

**EXPLANATORY MEMORANDUM TO**  
**THE UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) AND**  
**HOUSING BENEFIT (AMENDMENT) REGULATIONS 2013**

**2013 No. 2070**

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 These negative resolution regulations amend the Universal Credit (Transitional Provisions) Regulations 2013<sup>1</sup>, the Housing Benefit Regulations 2006<sup>2</sup> and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>3</sup> to support the national roll-out of Universal Credit from 28<sup>th</sup> October 2013 and make provision for paying Universal Credit along with Housing Benefit in certain specified cases. The regulations come into force on 28<sup>th</sup> October 2013.

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

3.1 None.

4. **Legislative Context**

4.1 The Welfare Reform Act 2012 provides 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 Tax Credits.

4.2 The Universal Credit (Transitional Provisions) Regulations 2013/386 ("the Transitional Regulations") came into force on 29<sup>th</sup> April 2013 and provide that the introduction of Universal Credit from that date is limited to certain categories of claimant ("the Pathfinder Group"). Commencement Orders<sup>4</sup> further restrict Universal Credit to claimants in specified postcode areas and bring into force related changes to Jobseeker's Allowance and Employment and Support Allowance.

4.3 The Transitional Regulations also prevent anyone entitled to Universal Credit from being entitled to any of the benefits and tax credits listed in

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2013/386/contents/made>

<sup>2</sup> <http://www.legislation.gov.uk/uksi/2006/213/contents/made>

<sup>3</sup> <http://www.legislation.gov.uk/uksi/2006/214/contents/made>

<sup>4</sup> <http://www.legislation.gov.uk/uksi/2013/983/contents/made> and <http://www.legislation.gov.uk/uksi/2013/983/contents/made>

paragraph 4.1 above (which are referred to in the Transitional Regulations as “existing benefits”).

4.4 The Universal Credit (Transitional Provisions) and Housing Benefit (Amendment) Regulations 2013 (“the Regulations”) amend the Transitional Regulations, the Housing Benefit Regulations 2006 (“the Housing Benefit Regulations”) and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (‘the Housing Benefit (SPC) Regulations’) to enable Housing Benefit in respect of exempt accommodation to be paid alongside Universal Credit.

4.5 The Regulations also amend the Transitional Regulations to make an amendment to the Pathfinder Group criteria, relating to Credit Union accounts; an amendment affecting awards of Universal Credit without a claim; and an amendment concerning the effect of transition to Universal Credit, relating to the benefit cap.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain. The Department for Social Development in Northern Ireland will produce its own legislation for Northern Ireland.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### *Amendments relating to exempt accommodation*

7.1 Under the Universal Credit Regulations 2013<sup>5</sup>, payments made in respect of exempt accommodation are not taken into account as “rent payments”. This means that the housing element of Universal Credit is not payable in respect of exempt accommodation.

7.2 The Government is exploring the feasibility of a localised funding system for the additional housing-related costs of those in supported housing that is “exempt accommodation” for Housing Benefit purposes<sup>6</sup>. In the meantime, the Regulations make provision to allow supported exempt

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<sup>5</sup> <http://www.legislation.gov.uk/ukxi/2013/376/contents/made>

<sup>6</sup> In this context we are referring to a specific group defined as ‘exempt’ supported accommodation as currently set out in DWP legislation. That is either:

- a resettlement place; or
- accommodation provided by a county council, housing association registered charity or voluntary organisation where that body or person acting on their behalf provides the claimant with care, support or supervision.

See paragraphs 4 and 5 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 No. 217 (<http://www.dwp.gov.uk/docs/a8-3301.pdf>)

accommodation housing costs for Universal Credit claimants to be met by way of Housing Benefit and are, consequently intended to be an intermediate measure.

7.3 People who live in supported housing that satisfies the definition of “exempt accommodation” have the amount of their rent eligible for help worked out using rules that date back to the early 1990s. Maintaining these rules has preserved a degree of flexibility in benefit provision that recognises the additional costs of providing this type of housing.

7.4 Regulation 3 therefore makes a series of amendments to regulations 2, 3, 14, 15, 16 and 18 of the Transitional Regulations, to remove the existing prohibition on a claimant being entitled simultaneously to both Universal Credit and Housing Benefit.

7.5 The amendments in regulation 3 ensure that:

- an award of Housing Benefit in respect of exempt accommodation does not prevent a claim to Universal Credit being made by a person who was formerly a member of a Universal Credit joint claim couple, or a joint claim to Universal Credit being treated as made where one member of the couple previously had an award of Universal Credit as a single person (regulation 3(2));
- an award of Universal Credit can be made without a claim in accordance with regulation 6 or regulation 9(6) or (7) of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013/380<sup>7</sup> even if the claimant is entitled to housing benefit in respect of exempt accommodation ((regulation 3(3));
- an award of Universal Credit does not prevent a person being entitled to Housing Benefit in respect of exempt accommodation (regulation 3(4));
- where a newly-formed couple is treated as making a claim to Universal Credit, the termination of any awards of existing benefits does not include awards of Housing Benefit in respect of exempt accommodation (regulation 3(5)); and
- where a Universal Credit claimant is awarded Housing Benefit in respect of exempt accommodation as a result of a decision by the First-tier Tribunal, the Upper Tribunal or a Court, or as a result of a revision or supersession by the Secretary of State or a relevant authority, that award may subsist (regulation 3(6)).

7.6 Regulation 7 amends the Housing Benefit Regulations to ensure that they take account of the possibility that a claimant who is entitled to Universal Credit is also entitled to Housing Benefit in respect of exempt accommodation. Regulation 7(4) deals with the case where a person in fear of domestic violence is living temporarily in accommodation that qualifies as exempt accommodation but intends to return to their usual home. It allows for

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<sup>7</sup> <http://www.legislation.gov.uk/ukxi/2013/380/contents/made>

them to claim Housing Benefit in respect of the exempt accommodation and to continue to receive the Housing Element of Universal Credit in respect of their usual home.

7.7 Regulation 7(5) amends the Housing Benefit Regulations to ensure that a student who is a Universal Credit claimant and who is living in exempt accommodation can receive help with their rent through Housing Benefit, unless they are receiving the Universal Credit housing element in respect of other accommodation.

7.8 Regulation 7(6) amends the Housing Benefit Regulations to ensure that those Universal Credit claimants whose home is exempt accommodation are able to receive help with their housing costs through Housing Benefit from the same date as they are awarded Universal Credit, provided that the claim for housing benefit is made within a specified time.

7.9 Regulation 7(7), (8) and (9) amend the Housing Benefit Regulations to ensure that Universal Credit claimants have their earnings, income other than earnings and their capital, respectively, disregarded in the calculation of their Housing Benefit. This mirrors existing provisions for the income related benefits and will only affect those whose home is exempt accommodation.

7.10 Regulations 7(3) and 8 amend the Housing Benefit Regulations and the Housing Benefit (SPC) Regulations to ensure that any person who has reached state pension age and is on Universal Credit or has a partner on Universal Credit is subject to the Housing Benefit Regulations rather than the Housing Benefit (SPC) Regulations.

#### *Amendment relating to credit union accounts*

7.11 Regulation 4 amends regulation 12(e) of the Transitional Regulations, which requires that a person must have an account with a bank, building society or the Post Office in order to belong to the Pathfinder Group and thus be eligible to claim Universal Credit.

7.12 In due course, along with the remaining Pathfinder Group criteria specified in Chapter 2 of the Transitional Regulations, these restrictions will be removed. For now, regulation 4 widens the requirement so that a person who has a current account with a credit union may also belong to the Pathfinder Group.

7.13 Other types of account that a credit union may offer are not included in the amendment. 'Current account' has its usual meaning - i.e. it is a transactional account for day-to-day use that identifiably belongs to the person concerned, including by means of a six-digit sort code and individual account number. As such, the amendment continues to ensure that Universal Credit claimants have an account into which Universal Credit payments can be made by direct transfer while being more consistent with the wider work on financial inclusion being undertaken by DWP with credit unions

*Amendments relating to awards of Universal Credit without a claim*

7.14 Regulation 6 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013/380<sup>8</sup> permits a further award of Universal Credit to be made without a new claim if the original award terminated within the preceding six months as a result of the level of the claimant's earnings.

7.15 Currently, regulation 14(2) of the Transitional Regulations disapplies that provision if the claimant was not entitled to universal credit for the first assessment period due to the level of their earnings (i.e. if the first month resulted in a nil UC award). That regulation reflected limitations of the computer systems in place for the Pathfinder rather than longer-term policy intent. Regulation 5 therefore revokes regulation 14(2) of the Transitional Regulations because, following testing during Pathfinder, it is no longer required.

*Revocation and saving relating to application of the benefit cap*

7.16 Regulation 20 of the Transitional Regulations currently disapplies the benefit cap provisions of Part 7 of the Universal Credit Regulations 2013<sup>9</sup>, which would otherwise limit the total amount of welfare benefits that most claimants may be paid to £2,167 per month for couples and lone parents and to £1,517 per month for single claimants.

7.17 Regulation 20 was intended as temporary measure to apply only during the Pathfinder, which reflected the fact that the benefit cap in Housing Benefit was being rolled-out on a different schedule from Universal Credit, and that the limited nature of the Pathfinder Group (particularly being restricted to single claimants without children) meant it was unlikely that a Universal Credit claimant would be entitled to payments above the level of the benefit cap during the six months of the Pathfinder.

7.18 The rollout of the benefit cap in Housing Benefit began on a phased basis from 15 April 2013 and the intention is that all appropriate cases will be capped by the end of September 2013. Although the Pathfinder Group criteria mean it continues to be unlikely that a Universal Credit claimant would be entitled to payments approaching the level of the benefit cap, the situation could occur if an existing Universal Credit claimant's circumstances changed, by forming a couple with a person responsible for a number of children, for example. It is therefore appropriate that the benefit cap be implemented in Universal Credit at the earliest opportunity after its full implementation in Housing Benefit and before the national rollout of Universal Credit commences.

7.19 Regulation 6 therefore revokes regulation 20 of the Transitional Regulations and provides for the benefit cap to be applied to:

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<sup>8</sup> <http://www.legislation.gov.uk/uksi/2013/380/regulation/6/made>

<sup>9</sup> <http://www.legislation.gov.uk/uksi/2013/376/part/7/made>

- existing Universal Credit claimants, with effect from the start of their first assessment period beginning on or after 28<sup>th</sup> October; and
- anyone who makes a new claim for Universal Credit on or after 28<sup>th</sup> October, from the date of their Universal Credit claim.

## **8. Consultation outcome**

8.1 These Regulations were not subject to statutory referral to the Social Security Advisory Committee because they are to be made within six months of the relevant powers coming into force. However, in recognition of the importance of the changes encompassed by the current welfare reforms, the Secretary of State for Work and Pensions invited the Committee to consider them in a similar way to regulations that are subject to formal scrutiny under section 172 of the Social Security Administration Act 1992<sup>10</sup>.

8.2 The Committee considered the draft Regulations at a meeting on 7<sup>th</sup> August 2013 and were content with the regulations and policy approach.

8.3 The Department held a formal, two-week consultation with local authority associations, on draft regulations, ending on 31<sup>st</sup> July 2013. No responses concerning the policy or content of the draft regulations were received.

## **9. Guidance**

9.1 Work is underway to produce comprehensive guidance to provide effective support for advisers and decision makers in administering Universal Credit. In line with standard practice, the Advice for Decision Making (which has replaced the Decision Maker's Guide) has now been published on the Departmental website<sup>11</sup>.

9.2 Knowledge Management guidance is being developed to further support staff in the administration of Universal Credit. Initial guidance has already been issued in the Universal Credit Pathfinder and guidance for claimants in making their claim to Universal Credit is available as part of the claims process.

## **10. Impact**

10.1 There is no impact on business or civil society organisations.

10.2 There will be no impact on the public sector because Housing Benefit rules are not changing and the burden on local authorities of administering these cases will remain as it is now.

10.3 Impact Assessments have not been separately prepared for these Regulations. However, an assessment has been made of the impact of the

<sup>10</sup> <http://www.legislation.gov.uk/ukpga/1992/5/section/172/enacted>

<sup>11</sup> <http://www.dwp.gov.uk/publications/specialist-guides/advice-for-decision-making/>.

introduction of Universal Credit and has been published<sup>12</sup>. This also covers information concerning the Department's obligations regarding its Equality Duty.

## **11. Regulating small business**

11.1 These Regulations do not apply to small businesses.

## **12. Monitoring & review**

12.1 The Department is firmly committed to evaluating and monitoring the impact and effects of Universal Credit.

12.2 A high level evaluation strategy was published by the Department for Work and Pensions on 10<sup>th</sup> December 2012<sup>13</sup>.

## **13. Contact**

Barry Cassels at the Department for Work and Pensions can answer any queries regarding the instrument. Tel: 020 7340 4231 or email: [barry.cassels1@dwpgsi.gov.uk](mailto:barry.cassels1@dwpgsi.gov.uk)

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<sup>12</sup> <https://www.gov.uk/government/publications/universal-credit-impact-assessment>

<sup>13</sup> <https://www.gov.uk/government/publications/universal-credit-evaluation-framework>