EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT AND JOBSEEKER'S ALLOWANCE (MISCELLANEOUS AMENDMENTS) REGULATIONS 2018

2018 No. 1129

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 The purpose of this instrument is, principally, to amend the Universal Credit Regulations 2013[1], to allow all 18-21 year olds to be eligible for support with their housing costs (as announced by the Secretary of State for Work and Pensions in a written statement on 29 March 2018[2]) and to extend the existing support for children who would otherwise be likely to be in local authority care (as announced by the Secretary of State in a written statement on 27 April 2018[3]). The instrument also amends an unintended defect in the Jobseeker's Allowance Regulations 1996[4].

2.2 The instrument makes other miscellaneous amendments to secondary legislation, to reflect the policy intent and to tidy up existing provisions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 As this instrument also corrects an unintended defect in the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207), it is being issued free of charge to all known recipients. (See section 7.2 of this explanatory memorandum for further information).

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 extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain. Separate but corresponding provision is being made for Northern Ireland.

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[1] http://www.legislation.gov.uk/uksi/2013/376/contents

[2] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-03-29/HCWS611/

[3] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-04-27/HCWS653/

[4] http://www.legislation.gov.uk/uksi/1996/207/contents

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 regarding human rights is required.

6. Legislative Context

6.1 The Welfare Reform Act 2012[5] 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.

6.2 This instrument makes changes to regulations which apply to all Universal Credit claimants.

6.3 As set out in the Explanatory Note, this instrument makes changes to a number of existing statutory instruments relating to Universal Credit and related benefits, as follows:

- Universal Credit Regulations 2013 (S.I. 2013/376) http://www.legislation.gov.uk/uksi/2013/376/contents
- Universal Credit Regulations (Housing Costs Element for claimants aged 18 to 21) (Amendment) Regulations 2017 (S.I. 2017/252) http://www.legislation.gov.uk/uksi/2017/252/contents/made
- Jobseeker's Allowance Regulations 1996 (S.I. 1996/207) http://www.legislation.gov.uk/uksi/1996/207/contents
- The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 http://www.legislation.gov.uk/uksi/2017/376/contents/made

7. Policy background

What is being done and why?

7.1 The policies contained in this instrument are:

Placing awards of disability premium or higher pensioner premium within income-based Jobseeker's Allowance to recipients of Personal Independence Payment or Armed Forces Independence Payment on a statutory footing

7.2 This instrument rectifies an unintended defect in the Jobseeker's Allowance Regulations 1996 and puts awards of the higher pensioner premium and disability premium within income-based Jobseeker's Allowance - where paid on the sole basis that the claimant has an award of either Personal Independence Payment or Armed Forces Independence Payment - on a statutory footing.

7.3 Within income-based Jobseeker's Allowance a longstanding qualifying condition for the award both of higher pensioner premium and disability premium has been that the claimant or their partner is in receipt of Disability Living Allowance. From 8 April 2013, Personal Independence Payment replaced Disability Living Allowance for people who are aged 16 to 64, and, from the same date, Armed Forces Independence

[5] http://www.legislation.gov.uk/ukpga/2012/5/contents/enacted

Payment was introduced as an alternative to Personal Independence Payment, for seriously injured Service and ex-Service personnel.

7.4 The policy intention was, and remains, that the qualifying conditions for the award of higher pensioner premium and disability premium under income-based Jobseeker's Allowance should be extended to accommodate cases where the claimant or their partner has been awarded either Personal Independence Payment or Armed Forces Independence Payment, and appropriate instructions to operational decision makers were issued accordingly. The computer system supporting Jobseeker's Allowance was also changed to reflect the policy intent. The Department has recently identified that, in drafting the Personal Independence Payment/Armed Forces Independence Payment consequential legislation, some of the legislative cross-references necessary to support the change where the claimant has an award of either Personal Independence Payment or Armed Forces Independence Payment were unintentionally omitted.

Reinstating housing support for 18-21 year olds

7.5 Under the provisions of this amendment, all 18-21 year old claimants will become entitled to claim financial support towards their rent in Universal Credit full service areas. In April 2017, The Universal Credit (Housing Costs Element for claimants aged 18 to 21) (Amendment) Regulations 2017 (S.I. 2017/252) withdrew entitlement to claim housing costs for certain 18 to 21 year olds in Universal Credit full service areas. Since then 18-21 year old claimants who are single, subject to all work-related requirements, and who do not fall within one of a range of exemption categories were expected to remain in, or return to, the family home or move into work.

7.6 This policy change means that young people on benefits will be assured that, if they secure a tenancy, they will have support towards their housing costs in the normal way.

Extending the existing support within Universal Credit for households with children who might otherwise be in local authority care

7.7 These changes are in recognition of the immense value of the care provided by adoptive parents and non-parental carers in keeping children out of local authority care and will have a positive impact for non-parental carers and parents who adopt. Under the existing rules, a payment is only made for third and subsequent children who benefit from an exception even if the first or second child in that household meet the criteria for the adoption or non-parental caring arrangement exceptions. This change will mean that, children who are adopted or in non-parental caring arrangements will be disregarded when determining the order of children. Therefore, a parent or carer will be able to receive an additional amount in Universal Credit for any children in these arrangements, plus the first and second child in their household (under the new ordering provision), as well as for any other children who qualify for the other exceptions (non-consensual conception or multiple birth).

7.8 This instrument also amends regulations 5 and 6 of the Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 to ensure that the changes made to the Universal Credit Regulations will apply equally to any awards of Income Support and Jobseeker's Allowance that, exceptionally, continue to include an amount for a child or young person.

7.9 Corresponding legislative changes will also be made to Child Tax Credit legislation to ensure the policy is mirrored across benefits. These changes will be taken forward by

HMRC and HMT as the owners and administrators of this policy. HMRC presented their corresponding legislation to the Social Security Advisory Committee at the same time as these Regulations were put forward.

7.10 Since the implementation of the policy, the Department has kept it under review to ensure that the exceptions provide the appropriate level of support. This review considered many aspects, including feedback from Departmental processes and correspondence from MPs and Lords from across the political spectrum. The review took place in parallel to a judicial review of the policy, supported by Child Poverty Action Group. The Government welcomed the High Court judgment of 20 April 2018, which found the policy to be lawful overall, but that the ordering provision as applied to non-parental carers was irrational. This irrationality was due to the fact that the policy aimed to incentivise, or at least not to discourage, such arrangements as they are more likely to be in the best interests of the child. Following this judgment, the Secretary of State for Work and Pensions announced on 27 April 2018 that the ordering provisions would no longer apply to children in non-parental caring arrangements or who were adopted from local authority care.

Updating a reference to relevant tax law in order to maintain the current alignment between tax and Universal Credit

7.11 Regulation 3(5) amending regulation 77(5) of the Universal Credit Regulations 2013 is a consequential amendment which will update the reference to the relevant tax law to ensure that the Universal Credit Regulations remain aligned with the Tax Regulations and maintain the existing policy such that public sector off-payroll workers will be treated as employees under Universal Credit, as they are in the tax system. It also clarifies that where a claimant combines off-payroll work with genuine self-employment, whichever is their main employment will determine how they are treated under Universal Credit. The concept of main employment is already part of Universal Credit's test of gainful self-employment.

Adding Foster Carers to the list of exemptions to the Shared Accommodation Rate

7.12 Regulation 3(6)(d) of this instrument amends paragraph 29 of Schedule 4 to the Universal Credit Regulations 2013. This is a minor change that will bring the legislation into line with current policy. Under existing policy, all claimants with housing costs who are foster carers can qualify for an additional bedroom to be awarded when applying the relevant Local Housing Allowance rate to their housing costs element. However, we have identified that the current regulations do not reflect this position for single claimants aged under 35 with no dependent children who live in the private rented sector and there is no statutory authority to support such awards. This amendment places these awards on a statutory footing.

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

8.1 This instrument does not relate to the 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 Archives' website legislation.gov.uk.

10. Consultation outcome

10.1 This instrument was subject to statutory consideration by the Social Security Advisory Committee. The Committee considered the amendments at their meeting which took place on 25th July 2018. They agreed that they did not wish to have the instrument formally referred to them.

10.2 Scottish Ministers were consulted, in line with section 29 of the Scotland Act 2016, as regulations to add Foster Carers to the list of exemptions to the Shared Accommodation Rate, which are made under section 11(4) of the Welfare Reform Act 2012, affect the calculation of housing costs within Universal Credit for claimants in Scotland.

11. Guidance

11.1 The Department will issue Advice for Decision Making and Decision Makers Guide memos, to be published on the DWP Intranet, to ensure that staff are aware of the changes introduced by this instrument. The memos will also be published on the Gov.uk website for the public before this instrument comes into force.

12. Impact

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

12.2 Extending the existing support within Universal Credit for households with children who might otherwise be in local authority care will have a positive impact upon women as parents/carers of children in non-parental caring arrangements or adopted from local authority care. Since the majority of lone parents/carers are women, this change will disproportionately affect women as compared to men in a positive way.

12.3 Reinstating housing support for 18-21 year will provide parity between 18-21 year olds and other age groups in eligibility for housing costs, ensuring no age group are disproportionately unable to claim housing support.

12.4 Other measures in this package are minor amendments and have no adverse or disproportionate negative impacts on equality and so no benefit recipient with a protected characteristic will be affected. The policy makers are content that the need to advance equality has been considered appropriately.

12.5 A Regulatory Impact Assessment has not been prepared for this instrument because there are no businesses affected by the measures in the instrument.

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 Department is firmly committed to evaluating and monitoring the impact of its policies. To do this the Department will:

- continue to closely monitor Universal Credit;
- monitor through correspondence;
- evaluate the impact through regular liaison with the Local Authority Associations and other stakeholders; and

- use feedback to assess and review whether the policies are working as intended.

15. Contact

15.1 Liam Parker at the Department for Work and Pensions can answer any queries regarding the instrument. Email: Liam.Parker3@dwp.gsi.gov.uk

15.2 James Bolton at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Justin Tomlinson, Parliamentary Under Secretary of State at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.