EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (TREATMENT OF ARREARS OF BENEFIT) REGULATIONS 2018

2018 No. 932

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to expand the existing capital disregards in legacy income-related benefits[1] that currently apply to benefit arrears amounting to £5,000 or more which are paid as a result of official error, to apply equally where the arrears are paid as a result of an error on a point of law. This would mean that the arrears in question could be disregarded for the life of the benefit award rather than for the current maximum of 52 weeks.

2.2 The instrument also applies the extended capital disregards for arrears as a result of official error or error on a point of law to Universal Credit (UC) during the period of migration of legacy benefit claimants to UC, thereby ensuring consistency of approach across the benefits.

2.3 No change is needed to contributory benefits as they are not affected by capital.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 territorial extent and application of this instrument is Great Britain.

4.2 The Department for Communities in Northern Ireland will be making corresponding provision for Northern Ireland.

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 is required.

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[1] Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Housing Benefit, Housing Benefit (Persons who have attained the qualifying age for state pension credit), State Pension Credit.

6. Legislative Context

6.1 Across the range of income-related social security benefits, there are capital limits at or above which a claimant's entitlement to an award of benefit can be affected, either in whole or in part. A claimant is not normally entitled to working age benefits, for example, if they have capital in excess of £16,000. Additionally, if they have capital above £6,000 and up to £16,000, their benefit is reduced by an amount known as `tariff income'. This is deducted at a rate of £1.00 for every complete £250, or part of £250, over £6,000. Pension age income-related benefits have similar, but slightly different, rules and in Pension Credit there is no upper capital limit.

6.2 Within legacy income-related benefits and Universal Credit (UC) there are provisions for benefit arrears or any payment made to compensate for arrears due to the non-payment of benefit, to be wholly ignored ("disregarded") in the calculation of a person's capital. In the legacy benefits this is for a period of 52 weeks from the date of receipt. However, in the circumstances where the arrears amount to £5,000 or more and became payable as a result of official error, they are disregarded for 52 weeks from date of receipt or, if the relevant sum is received in its entirety during the award of an income-related allowance, for the remainder of that award if that is a longer period, except in the case of State Pension Credit and Housing Benefit (Persons who have attained the qualifying age for state pension credit) where they are disregarded until the award comes to an end. In effect, the arrears are excluded from the calculation of the beneficiary's capital for the lifetime of their award. In UC, benefit arrears or compensation for the late payment of benefits are disregarded for a period of 12 months from the date of receipt; there is no provision for the payments to be disregarded for a longer period if paid out for official error.

6.3 This instrument in respect of the legacy income-related benefits extends the existing disregard provisions to include amounts of £5,000 or more which become payable as a result of an error on a point of law. This will prevent claimants who might receive arrears of this magnitude from being disadvantaged if the relevant sum was otherwise to be taken into account as part of their capital.

6.4 In respect of UC, this instrument provides that any benefit arrears or payment made to compensate for arrears due to the non-payment of benefit, of £5,000 or more which are received whilst a claimant is getting UC, or were received during an earlier award of a legacy income-related benefit and the claimant migrated to UC within one month of their earlier award ending, and would have been disregarded, or were disregarded, in respect of the earlier award (as a result of official error or an error on a point of law), will benefit from the extended disregard until their current UC award ends.

6.5 This approach provides a uniform change across all legacy income-related benefits. The UC amendment ensures consistency with legacy benefits is maintained until all legacy benefit claimants have been migrated to UC.

6.6 The Regulations subject to amendment are the:

- Income Support (General) Regulations 1987, Schedule 10 paragraph 7(2) (S.I. 1987/1967)[2];
- Jobseeker's Allowance Regulations 1996, Schedule 8 paragraph 12(2) (S.I. 1996/207)[3];

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[2] http://www.legislation.gov.uk/uksi/1987/1967/schedule/10/made
[3] http://www.legislation.gov.uk/uksi/1996/207/contents/made

- State Pension Credit Regulations 2002, Schedule 5 paragraph 20A(1) (S.I. 2002/1792)[4];
- Housing Benefit Regulations 2006 Schedule 6 paragraph 9(2) (S.I. 2006/213[5]);
- Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, Schedule 6 paragraph 22(1) (S.I. 2006/214)[6];
- Employment and Support Allowance Regulations 2008, Schedule 9 paragraph 11(2) (S.I. 2008/794)[7];
- Universal Credit (Transitional Provisions) Regulations 2014 – this instrument inserts new regulation 10A (S.I. 2014/1230)[8].

7. Policy background

What is being done and why

The issues to be addressed

7.1 Currently there is an inconsistency in the way that DWP treats arrears of benefit which, when paid, amount to a substantial sum that could otherwise affect entitlement to income-related benefits. We want to provide consistent treatment of arrears of benefit paid due to an error on a point of law, with those paid due to an official error in legacy income-related benefits.

7.2 In addition, Universal Credit (UC), as a simplified benefit, only has a 12 month disregard for all benefit arrears regardless of the basis for payment of the arrears. This could mean that when claimants migrate from a legacy benefit to UC, the treatment of any arrears payments would change, and they could be worse off than people who did not migrate. This means that there is inconsistency of treatment between the benefits and makes it difficult for DWP to provide a clear message about, and equitable treatment in, the treatment of arrears payments.

What the instrument does

7.3 This instrument is designed to ensure equitable treatment for people who receive arrears of benefit of £5,000 or more arising from an error on a point of law (for example, arrears of Personal Independence Payment arising from recent legal judgments).

7.4 This instrument ensures that arrears amounting to £5,000 or more, which are paid as the result of an error on a point of law, are disregarded until the termination of the current award, and provides the same capital disregard in UC in respect of arrears relating to benefit entitlement that begins before migration to UC is complete.

7.5 This instrument will amend the Universal Credit (Transitional Provisions) Regulations 2014 to disregard, when calculating an award of UC, any benefit arrears

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[4] http://www.legislation.gov.uk/uksi/2002/1792/contents/made
[5] http://www.legislation.gov.uk/uksi/2006/213/contents/made
[6] http://www.legislation.gov.uk/uksi/2006/214/contents/made
[7] http://www.legislation.gov.uk/uksi/2008/794/contents/made
[8] http://www.legislation.gov.uk/uksi/2014/1230/contents/made

payments, or payment to compensate for arrears due to the non-payment of benefit, of £5,000 or more for 12 months from receipt of the payment, or until the end of the current UC award (if later), where:

a) The payment is received during the current UC award and it would have been disregarded from the calculation of the claimant's capital if the claimant were entitled to a relevant benefit: legacy benefit, State Pension Credit or Housing Benefit for people over the qualifying age for State Pension Credit; or

b) the payment is received during an award of a relevant benefit and is disregarded from the calculation of the claimant's capital; the claimant then moves to UC within one month of the end of their relevant benefit award.

7.6 This provision applies to arrears due to official error and error on a point of law. It will only apply to arrears relating to benefit entitlement which began before migration of the legacy benefits to UC is complete.

7.7 The requirement to move from a relevant benefit to UC following termination of the relevant benefit award within one month, in order to benefit from the extended disregard, ensures that those who naturally migrate to UC will benefit, i.e. those with a relevant benefit award who are required to make a claim for UC as a result of a change in their circumstances. In such circumstances there may be a delay in the claimant making a claim for UC and it would be unfair to treat such individuals differently from those who are managed migrated to UC.

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

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Informal consolidation of new instruments is available to the public free of charge via the National Archives website: http://www.legislation.gov.uk.

10. Consultation outcome

10.1 We have consulted the Local Authority Associations[9] (LAAs) as the changes have an effect on Housing Benefit Regulations. Three out of four LAAs responded and had no comments.

10.2 We have also consulted the Social Security Advisory Committee. Under the powers conferred by Section 173(1)(b) of the Social Security Administration Act 1992, the Committee decided that it did not wish to take these regulations on formal reference and that they may proceed accordingly.

11. Guidance

11.1 Guidance detailing these changes will be issued to DWP decision makers, and to Local Authority staff, in advance of this statutory instrument coming into force.

[9] There are four LAAs representing local authorities' interests: the Local Government Association, London Councils, Welsh Local Government Association and Convention of Scottish Local Authorities.

12. Impact

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

12.2 A Regulatory Impact Assessment has not been prepared for this instrument, because no impact on business is foreseen.

12.3 There is no, or no significant, impact on the public sector. The regulations should have a positive impact on claimants who are affected by it, as arrears paid due to an error on a point of law will be disregarded for the lifetime of the award of an income-related benefit in more cases than they are currently. This will have a positive impact as it will mean that when claimants receive large payments of benefit arrears, the payments will not affect current claims.

13. Regulating small business

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

14. Monitoring & review

14.1 No specific monitoring and review of the income-related benefit disregard processes will be carried out above and beyond that which is already in place as part of the Department's routine data.

15. Contact

15.1 Kim Jones [Telephone: 0207 449 4810 or email: kim.jones@dwp.gsi.gov.uk] and Joanne Ward [Telephone: 020 7449 5039 or email: joanne.ward@dwp.gsi.gov.uk] at the Department for Work and Pensions can be contacted with any queries regarding the instrument.

15.2 Jackie Oatway and Louise Everett, Deputy Directors in the Disability Employment Support Directorate at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Sarah Newton, Minister for Disabled People, Health and Work at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.