EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT AND MISCELLANEOUS AMENDMENTS REGULATIONS 2015

2015 No. 1754

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 provision for amendments to various pieces of legislation governing the operation of Universal Credit and its interaction with other benefits. It also makes amendments to Regulations relating to certain of the benefits which will eventually be replaced by Universal Credit ("legacy benefits") and State Pension Credit, as listed in paragraph 4.4 below, to ensure appropriate alignment with those benefits.

2.2 The instrument also makes provision for a number of minor technical changes and corrections to support delivery of Universal Credit and, where necessary, other interacting benefits.

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 some specified postcode areas and for the full range of claimants in other specified postcode areas ("Digital Service areas").

4.3 This instrument makes changes to a number of regulations relating to Universal Credit, as follows:

- The Universal Credit Regulations 2013 (SI 2013/376)[2]
- The Universal Credit (Work-Related Requirements) In Work Pilot Scheme and Amendment Regulations 2015 (SI 2015/89)[3]
- The Social Security (Payments on Account of Benefit) Regulations 2013 (SI 2013/383)[4]

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[1] Welfare Reform Act 2012, c. 5: http://www.legislation.gov.uk/ukpga/2012/5/contents
[2] Universal Credit Regulations 2013: http://www.legislation.gov.uk/uksi/2013/376/contents
[3] Universal Credit (Work-Related Requirements) In Work Pilot Scheme and Amendment Regulations 2015: http://www.legislation.gov.uk/uksi/2015/89/contents/made
[4] Social Security (Payments on Account of Benefit) Regulations 2013: http://www.legislation.gov.uk/uksi/2013/383/contents

- The Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015 (SI 2015/345)[5]
- The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (SI 2013/380)[6]
- The Universal Credit (Digital Service) Amendment Regulations 2014 (SI 2014/2887)[7]

4.4 The instrument also makes consequential changes to regulations relating to legacy benefits and State Pension Credit, as follows:

- The Social Security (Invalid Care Allowance) Regulations 1976 (SI 1976/409)[8]
- The Income Support (General) Regulations 1987 (SI 1987/1967)[9]
- The Jobseeker's Allowance Regulations 1996 (SI 1996/207)[10]
- The State Pension Credit Regulations 2002 (SI 2002/1792)[11]
- The Housing Benefit Regulations 2006 (SI 2004 / 213)[12]
- The Housing Benefit (Persons Who Have Attained the Qualifying Age for State Pension Credit) Regulations 2006 (SI 2006 / 214)[13]
- The Employment and Support Allowance Regulations 2008 (SI 2008/794)[14]

4.5 The amendments also include changes to primary legislation, as follows:

- The Social Security Administration Act 1992 (c. 5)[15]
- The Social Security Contributions and Benefits Act 1992 (c. 4)[16]

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

5.2 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 This instrument is subject to the negative resolution procedure and, as regards all but regulations 9 and 10, does not amend primary legislation. To that extent, no statement is required.

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5 Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015: http://www.legislation.gov.uk/uksi/2015/345/contents/made
6 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
7 Universal Credit (Digital Service) Amendment Regulations 2014: http://www.legislation.gov.uk/uksi/2014/2887/contents/made
8 Social Security (Invalid Care Allowance) Regulations 1976: http://www.legislation.gov.uk/uksi/1976/409
9 Income Support (General) Regulations 1987: http://www.legislation.gov.uk/uksi/1987/1967
10 Jobseeker's Allowance Regulations 1996: http://www.legislation.gov.uk/uksi/1996/207
11 State Pension Credit Regulations 2002: http://www.legislation.gov.uk/uksi/2002/1792
12 Housing Benefit Regulations 2006: http://www.legislation.gov.uk/uksi/2006/213
13 Housing Benefit (Persons Who Have Attained the Qualifying Age for State Pension Credit) Regulations 2006: http://www.legislation.gov.uk/uksi/2006/214
14 Employment and Support Allowance Regulations 2008: http://www.legislation.gov.uk/uksi/2008/794
15 Social Security Administration Act 1992: http://www.legislation.gov.uk/ukpga/1992/5
16 Social Security Contributions and Benefits Act 1992: http://www.legislation.gov.uk/ukpga/1992/4

6.2 As regards regulations 9 and 10, which do amend primary legislation, the Minister of State for Welfare Reform, Lord Freud, has made the following statement regarding Human Rights:

In my view the provisions of regulations 9 and 10 of the Universal Credit and Miscellaneous Amendments Regulations 2015 are compatible with the Convention rights.

7. Policy background

- **What is being done and why**

7.1 The Universal Credit and Miscellaneous Amendments Regulations 2015 amend a number of existing Universal Credit and related regulations to better reflect the intended policy, to make other minor technical changes and corrections and also to make related and consequential amendments to other benefits legislation.

7.2 The regulations for the most part apply to all Universal Credit claimants, with the exception of the amendment made by Regulation 7 (which corrects an error in the Universal Credit (Surpluses and Self-Employed Losses (Digital Service) Amendment Regulations 2015) and that made by Regulation 19 (which allows for the administration of the Live Service caseload to be transferred to the Universal Credit Digital Service platform). These two exceptions only have effect in relation to claimants in the Digital Service areas, where there are no limitations on the categories of claimant who may claim Universal Credit (see 4.2 above).

7.3 Regulations 2 to 4 amend a number of provisions in the Universal Credit Regulations 2013[17] and the Universal Credit (Work-Related Requirements) In Work Pilot Scheme and Amendment Regulations 2015[18]. These relate to the calculation of various earnings thresholds used in Universal Credit for the purposes of determining the applicability of conditionality requirements, sanctions and hardship payments to claimants.

7.4 The amendments in Regulations 2 and 3 provide that where earnings thresholds (and the earnings measured against those thresholds) were previously calculated as a weekly amount, they are now to be converted to equivalent monthly amounts. This is to allow for greater ease of administration and bring the process in line with the monthly assessment periods structure and monthly calculation of awards in Universal Credit. There is no monetary impact on the claimant.

7.5 The changes made by Regulation 2(6)(e) also clarify that where earnings fluctuate, we refer to the gross amount (before any deduction of income tax, National Insurance contributions or relievable pension contributions) when determining conditionality requirements, in the same way as earnings which remain the same each month. In addition, they clarify that when considering earnings for the purpose of determining requirements to be placed on individuals, the Department may disregard earnings from any employment that has ceased. This is to ensure that anyone who is unemployed may be offered immediate support and their final earnings will not exclude them from conditionality requirements for the first month of their claim. An example of where the

[17] http://www.legislation.gov.uk/uksi/2013/376/contents
[18] http://www.legislation.gov.uk/uksi/2015/89/contents/made

discretion would not be applied could be where a claimant is moving from one job to another and there would be no benefit in applying full conditionality requirements.

7.6 Regulation 4 clarifies that when calculating earnings thresholds, they are to be rounded down to the nearest whole pound. This is intended to make the thresholds simpler to explain and apply to claimants. There will be no negative impact on the claimant because the thresholds will overall be slightly lower, meaning that it will be slightly easier for claimants to earn enough to meet them.

7.7 Regulation 5 amends regulation 19A (3)(b)(iii) of The Universal Credit Regulations 2013, which exempts care leavers from serving waiting days on their awards of universal credit. The regulation currently uses a definition of care leavers which does not include young people who were previously in care and are now aged 18 or over. The amended exemption will cover anyone under the age of 22 who was a care leaver before the age of 18 and who has made a successful claim for UC for the first time, to reflect the original policy intention.

7.8 Regulation 6 increases the maximum support on offer for childcare costs within Universal Credit from 70% of eligible costs to 85% from April 2016, and increases the related childcare cost caps.

7.9 In 2013 the Government consulted on a proposal to increase the rate of childcare support under Universal Credit for taxpayers only[19]. This was opposed by some stakeholders who argued it did not meet the needs of the lowest paid parents. Reflecting on the consultation, the Government committed instead to increase childcare support within Universal Credit to pay up to 85% of childcare costs from April 2016 where the childcare is provided by a registered or other approved provider and the lone parent or both parents in a couple are in work[20]. This provision will not be limited to taxpayers only and is also more generous than the current rules which apply in Tax Credits and Universal Credit, which allow claimants to recover a maximum of 70% of eligible childcare costs. The changes will mean that families will be entitled to up to £646.35 of help with childcare costs per month for one child and up to £1108.04 per month for two or more children.

7.10 Regulation 7 clarifies the earnings condition for budgeting advances in circumstances where the six month qualifying period is waived because the claimant requires the budgeting advance to obtain or retain employment.

7.11 Universal Credit claimants may be entitled to a Budgeting Advance. They also need to satisfy an earnings condition over the six complete assessment periods preceding the date of application for the Budgeting Advance. The condition is that earnings do not exceed £2,600 for a single claimant or £3,600 for a claimant who has a partner (Regulation 13 of the Payments on Account Regulations 2013)[21]. If the claimant or their partner requires the

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[19] Tax-Free Childcare: consultation on design and operation (August 2013) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/318952/tax-free_childcare_consultation_on_design_and_operation.pdf

[20] Delivering Tax-Free Childcare: the Government's response to the consultation on design and operation (March 2014) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/318953/PU1607_Tax_free_Childcare_response.pdf

[21] http://www.legislation.gov.uk/ukdsi/2013/9780111531532/contents

Budgeting Advice to obtain or retain employment the qualifying criteria of being in receipt of Universal Credit for six months is waived.

7.12 However, although the 6 month qualifying criteria is waived, the earnings condition in Regulation 13 must still be satisfied. For someone who has been in receipt of Universal Credit for less than 6 months, whose household has earnings and need a Budgeting Advance to help obtain employment, the current provision does not say how the earnings condition can be satisfied because there would be less than six complete assessment periods to calculate the household's earnings over.

7.13 The change to Regulation 13 will apportion the earnings threshold over the actual number of assessment periods preceding the date of application for the Budgeting Advance. This will put claimants making a claim in these circumstances in an analogous position to other claimants making an application for a Budgeting Advance in terms of the earnings threshold applied.

7.14 Regulation 8 corrects an error in the Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015. The formula for calculating the "nil UC threshold" (as defined in those Regulations) was incorrect and did not contain the 65% single taper rate applied in the calculation of the Universal Credit award where the claimant's earned income exceeds the work allowance. This correction reflects the original policy intention as considered by the Social Security Advisory Committee.

7.15 Regulation 9 corrects the cross reference in paragraph 5(2)(j) of Schedule 6 to the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments Regulations) 2013, which is presently incorrect as it refers to the "2012 Act". This regulation amends the cross reference so that it correctly refers to the "Administration Act".

7.16 Regulation 10 makes a technical amendment to section 151A of the Social Security Administration Act 1992 to ensure that up-rating of the new Transitional State Pension, where one member of a couple claiming Universal Credit is receiving the new State Pension[22], takes effect for the purposes of calculation of Universal Credit at the same time as the up-rating of the Universal Credit award itself and other benefits relevant to calculation of the award.

7.17 The Universal Credit and Miscellaneous Amendments (No2) Regulations 2014[23] amended sections 150 and 150A of the Social Security Administration Act 1992[24] (SSAA) and section 1 of the Welfare Benefits Up-rating Act 2013[25] in relation to the up-rating of Universal Credit, to make sure that the primary legislation applies clearly and directly to Universal Credit, as well as to existing weekly benefits, and aligns with the monthly assessment period cycle in Universal Credit. These amendments made sure that where:

- Universal Credit is up-rated that the up-rated amount comes into force from the start of the first assessment period beginning on or after the first Monday of the tax year (or

[22] This is being introduced from April 2016 by the Pension Act 2014: http://www.legislation.gov.uk/ukpga/2014/19/contents
[23] http://www.legislation.gov.uk/uksi/2014/2888/regulation/7/made
[24] http://lawvolumes.dwp.gov.uk/docs/a1-1801.pdf
[25] http://www.legislation.gov.uk/ukpga/2013/16/contents

from the start of the first assessment period beginning on or after any earlier date in April specified under the relevant Order(s)); and;

- other benefits or elements taken into account in Universal Credit can be applied in Universal Credit from the start of the same assessment period in which the various elements of the claimant's Universal Credit award itself is up-rated.

7.18 In line with this, Regulation 10 makes a technical amendment to Section 151A of the SSAA[26] to make sure that an Up-rating Order made under that Act caters for couples who are claiming Universal Credit where one is receiving the new State Pension[27]. This ensures that the new State Pension rate and its up-rating can be taken into account as unearned income in Universal Credit, for the purposes of calculating the award, in line with the uprating of other benefits likewise being taken into account for the calculation i.e. the various elements of the claimant's Universal Credit award will be up-rated, and this and other unearned income (e.g. basic pension) or other benefits treated as such, will be up-rated[28,] from the start of the same assessment period.

7.19 Regulations 11 to 19 prevent dual provision of carer related benefits. Regulations 10-12 prevent dual provision of Carer's Allowance and the Carer Element in Universal Credit, in accordance with the longstanding principle that only one carer for a severely disabled person can be paid carer related benefits in respect of that person's care. Regulations 13-18 make amendments to legacy benefits to ensure that, where the Carer Element is in payment in respect of care for a severely disabled person, that person may not receive an addition to their legacy benefit for care. This is presently the case when Carer's Allowance is in payment for such a person's care.

7.20 Regulations 20 and 21 will provide that, as the enhanced Digital Service is rolled out across Great Britain, certain regulations specific to the Digital Service areas (see 7.2 above) will apply to anyone who claims universal credit in those areas. Those regulations will also apply to any existing claimant who is either living in those areas or has previously had their claim transferred onto the digital service platform.

7.21 "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 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 from http://www.dwp.gov.uk/docs/lawvolnews.pdf.".

8. Consultation outcome

8.1 The statutory six week consultation with the Local Authorities with respect to the change in housing benefit was completed on 28th September 2015. There were no formal responses.

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[26] Via Section 32 of the Welfare Reform Act 2012 http://lawvolumes.dwp.gov.uk/docs/a14-101.pdf

[27] This is being introduced from April 2016. via the Pensions Act 2014 http://www.legislation.gov.uk/ukpga/2014/19/contents

[28] For information Regulation 67 of the Universal Credit Regulations 2013 does not need to be amended to allow the new State Pension to be taken into account as unearned income in Universal Credit. This is because paragraph 44 of Schedule 12 to the Pensions Act 2014 will amend the definition of retirement pension income in Section 16 of the State Pension Credit Act 2002 to include the new State Pension.

8.2 As regards the change to carers benefits, the Department is in regular contact with groups representing carers. The specific amendment which confirms in Universal Credit legislation the principle that carer's benefits are restricted to one carer per severely disabled person does not mark a change in policy and has thus not been specifically consulted upon. However, the Department will ensure, as requested by the Social Security Advisory Committee, that the changes being introduced by these proposals are properly communicated and understood by the groups representing carers and impacts are monitored.

9. Guidance

9.1 Internal guidance for staff will be amended in line with the amendments made by this instrument and will be published before the regulations take effect.

10. Impact

There is no impact on business, civil society organisations or the public sector. Impact assessments for those sectors 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[29]. This also covers information concerning the Department's obligations by way of Equality Duties, due regard to which has been paid in making this instrument (see also below at 12).

11. Regulating small business

This instrument does not apply to small business.

12. Monitoring & review

The Department is firmly committed to evaluating and monitoring the impact and effects of Universal Credit, including compliance with Equality Duties. A high level evaluation strategy was published by the Department for Work and Pensions on 10 December 2012[30].

13. Contact

Maria Meyer or Lynne Paske at the Department for Work and Pensions can answer any queries regarding the instrument. Email: maria.meyer@dwp.gsi.gov.uk and lynne.paske@dwp.gsi.gov.uk .

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29 https://www.gov.uk/government/publications/universal-credit-impact-assessment

30 https://www.gov.uk/government/publications/universal-credit-evaluation-framework