

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY AND UNIVERSAL CREDIT (MISCELLANEOUS
AMENDMENTS) REGULATIONS 2023

2023 No. 543

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 His Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to various pieces of legislation relating to Universal Credit and makes legislation relating to recovery of social security benefits. The reasons for the amendments include the need to update an out of date address, correct errors and clarify policy intent.

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 extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, and Scotland.

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 This instrument makes minor changes in order to correct, clarify and update the following regulations:

- The Social Security (Recovery of Benefits) Regulations 1997¹;
- The Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008²;
- The Universal Credit Regulations 2013³;

¹ <https://www.legislation.gov.uk/uksi/1997/2205/contents>

² <https://www.legislation.gov.uk/uksi/2008/1596/contents>

³ <https://www.legislation.gov.uk/uksi/2013/376/contents>

- The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013⁴;
- The Universal Credit (Transitional Provisions) Regulations 2014⁵.

7. Policy background

What is being done and why?

Amendment to regulation 1(2) of the Social Security (Recovery of Benefits) Regulations 1997 and regulation 1(2) of the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008

- 7.1 This instrument updates the address of the Compensation Recovery Unit. Amending the incorrect addresses in regulations will avoid any prospect of miscommunication or letters going astray.

Amendment to regulation 28(6) of the Universal Credit Regulations 2013

- 7.2 Consequential amendments were made to the Universal Credit Regulations 2013 in 2017 to account for changes made in the Welfare Reform and Work Act 2016⁶. This Act abolished the award of the limited capability for work (LCW) element in Universal Credit (and also the work related activity component in ESA) for claims made on or after 3 April 2017.
- 7.3 Paragraph (6) of regulation 28 of the Universal Credit Regulations 2013 was omitted in error. Its omission means that it could be argued that claimants who are determined to have limited capability for work and work related activity (LCWRA), having previously been determined as having LCW, could be required to again serve a further 3-month relevant period before the LCWRA element is awarded. Reinserting regulation 28(6) makes it clear that claimants who are determined as having LCW do not have to serve the 3-month relevant period before the LCWRA element is awarded.

Amendment to regulation 26(2) of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013

- 7.4 Universal Credit is assessed and paid monthly with entitlement based on a household’s circumstances on the last day of the monthly assessment period. The Universal Credit system allows for the maximum period of one month backdating to be based on the length of an assessment period, with the date of claim becoming the last day of the first assessment period. This reflects the monthly assessment of Universal Credit. However, the regulations provided for a maximum period of backdating of up to a month without setting out how this interacted with the monthly assessment period approach.
- 7.5 To accommodate this, a resource intensive clerical process was required where it appeared that a case could or should be backdated for longer than allowed for by the system (one assessment period). Assessment periods have to take account of, for example, the different number of days in each month and leap years and so “a month”

⁴ <https://www.legislation.gov.uk/uksi/2013/380/contents>

⁵ <https://www.legislation.gov.uk/uksi/2014/1230/contents>

⁶ <https://www.legislation.gov.uk/ukpga/2016/7/contents>

does not automatically align with assessment period dates. This amendment aligns the backdating provision with the approach specified in relation to the extension of the time to make a claim in Regulation 46 of the Universal Credit (Transitional Provisions) Regulations 2014 and allows for backdating for up to the length of an assessment period. This ensures alignment between the regulations and the monthly assessment period approach and removes any potential ambiguity.

Amendment to regulation 9 of the Universal Credit (Transitional Provisions) Regulations 2014

- 7.6 This regulation includes a typographical error and incorrectly cross-refers to regulation 26 of the Universal Credit Regulations 2013. This cross reference is corrected to refer to regulation 26 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance Regulations 2013.

Amendment to regulation 21 of the Universal Credit (Transitional Provisions) Regulations 2014

- 7.7 This amendment corrects an inaccurate cross-reference in regulation 21(4) of these regulations where it currently refers to regulation 27(1)(b) of the Universal Credit Regulations but should refer to regulation 27(1). The amendment will ensure any confusion or ambiguity is avoided.

Amendment to regulation 53(10) of the Universal Credit (Transitional Provisions) Regulations 2014

- 7.8 The Universal Credit Housing Element is not paid to claimants with any housing costs arising from being in temporary or specified accommodation, rather, Housing Benefit provides support in those circumstances.
- 7.9 Some claimants who have moved into temporary or specified accommodation, for example due to domestic violence, can receive Housing Benefit for both that accommodation and their permanent home. As currently drafted, the regulations could be misinterpreted and suggest that no Housing Benefit at all should be taken into account when considering whether Transitional Protection should be awarded when the claimant moves to Universal Credit.
- 7.10 This amendment removes any doubt and ensures the correct amount of Housing Benefit, i.e. that for their permanent home, will be taken into account when considering the award of Transitional Protection under regulation 53 (“the transitional element – total legacy amount”) of the Universal Credit (Transitional Provisions) Regulations 2014.

Amendment to Schedule 1 of the Universal Credit (Transitional Provisions) Regulations 2014

- 7.11 These regulations contain provisions that allow HMRC to finalise entitlement to tax credits in the tax year when a person moves to Universal Credit rather than at the end of the tax year (as would typically be the case).
- 7.12 These amendments remove unnecessary references to a “part” year which may cause confusion and ambiguity.

Amendment to Schedule 2 of the Universal Credit (Transitional Provisions) Regulations 2014

- 7.13 The amendment clarifies that for Universal Credit couple claims, the highest rate of transitional Severe Disability Premium element (SDPTE), will be payable if the higher Severe Disability Premium (SDP) rate was payable in their previous legacy benefit (Income Support, Income Based Jobseeker's Allowance or Income Related Employment and Support Allowance) and no person has since become a carer for either of them.
- 7.14 This ensures claimants, who would not have continued to receive the higher SDP rate had they remained on their legacy benefit, will not be awarded the higher SDPTE rate as part of their Universal Credit award.

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

10. Consultation outcome

- 10.1 The Department presented the draft regulations to the Social Security Advisory Committee (SSAC) on 22 March 2023. The committee did not take the regulations on formal reference.

11. Guidance

- 11.1 Official guidance will be updated both internally and on gov.uk.

12. Impact

- 12.1 There is no significant impact on business, charities, or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because it has negligible impact on business or civil society organisations.

13. Regulating small business

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

14. Monitoring & review

- 14.1 There are no plans to formally review the impacts of these amendments and the regulations do not include a statutory review.

15. Contact

- 15.1 Winston Alexander at the Department for Work and Pensions, email: winston.alexander@dwp.gov.uk, can be contacted with any queries regarding the instrument.

- 15.2 Graeme Connor, Deputy Director for Universal Credit Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Guy Opperman MP, Minister for Employment, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.