EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY BENEFITS (CLAIMS AND PAYMENTS) (AMENDMENT) REGULATIONS 2021

2021 No. 1065

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Statutory Instrument enables the Department, with the claimant's consent, to stagger payments of benefit arrears rather than have to pay the whole amount as a lump sum, where the Department believes it is necessary to protect the interests of the claimant. It will only apply to arrears payments and will not affect normal benefit entitlements. It will apply to the benefits set out in the Regulations.

3. Matters of special interest to Parliament

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

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales for the benefits included at regulation 1(2)(a); and for England, Wales and Scotland for the benefits referred to in regulation 1(2)(b)[1].

4.2 The territorial application of this instrument is as above.

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.

6. Legislative context

6.1 As part of normal business, the Department sometimes has to retrospectively review entitlement to benefit. This may mean that the time that has elapsed since the original decision was made may result in claimants being due a large payment of arrears of benefit. There are a number of possible reasons for these payments, for example, delays in processing claims, successful Mandatory Reconsiderations, successful appeals and official error. In recent times the number of 'large payment' cases has

[1] **England & Wales:** Disability Living Allowance, Attendance Allowance, Severe Disablement Allowance, Industrial Injuries Disablement Benefit, Carer's Allowance, Social Fund Maternity Expenses, Social Fund Funeral Payments, Social Fund Cold Weather Payments, Social Fund Winter Fuel Payments. **England, Wales and Scotland. As above plus:** Income Support, Jobseeker's Allowance, Employment and Support Allowance, State Pension Credit, Retirement Pension, State Pension, Widowed Parent's Allowance, Widow's Benefit, Bereavement Support Payment, Maternity Allowance.

increased significantly, in the main because of correction exercises arising from cases in the Upper Tribunal (Administrative Appeals Chamber) and court cases, with payments exceptionally up to £60,000 having been awarded.

6.2 The current options for making payment of benefit arrears are:

(a) Pay the arrears as a lump sum.

(b) With the claimant's consent, pay the whole amount to a third party.

6.3 Regulation 47(3) of the Universal Credit, Personal Independence Payment and Employment and Support Allowance Regulations 2013/3802, allows the Secretary of State, with the claimant's consent, to stagger the payment of Universal Credit (UC) arrears and regulation 51(3) allows the same for contributory Employment and Support Allowance (ESA). It should be noted that neither provision was drafted with staggering payments in mind but due to the way in which they are drafted they have been interpreted to enable this to be done with the consent of the claimant. No other benefit provision is drafted to afford such an interpretation.

6.4 The proposed amendments will enable the Secretary of State to offer claimants payment by instalments if they would prefer to receive the money they are owed in this way. This is a limited measure that will only be applied within the confines of the regulatory changes. It will only be used with the consent of the claimant where it is necessary to protect their interests.

7. Policy background

What is being done and why?

7.1 The Social Security Administration Act 1992[3] enables the Secretary of State to make regulations as to how benefits should be paid.

7.2 For the vast majority of claimants receiving a large lump sum is not a problem, but there are a small minority of claimants – often the Department's most vulnerable – for whom these payments pose a potential risk. In extremis a risk to their lives, for example, those with serious addiction issues, where having large sums of money at any one time might lead to tragic consequences.

7.3 The changes now being proposed give the Secretary of State another option in her discussions with claimants. The option to be paid in instalments is something for the claimant to agree to if they choose and the Secretary of State recognises that this is a statutory entitlement that is lawfully due and so must be paid. The existing guidance will therefore be supplemented with a section which deals specifically with these offers; in particular, on how staff will present the offers. The Department does not intend to prescribe an amount or period of time over which the payments will be staggered to preserve maximum flexibility to take into account the claimant's particular circumstances.

7.4 For legacy benefits (that is, benefits introduced before 2013) the regulations use the term 'beneficiary' rather than claimant because that is consistent with the language of their payment provisions. For the new style benefits (benefits introduced after 2013:

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[2] https://www.legislation.gov.uk/uksi/2013/380/contents;

[3] https://www.legislation.gov.uk/ukpga/1992/5/contents - see section 5

Universal Credit (UC), Personal Independence Payment (PIP), contributory Jobseeker's Allowance (JSA) and contributory ESA[4]) 'claimant' has been used for the same reason.

7.5 In relation to joint claims for UC and JSA (where such claims are still possible), the department has decided that both claimants (or beneficiaries in the case of JSA) will need to consent to the proposed staggering of payments. This is because it is a joint award and both parties should have a say in how it is paid. In respect of a joint claim for JSA, because the Regulations refer to "beneficiary" and not "claimant", the Department has relied on the singular including the plural under the Interpretation Act. For UC, as 'claimant' is defined to include singular and joint claimants in this context at s40 of the Welfare Reform Act 2012[5], the Regulations make it clear that here both joint claimants must consent.

7.6 The provisions can be used where they are necessary to protect the interests of the claimant / beneficiary. The Department has decided not to refer directly to the interests of other third parties e.g. a partner and children, because the intention is these would be included within the claimant's / beneficiary's interests. The provisions could potentially therefore be used where the vulnerability of the claimant could potentially harm the interests of their partner or any children as indirectly it would be in their interests to avoid this.

7.7 In the case of joint claims in the circumstances discussed above, the provisions only require that it is necessary to protect the interests of one of the parties to the claim. In the vast majority of cases, the Department considers that directly or indirectly the parties' interests will be the same. If one of the parties to the joint claim does not agree to the proposal, the payment will not be made on a staggered basis.

7.8 The Department has limited data to enable us to forecast how this change will impact affected claimants. Because it is not routinely collected, we do not have data on how often we currently make payments to third parties or rely on the existing limited provisions to stagger payments to UC or New Style ESA claimants (where the legislation can potentially be interpreted to allow this). However, data from recent correction exercises where benefit entitlements have had to be retrospectively changed has convinced us that having this option would be a useful tool in supporting some of the Department's most vulnerable claimants if they were to be offered an arrears payment because of the numbers of claimants eligible and the sums involved.

ESA corrective Exercise

7.9 As at 12 January 2020, 112,000 cases had qualified for arrears payments as a result of their awards having been changed and the average payment owed was £5,000.

Ongoing Personal Independence Payment corrective Exercise

7.10 Around 8000 awards have been made with an average payment of £5000.

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[4] Contributory JSA and contributory ESA replaced JSA and ESA respectively.
[5] https://www.legislation.gov.uk/ukpga/2012/5/contents

8. European Union Withdrawal and Future Relationship

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 There are no plans to consolidate either the 1987 or 2013 Regulations.

10. Consultation outcome

10.1 No consultation has been undertaken. The existing regulations enable the Secretary of State to stagger payments in some limited circumstances and these changes just extend this option to all other benefits. This is proposed as a positive change to increase the flexibility for the Department's most vulnerable claimants as to how they can receive the money they are owed by the Department.

11. Guidance

11.1 The Department has internal guidance which is being updated to include this new option.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this 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 intends to monitor how this change operates in practice. The Department will gather the following data: the amount of the award; number of offers made; number accepted. This will be done on an ongoing basis once the change comes into force.

15. Contact

15.1 Lyndon Walters at the Department of Work and Pensions: 0207449 7347 or Lyndon.walters***@dwp.gov.uk*** can be contacted with any queries regarding the instrument.

15.2 Louise Everett, Deputy Director for Disability and Housing Support at the Department for Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.

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