1992⁹ to people receiving Industrial Injuries Benefits under the pre-1948 Schemes. From 5 December 2012, those old schemes have been incorporated in the modern scheme, and this amendment takes account of these changes. Section 111 and Schedule 8 were repealed by Section 64 of the Welfare Reform Act 2012, so they no longer need to be mentioned in the definition of “attendance allowance”.

⁹ Social Security Contributions and Benefits Act 1992:
<http://www.legislation.gov.uk/ukpga/1992/4/contents/enacted>

7.4 Regulation 3(3) and 3(4) makes amendments to create an exemption to allow some additional categories of looked after children to be included in the Universal Credit benefit unit. This exemption will affect those children who have “looked after” status but have been placed by a local authority to live with, or are continuing to live with, parents, or someone else who has parental responsibility for them. The families of children in this situation are currently eligible for Child Tax Credit as they are usually not supported financially by the local authority. The amendment allows this group of looked after children to be supported via the child element in Universal Credit and for their needs to be taken into account in the determination of the housing costs element and claimant conditionality. The definition of “parental responsibility” for the purposes of the new exemption is linked to certain statutory provisions and is not as broad a concept as “responsibility for a child” which is the usual test in Universal Credit.

7.5 Regulation 3(5) relates to persons treated as not being in Great Britain. Regulation 9(4)(e) of the Universal Credit Regulations 2013 currently enables persons with an immigration status of “exceptional leave” to enter or remain in the United Kingdom outside the immigration rules to be treated as habitually resident for Universal Credit. However, the "exceptional leave" category no longer exists as an immigration status because the Home Office replaced it with new leave categories outside the immigration rules. The amendment reflects the current Home Office "leave" terminology. The effect will be to treat as habitually resident those who have leave outside the immigration rules which is discretionary leave, or leave in the case of victims of domestic violence, or leave deemed to have been granted by virtue of the Displaced Persons (Temporary Protection) Regulations (SI 2005/1379)¹⁰.

7.6 Regulation 3(6) makes amendments to refer to all appropriate registered or approved childcare. What constitutes “relevant childcare” for Universal Credit purposes is defined largely by reference to other legislation in England and the devolved administrations. The amendment changes the definition to ensure that all statutory references are up to date, and to ensure that any category of childcare which is currently eligible to be covered by Tax Credits will also be eligible to be covered by Universal Credit. The amendment to the English provisions also adds reference to domiciliary care providers registered with the Care Quality Commission, which also aligns with the fact that domiciliary care can be eligible childcare under current Tax Credits legislation.

7.7 Regulation 3(7) is about the self-employed income reporting process in Universal Credit, which is based on Her Majesty’s Revenue and Customs new cash basis and simplified expenses accounting system (‘cash basis’). In order to assist individuals who need to self-report their income for both income tax and Universal Credit purposes there is a need to align with Her Majesty’s Revenue and Customs cash basis where possible. Her Majesty’s Revenue and Customs now permit a deduction of up to £500 annually for interest payments made on loans taken out for the purpose of a business. As Universal Credit awards are calculated on income received in monthly assessment periods, the amendment allows for the permitted

¹⁰ Displaced Persons (Temporary Protection) Regulations 2005:
<http://www.legislation.gov.uk/ukxi/2005/1379/contents/made>

annual £500 to be divided by 12 to provide for a deduction of up to £41 per assessment period.

7.8 Regulation 3(8) makes an amendment because Her Majesty's Revenue and Customs also now permit a deduction for the actual cost of purchasing and running a motorcycle whereas such costs were originally restricted to flat rate pence per mile deductions. Current Regulations do not reflect the choice provided by Her Majesty's Revenue and Customs for deducting actual or flat rate mileage costs for motorcycles. The amendment provides for this choice for claimants in Universal Credit.

7.9 Regulation 3(9) reflects a new cross-Government definition of domestic violence and abuse. The amendments will enable a pattern of incidents, as well as any single incident, to constitute domestic violence, and also extend the definition to cover 'coercive behaviour' and 'controlling behaviour' whereas previously domestic violence was limited to specific types of abuse. Equivalent amendments are being made in this instrument to both the Jobseeker's Allowance Regulations 2013 (Regulation 4(2)) and the Employment and Support Allowance Regulations 2013 (Regulation 5(3)). Although not in this instrument, similar changes are being made to the Jobseeker's Allowance Regulations 1996.

7.10 Regulation 3(10) changes the formula for apportioning rent between joint tenants. The intention behind the methodology is that the total rent for the property should be apportioned between those joint tenants who have a rental liability. However, the existing formula for calculating core rent refers to "listed persons" whether or not they have rental liability. The amendment makes it clear that only listed persons who are liable for paying rent are to be included when calculating the core rent.

7.11 Regulation 3(11). In Universal Credit and Employment and Support Allowance hospital in-patients are treated as having limited capability for work. However, the criteria in the Universal Credit Regulations 2013 and the Employment and Support Allowance Regulations 2013 as to how long someone has to be in hospital to qualify are slightly different from the criteria inserted earlier this year in the Employment and Support Allowance Regulations 2008 (SI 2009/794)¹¹. To bring the provisions into line the amendment removes the term "overnight or for a longer period" and replaces it with "for a period of 24 hours or longer".

Jobseeker's Allowance Regulations 2013 (SI 2013/378)

7.12 As well as the changes to the domestic violence Regulations referred to in paragraph 7.10, this instrument contains three further amendments to the Jobseeker's Allowance Regulations 2013.

7.13 Regulation 4(3) and (5) reflects the changes introduced by the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013¹². That Order amended Income Support, old style Jobseeker's Allowance and

¹¹ Employment and Support Allowance Regulations 2008:
<http://www.legislation.gov.uk/ukxi/2008/794/contents/made>

¹² Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order:
<http://www.legislation.gov.uk/ukxi/2013/602/contents/made>

old style Employment and Support Allowance Regulations by removing references to the former Scottish fire and rescue bodies and replacing them with reference only to the new "Scottish Fire and Rescue Service". This amendment brings the Jobseeker's Allowance Regulations 2013 into line with those Regulations.

7.14 Regulation 4(4). The Social Security Amendment (Capital Limits and Earnings Disregards) Regulations 2000 (SI 2000/2545)¹³ amended the Jobseeker's Allowance Regulations 1996¹⁴ to change references to the disregard for share fishermen from £15 to £20. However, this change was not incorporated in one place in the Jobseeker's Allowance Regulations 2013. This amendment incorporates the change so that a share fisherman has a £20 disregard.

Employment and Support Allowance Regulations (SI 2013/379)

7.15 Regulation 5(2)(a) makes a minor amendment to Regulation 21(1) of the Employment and Support Allowance Regulations 2013. It inserts the words "on any day". Those words were inserted into the equivalent Regulation 25 of the Employment and Support Allowance Regulations 2008 by the Employment and Support Allowance (Amendment) Regulations 2012 (SI 2012/3096)¹⁵. This amendment brings the 2013 Regulations into line with the 2008 Regulations.

7.16 Regulation 5(2)(b) makes a similar provision regarding hospital in-patients to that being made in the Universal Credit Regulations 2013. Regulation 5(3) provides for the new definition of domestic violence referred to in paragraph 7.10. Regulation 5(4) amends the definition of "Attendance Allowance" in the same way as Regulation 3(2).

Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (SI 2013/380)

7.17 Regulation 6(2) makes an amendment to the current Regulations, which treat a couple as having made a joint claim where one of them was entitled to Universal Credit as a single claimant, but the other member of the couple did not have such an award. The amendment specifies the date when the award begins. The date on which the couple are treated as claiming is the first day after the cessation of the existing award.

7.18 Regulation 6(3) simplifies the rules on the calculation of deduction rates from Universal Credit for payments to third parties. It provides that the rounding of those calculations takes place on the same basis as the general rounding rule provided in Regulation 6 of the Universal Credit Regulations 2013. When the relevant deduction rate has been calculated and results in a fraction of a penny, the fraction will be disregarded if it is less than half a penny and otherwise it will be rounded up to the next whole penny. The amendment also amends the maximum deduction rates set out

¹³ Social Security Amendment (Capital Limits and Earnings Disregards) Regulations 2000: <http://www.legislation.gov.uk/ukxi/2000/2545/contents/made>

¹⁴ Jobseeker's Allowance Regulations 1996: <http://www.legislation.gov.uk/ukxi/1996/207/contents/made>

¹⁵ Employment and Support Allowance (Amendment) Regulations 2012: <http://www.legislation.gov.uk/ukxi/2012/3096/contents/made>

as a formula in order to provide an actual percentage, for example “five times 5%” will be amended to “25%”.

Social Security (Payments on Account of Benefit) Regulations 2013 (SI 2013/383)

7.19 Regulation 7(2) makes an amendment to provide that Guardian’s Allowance is not to be a benefit in respect of which a payment on account of benefit may be awarded. This reflects the fact that functions in relation to that benefit are carried out by Her Majesty’s Revenue and Customs.

7.20 Regulation 7(3) both clarifies and changes the basis for calculating earned income, the amount of which must not exceed a certain amount over the relevant period for a person to be awarded a Budgeting Advance. The changes will ensure that the relevant period is defined as the previous six complete assessment periods, within the meaning of the Universal Credit Regulations 2013. They will also ensure that for the purpose of access to a Budgeting Advance, the earned income of persons in gainful self-employment is not to be limited by the Minimum Income Floor. These persons will be able to access a Budgeting Advance if their earned income does not exceed the relevant threshold prescribed in Regulation 13(1) of the Social Security (Payments on Account of Benefit) Regulations 2013.

Social Security (Overpayments and Recovery) Regulations 2013 (SI 2013/384)

7.21 Regulation 8 simplifies the rules on the calculation of the maximum amounts that can be deducted from Universal Credit to recover benefit and tax credit overpayments, so that the rounding of those calculations takes place on the same basis as the general rounding rule provided in Regulation 6 of the Universal Credit Regulations 2013. When the maximum deduction amount results in a fraction of a penny, the fraction will be disregarded if it is less than half a penny and otherwise it will be rounded up to the next whole penny. It also amends the maximum deduction rates set out as a formula in order to provide an actual percentage, for example “8 times 5%” will be amended to “40%”.

8. Consultation outcome

8.1 The amendments to the Universal Credit Regulations 2013 and the Social Security (Payments on Account of Benefit) Regulations 2013 were not subject to statutory referral to the Social Security Advisory Committee. However, in recognition of the importance of the changes encompassed by the current welfare reforms, the Secretary of State for Work and Pensions invited the Committee to consider them in a similar way to regulations that are subject to formal scrutiny under the Social Security Administration Act 1992.

8.2 The amendments to the Employment and Support Allowance Regulations 2013 and the Jobseeker’s Allowance Regulations 2013 (with the exception of the domestic violence amendments) were subject to statutory formal consideration by the Social Security Advisory Committee, as were the amendments to:

- Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013
- The Social Security (Overpayments and Recovery) Regulations 2013

- The Social Security (Claims and Payments) Regulations 1987

8.3 The Committee considered the amendments over two separate meetings on 1 May 2013¹⁶ and 5 June 2013¹⁷. At both meetings the Committee decided it did not wish to have the amendments formally referred.

8.4 This instrument contains one amendment that relates to housing benefit. In accordance with section 176(2)(b) of the Social Security Administration Act 1992, the Department wrote formally to the local authority associations to advise them of the proposed changes. None of the associations raised any issues.

9. Guidance

9.1 Work is underway to provide comprehensive guidance to provide effective support for advisers and decision makers in administering Universal Credit. In line with standard practice, the Advice for Decision Making (which has replaced the Decision Makers Guide) has now been published on the Departmental website¹⁸.

9.2 Knowledge Management guidance is being developed to further support staff in the administration of Universal Credit. Initial guidance has already been issued in the Universal Credit Pathfinder and guidance for claimants in making their claim to Universal Credit is available as part of the claims process.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 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 published¹⁹. This also covers information concerning the Department's obligations regarding its Equality Duty.

11. Regulating small business

11.1 These Regulations do not apply to small business regulation.

12. Monitoring & review

12.1 The Department is firmly committed to evaluating and monitoring the impact and effects of Universal Credit and the new Jobseeker's Allowance and Employment and Support Allowance.

¹⁶ <http://ssac.independent.gov.uk/pdf/minutes/minutes-01-05-13.pdf>

¹⁷ <http://ssac.independent.gov.uk/meetings/>

¹⁸ <http://www.dwp.gov.uk/publications/specialist-guides/advice-for-decision-making/>.

¹⁹ <https://www.gov.uk/government/publications/universal-credit-impact-assessment>

12.2 A high level evaluation strategy was published by the Department for Work and Pensions on 10 December 2012²⁰.

13. Contact

13.1 Mike Jewell at the Department for Work and Pensions can answer any queries regarding the instrument. Tel: 020 7449 5264 or email: mike.jewell@dwp.gsi.gov.uk

²⁰ <https://www.gov.uk/government/publications/universal-credit-evaluation-framework>