EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (BENEFIT CAP EARNINGS EXCEPTION) AMENDMENT REGULATIONS 2017

2017 No. 138

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 amends the Universal Credit Regulations 2013 (S.I. 2013/376)[1] to replace the existing earnings threshold in the exception to the application of the benefit cap to a Universal Credit award. The instrument replaces the fixed threshold of £430 with a new threshold calculated by a formula based on earnings from 16 hours of work per week at the national living wage.

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 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Welfare Reform Act 2012[2] introduced a cap on the total amount of benefits that workless working-age households can receive. Receipt of certain benefits, such as disability benefits, results in exception from the cap (amongst other exceptions). This was amended by the Welfare Reform and Work Act 2016[3], which introduced a new lower and regionally tiered cap, and the Benefit Cap (Housing Benefit and Universal Credit) (Amendment) Regulations 2016 (S.I. 2016/909)[4], which introduced two new exemptions from the cap.

4.2 In Universal Credit, claimants are exempt from the benefit cap when the individual, or a couple jointly, earns £430 or more per monthly assessment period, regardless of household type (the “earnings exception threshold”). This is to encourage claimants to move into work or increase their work hours. A fixed value was originally chosen because it was thought easier for claimants and staff to understand. The £430 earnings exception threshold was based on gross monthly earnings from 16 hours of work per week paid at the highest national minimum wage rate at the time (the 2012 rate for

[1] http://www.legislation.gov.uk/uksi/2013/376/contents
[2] http://www.legislation.gov.uk/ukpga/2012/5/contents
[3] http://www.legislation.gov.uk/ukpga/2016/7/contents
[4] http://www.legislation.gov.uk/uksi/2016/909/contents

those aged 21 years or older). This threshold was not subsequently updated to reflect increases to minimum wage rates, and the introduction of the higher national living wage in April 2016 has meant that the fixed threshold is no longer aligned with the highest minimum wage rate in force and needed to be updated in order to maintain policy intent.

4.3 This instrument amends the Universal Credit Regulations 2013 so that the new earnings exception threshold is indexed to the national living wage, and will update each year in April when the national living wage rate changes without the need for further regulation change.

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.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 This instrument amends the earnings exception threshold for Universal Credit claimants from a fixed threshold of £430 per month (see 4.2) to a formula which calculates the net monthly earnings equivalent of working 16 hours per week at the national living wage. The threshold will continue to be the same for single claimants and couples.

7.2 The new threshold will come into force on 1st April 2017, to coincide with the uprating of the national living wage.

7.3 The benefit cap aims to strengthen work incentives, achieve fairness for taxpayers and ensure there is a reasonable safety net of support for the most vulnerable. The Government is committed to building on the successful outcomes of the cap by linking the earnings exception threshold to the national living wage. A threshold based on a formula using the national living wage will be linked to the rates set out in regulation 4 of the National Minimum Wage Regulations 2015 (S.I 2015/621[5], as amended by S.I. 2016/68[6]) and therefore will change automatically with any change to the national living wage rate.

7.4 The original fixed threshold was based on working 16 hours per week at the highest minimum wage rate at the time; the amended threshold provided for by this instrument ensures that this policy intention continues to be achieved, as it realigns the earnings exception threshold with the highest minimum wage rate currently in force, the national living wage.

7.5 Aligning the earnings exception threshold with the national living wage strengthens the rewards of work in the benefit system, as it ensures that it will not become easier for claimants to exempt themselves from the cap as the national minimum wage rates

[5] http://www.legislation.gov.uk/uksi/2015/621/contents/made
[6] http://www.legislation.gov.uk/uksi/2016/68/contents

rise. This was the case with the fixed £430 earnings exception threshold, where increases to minimum wage rates each year enabled claimants to become exempt from the benefit cap on the basis of fewer and fewer hours worked, and they therefore may have been choosing to work fewer hours.

7.6 This instrument provides that when the amount for the benefit cap earnings exception threshold is calculated, it should be rounded down to the nearest pound. This is to make the threshold easier to apply and understand.

7.7 This instrument also provides that any grace period entitlement already accrued by April 2017 is not retrospectively affected by the amendment to the earnings exception threshold. Earnings in an assessment period or month (as appropriate) before 1 April 2017 will count towards a claimant's grace period eligibility if they are at or above £430; for assessment periods starting on or after 1 April 2017, when the updated threshold is in force, the updated threshold will be applied.

Consolidation

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

8. Consultation outcome

8.1 There has been no formal consultation specifically in relation to this instrument. This is because the policy to provide an earnings exception threshold has not changed, but it has been decided to align it with the national living wage for the reasons set out above. No consultation was done to set the original threshold, which was referred to, and approved by, the Social Security Advisory Committee (SSAC) as part of the Universal Credit Regulations 2013. The policy to have an earnings exception to the benefit cap was provided for in the Welfare Reform Act 2012, and was not affected by the Welfare Reform and Work Act 2016.

8.2 This instrument was referred to SSAC and discussed at their meeting on 14th December 2016. SSAC decided to take the regulations on formal reference and the Department for Work and Pensions' response to their report is laid before Parliament alongside the regulations.

8.3 The Department does not accept SSAC's recommendation that the earnings exception policy needs to make allowances for apprentices who are paid the apprentice minimum wage. This is because the Government anticipate that the complexity for claimants and the Department of having a multiple thresholds would be disproportionate, and that very few apprentices will be affected by the new earnings exception threshold, as the new threshold is only expected to affect apprentices where all of the following apply:

- They are aged under 19, or aged 19 or over and in the first year of their apprenticeship. After their first year, apprentices aged 19 or over must be paid at least the relevant national minimum wage rate for their age, which would lift them above the new earnings exception threshold even if they worked the minimum requirement of 30 hours per week.
- They are working under 35 hours at the apprentice minimum wage of £3.50 per hour in 2017/18 or working even fewer hours if earning more per hour (for example, all apprentices earning £4.00 or more per hour would not be affected

as they would meet the threshold doing the minimum required hours of 30 per week).

- Their partner (if applicable) has no significant earnings.
- They are in receipt of Universal Credit and their household benefit entitlement is above the cap levels – this would require them to have high housing costs and/or several children.

8.4 In addition, evidence indicates that many apprentices are paid more than the legal minimum and/or work enough hours to exempt themselves from the cap.

8.5 No Local Authority consultation was done, as this was not required because the change does not impact housing benefit.

9. Guidance

9.1 Comprehensive guidance and training products are available to staff in the Department for Work and Pensions, which are being amended in time to support implementation from 1st April 2017. This will cover the full details of the new earnings exception threshold.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There may be some indirect impact on the public sector, for example, increased contact with public sector advice centres which cannot be quantified with certainty at this stage, as it is not possible to predict the behavioural responses of those affected by the new earnings exemption threshold. This measure is expected to make small fiscal savings as households who would have moved into work at the minimum requirement to meet the existing earnings exception threshold may now be encouraged to work an additional few hours per week to obtain the exception. Those earning the national minimum wage for 21 to 24 year olds would need to work 18 hours per week under the proposed earnings exception threshold (2 additional hours per week compared to those on the national living wage). This would result in them remaining exempt from the cap and small savings would arise due to the decrease to the Universal Credit award from increased earnings. This is difficult to reliably quantify but it is estimated that savings to the exchequer will be negligible initially but increasing as Universal Credit rolls out, to around £1m per year in 2020/21.

10.3 An Impact Assessment is submitted with this memorandum and will be published with the Explanatory Memorandum on the legislation.gov.uk website.

10.4 The Impact Assessment and Equality Analysis outline the main groups affected by the policy. Households receiving the national living wage are unlikely to be affected by the proposed amendment to the earnings exception threshold as many of those in work are likely to be working at least 16 hours a week due to the design of labour market contracts. However, a small number of households, claimants under the age of 25 who may be paid less than the national living wage, may fall in between the existing (£430 per month) and new (£520 per month in 2017/18) threshold levels even when working 16 hours per week. They may, therefore, no longer be exempt from the cap without increasing their earnings. The overall numbers directly impacted are difficult to reliably quantify, but are expected to be small – around 100 households affected in 2017/18, 500 in 2018/19, 1,100 in 2019/20 and 1,200 by 2020/21 as the UC caseload increases.

10.5 The Impact Assessment and Equality Analysis were both updated since the SSAC meeting to reflect the new national living wage rate announced at the Autumn Statement 2016.

11. Regulating small business

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

12. Monitoring & review

12.1 There are plans to monitor the impact of the new benefit cap, which came into force in November 2016. The new earnings exemption threshold will form a part of this evaluation, which will be published in 2018.

13. Contact

13.1 David Edson at the Department for Work and Pensions. Telephone: 0113 2327506 or email: david.edson1@dwp.gsi.gov.uk can answer any queries regarding the instrument.