

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

2014 No. 1626

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 These negative regulations amend the Universal Credit (Transitional Provisions) Regulations 2014¹ ('the 2014 Regulations') to:

- replace the definition of '*exempt accommodation*' with that of '*specified accommodation*' so a Universal Credit (UC) claimant whose accommodation falls within this definition, can claim and be paid Housing Benefit (HB) alongside UC;
- allow tax credit awards to be in-year finalised when a tax credit claimant makes the transition to UC;
- enable the Limited Capability for Work or Limited Capability for Work-Related Activity element in UC to be awarded from the first assessment period where an Incapacity Benefit or Severe Disablement Allowance claimant made, or joined a UC claim, if they qualify for it following assessment under the Universal Credit Regulations 2013²; and
- ensure fraud penalties applied to Working Tax Credit (WTC) awards can be applied to an award of UC when a tax credit claimant makes the transition to UC and in cases where such claimants were in receipt of WTC and another existing benefit and a fraud penalty had been applied to both awards, that the combination of these penalties when applied to the UC award will not exceed the UC standard allowance in any assessment period.

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

3.1 None.

4. Legislative Context

4.1 The Welfare Reform Act 2012³ provides for the introduction in Great Britain of a new working age income-related social security benefit, UC, and the abolition of income-based Jobseeker's Allowance (JSA), income-related

¹ <http://www.legislation.gov.uk/uksi/2014/1230/contents/made>

² <http://www.dwp.gov.uk/docs/a14-6001.pdf>

³ <http://www.dwp.gov.uk/docs/a14-101.pdf>

Employment and Support Allowance (ESA), Income Support (IS), Housing Benefit (HB), Working Tax Credit and Child Tax Credit (“existing benefits”).

4.2 The Universal Credit (Transitional Provisions) Regulations 2013⁴ (“the 2013 Regulations”) came into force on 29th April 2013 and provided for the introduction of Universal Credit (UC) to limited categories of claimant. A series of Commencement Orders⁵ have brought into force provisions relating to UC, and repeals of the legislation relating to Jobseeker’s Allowance and Employment and Support Allowance for UC claimants in specified postcodes.

4.3 The 2014 Regulations came into force on 16th June 2014 and revoked and replaced the 2013 Regulations, subject to certain savings, as part of the Department’s changing approach to how legislation relating to the rollout of UC is structured. They deal with the effects of transition from existing benefits to UC.

4.4 The Universal Credit (Transitional Provisions) (Amendment) Regulations 2014 enhance provision within the Universal Credit (Transitional Provisions) Regulations 2014 to deal more effectively with claimants who make the transition from HB, Tax Credits, Incapacity Benefit or Severe Disablement Allowance to UC.

5. Territorial Extent and Application

5.1 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

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

- What is being done and why

Amendment relating to specified accommodation

7.1 The Housing Benefit and Universal Credit (Supported Accommodation) (Amendment) Regulations 2014⁶ made amendments to the Universal Credit Regulations 2013⁷ and the Housing Benefit Regulations 2006⁸ to remove references to ‘*exempt accommodation*’ and replace them with

⁴ <http://www.dwp.gov.uk/docs/a14-6501.pdf>

⁵ <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>; <http://www.legislation.gov.uk/ukxi/2014/209/contents/made>; and <http://www.legislation.gov.uk/id/ukxi/2014/1452>

⁶ http://www.legislation.gov.uk/ukxi/2014/771/pdfs/ukxi_20140771_en.pdf

⁷ <http://www.legislation.gov.uk/ukxi/2013/376/contents/made>

⁸ <http://www.dwp.gov.uk/docs/a8-2501.pdf>

the broader definition of '*specified accommodation*'. This broader definition now includes:

- Accommodation which comes within the existing definition of '*exempt accommodation*'. This protects those in supported housing where the landlord is of a specified type e.g. a housing association and also provides care, support or supervision to the claimant, or has it provided on their behalf;
- Supported accommodation where the landlord is a specified third or social sector provider and care, support or supervision is provided to residents, but where the accommodation falls outside the existing '*exempt accommodation*' definition because the care is not provided by the landlord or on their behalf;
- Third and social sector refuges, including local authority refuges, where the claimant is accommodated there because they are fleeing domestic violence;
- Local authority hostels providing care, support or supervision.

7.2 As a result, these Regulations amend the 2014 Regulations to replace the definition of '*exempt accommodation*' with that of '*specified accommodation*' so a claim to Housing Benefit in respect of '*specified accommodation*' can be made and paid alongside Universal Credit (UC), in the same way it was for '*exempt accommodation*'.

7.3 This amendment will not come into force on 13th October 2014 like the other amendments in the Regulations, but will come into force on 3rd November 2014, in line with coming into force of the Housing Benefit and Universal Credit (Supported Accommodation) (Amendment) Regulations 2014.

Amendments relating to finalisation of tax credits

7.4 The Regulations re-instate provision for in-year finalisation of tax credits. By doing so, they allow tax credits awards to be finalised during the tax year (i.e. in-year) when a tax credit claimant makes the transition to UC, rather than after the end of the tax year.

7.5 Re-instating this provision will reduce administrative complexity and confusion for the claimant by:

- providing a clean break from tax credits, thus avoiding the claimant having to provide Her Majesty's Revenue and Customs (HMRC) with information about their circumstances and income after they have been receiving UC for some time; and
- ensuring the claimant has a single interaction with HMRC so that HMRC only have to deal with their case once, as both the stopping of a tax credits award and the finalising of the award are dealt with upon transition to UC.

7.6 Although the intention is that in-year finalisation of tax credits awards will be the default approach in the majority of cases, provision has been made

under regulation 12A(3) to allow the Her Majesty's Revenue and Customs Commissioners to continue to finalise tax credits awards after the end of the tax year, if they think that it is not practicable to apply the modified legislation to a particular case or class of case or as a contingency to guard against unforeseen operational or IT difficulties.

Amendments relating to transition from incapacity benefit or severe disablement allowance

7.7 The Regulations also make a number of amendments to regulations 22 to 26 of the 2014 Regulations, to ensure that, Incapacity Benefit (IB) or Severe Disablement Allowance (SDA) claimants can have the Limited Capability for Work (LCW) or Limited Capability for Work-Related Activity (LCWRA) elements applied to their Universal Credit (UC) award, from the start of the first assessment period where they joined or made a UC claim, as quickly as possible, by ensuring they either:

- remain in the Employment and Support Allowance (ESA) conversion process⁹ and undergo a Work Capability Assessment (WCA) to determine whether their IB or SDA award qualifies for conversion to 'new style' ESA¹⁰, inclusive of either the Work-related Activity Component or Support Component and where it does, allow this decision to be used to apply the LCW or LCWRA element to their UC award; or
- enter the UC assessment process and undergo a UC WCA to ascertain whether the LCW or LCWRA element should be applied to their UC award;

7.8 Currently, IB or SDA claimants who have not commenced ESA conversion have the choice of either entering the UC assessment process or waiting until they undergo conversion to ascertain whether the LCW or LCWRA element should be applied to their UC award. These amendments ensure that where the claimant has not entered the ESA conversion process they now have to enter the UC process, if they want to be assessed and have the LCW or LCWRA element backdated.

7.9 This change is important because if they do not enter the UC assessment process they would have to wait until they are scheduled for ESA conversion, to see if their IB or SDA award qualified for conversion to 'new style' ESA, before the LCW or LCWRA element could be applied to their UC award. This thereby avoids any delay in these IB and SDA claimants accessing the additional financial support they will be entitled to if it is decided that they have LCW or LCWRA.

7.10 The Regulations also ensure that where an IB claimant is in receipt of National Insurance credits only and they are not entitled to the appropriate

⁹ This is a where claimants receiving IB, SDA or IS on the grounds of incapacity are considered to be eligible for ESA or fit for work as part of the Government's Incapacity Benefit Reforms.

¹⁰ 'New style' ESA is an award of contributory ESA paid alongside UC.

level or component of a prescribed benefit¹¹ to allow them to qualify for the Limited Capability for Work (LCW) or Limited Capability for Work-Related Activity (LCWRA) element in UC, that they will be treated in the same way as those Incapacity Benefit (IB) or Severe Disablement Allowance (SDA) claimants and will not have to serve the Universal Credit (UC) relevant period but can have the LCW or LCWRA element applied to their UC award, with retrospective effect, back to the start of the first assessment period, if it is subsequently determined by a UC Work Capability Assessment that they have either LCW or LCWRA.

7.11 No separate amendments are required to provide the same treatment, as described in paragraph 7.9, for IB or SDA claimants who are entitled to payments of IB or SDA. This is because they will be covered by the amendments made, via these Regulations, to regulation 22 of the 2014 Regulations.

Amendment relating to loss of tax credits penalties

7.12 The Regulations insert new regulation 37 into the 2014 Regulations so where a Working Tax Credit (WTC) claimant has a fraud penalty applied to their WTC award, the fraud penalty will be applied to the UC standard allowance, for the remaining period of that penalty.

7.13 As a consequence of inserting regulation 37 into the 2014 Regulations, new regulation 38 ensures that where a claimant has been in receipt of WTC and another existing benefit (e.g. Housing Benefit) and both awards have had a fraud penalty applied to them, the combination of these penalties will not exceed the UC standard allowance in any assessment period. This is in line with the approach taken with Department for Work and Pensions benefits where there is more than one fraud penalty applied to an existing benefit award upon the transition to UC.

- Consolidation

7.14 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 website¹² or the National Archive website¹³. An explanation as to which instruments are maintained on each site is available [here](#).”

8. Consultation outcome

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

¹² <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

¹³ legislation.gov.uk

8.1 The Department referred these Regulations to the Departments Local Authority Steering Group for discussion at their meeting on 4th June 2014. At the meeting the Group decided not to consult on the Regulations.

8.2 The Department has also referred these Regulations to the Social Security Advisory Committee for discussion at their meeting on 11th June 2014. At the meeting the Committee decided not to consult on the Regulations.

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 website¹⁴ and will be updated ready for the coming into force of the Regulations.

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 published¹⁵. This also covers information concerning the Department's obligations regarding its Equality Duty.

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 2012¹⁶.

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@dwpgsi.gov.uk

¹⁴ <https://www.gov.uk/government/publications/advice-for-decision-making-staff-guide>

¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220177/universal-credit-wr2011-ia.pdf

¹⁶ <https://www.gov.uk/government/publications/universal-credit-evaluation-framework>