

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (PAYMENTS ON ACCOUNT OF BENEFIT)
REGULATIONS 2013

2013 No. 383

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 Regulations will make provision for two new types of payment on account of benefit and prescribe the criteria which the Secretary of State must use when determining whether or not to make them.

2.2 The new types of payment on account introduced by these Regulations are:

- Advances of benefit for Universal Credit and legacy benefit claimants¹, (Part 2 of the regulations). These will replace Interim Payments and Social Fund Crisis Loan alignment payments from 1 April 2013; and
- Budgeting Advances, (Part 3 of the Regulations). These will replace Social Fund Budgeting Loans for eligible Universal Credit claimants from 29 April 2013.

2.3 A draft of these Regulations was previously presented to the House of Lords during the Committee stage of the Welfare Reform Act 2012 (“the 2012 Act”) under the title “The Social Security (Short-Term Advances and Budgeting Advances) Regulations 2012”.

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

None.

4. Legislative Context

4.1 Section 138(1)(b) of the Social Security Contributions and Benefits Act 1992, which provides the legislative basis for the existing Discretionary Social Fund, is repealed by section 70(1) of the 2012 Act. This covers Budgeting Loans, Crisis Loans and Community Care Grants. A Commencement Order will be laid shortly to abolish the Discretionary Social Fund, but with a saving provision for Budgeting Loans to continue until people in receipt of Income Support, income-based Jobseeker’s

¹ The legacy benefits in this context are – Jobseeker’s Allowance, Employment and Support Allowance, Income Support, Pension Credit, State Pension, Carer’s Allowance, Maternity Allowance, Bereavement Allowance/Benefit and Industrial Injuries Disablement Benefit.

Allowance and income-related Employment and Support Allowance migrate to Universal Credit.

4.2 To dovetail with this, section 101 of the 2012 Act broadens the existing regulation making powers in the Social Security Administration Act 1992 to make payments on account of benefit and these Regulations are made both under those powers and those in the Social Security Act 1998 in the context of appeals.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister for Welfare Reform has made the following statement regarding Human Rights:

“In my view the provisions of the Social Security (Payments on Account of Benefit) Regulations 2013 are compatible with the Convention Rights.”

7. Policy background - what is being done and why

Overview

7.1 Universal Credit will help to remove the complexities of the current benefits system. Instead of income-based Jobseeker’s Allowance, Housing Benefit, Child Tax Credit, Income Support, Working Tax Credit, and income-related Employment and Support Allowance as separate benefits, there will be a single means-tested benefit for people both in and out of work.

7.2 The Government is also abolishing the current systems of loans available under the Discretionary Social Fund and the provisions that allow for Interim Payments of benefits. The provisions in these regulations ensure continuity of these services in a way that reflects the design and purpose of Universal Credit, encourages financial independence and is both simpler and more cost effective to administer.

7.3 Advances of benefit for Universal Credit and legacy benefit claimants will, although not so termed on the face of the Regulations, be known administratively as “Universal Credit Advances” and “Short Term Benefit Advances”. These will replace both Social Fund Crisis Loan alignment payments and existing Interim Payments of benefit. They will help ensure that those with an immediate financial need have access to funds when making a new benefit claim or, for those already in receipt of benefit, following a change of circumstances which results in a significant increase in the amount of benefit award.

7.4 Budgeting Advances will be available to those entitled to Universal Credit and will replace Budgeting Loans which are available currently under existing legislation to those on income-related benefits (Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance and Pension Credit). Budgeting Loans will continue to be available to all such claimants until their benefit

claims have either been closed or, where appropriate, they have been migrated to Universal Credit. Budgeting Advances will ensure that those with the lowest incomes claiming Universal Credit will continue to have access to an alternative source of funds to high-cost lending in order to cope with emergencies and unforeseen expenses.

Universal Credit Advances and Short Term Benefit Advances (“Advances of Benefit”)

7.5 When someone makes a new claim for benefit ², they can encounter a period of financial need before receiving their first payment of benefit (either because they have no or limited financial resources available to them for the period until their first benefit payment is due to be paid or where their claim cannot be determined immediately). Advances of Benefit are designed to help claimants who are in financial need through that period by providing an advance of their future benefit award, which would then be recovered from subsequent payments of benefit. Advances of Benefit can also be made:

- to claimants who have experienced a change of circumstances that will significantly increase the amount of benefit to which they are entitled; or
- in cases where it is impractical for benefit to be paid on the due date (e.g. due to a technical problem in processing the claim or payment); and
- in cases where someone is receiving a legacy benefit (see footnote 1 above), where the first payment of benefit is made in respect of a period shorter than that in respect of which subsequent payments will be made (e.g. the first payment is made in respect of a week and the next payment is due to be paid in two weeks time and will be made in respect of those two weeks).

7.6 To make an Advance of Benefit to a person, the Secretary of State must be satisfied that they are in financial need.

7.7 Part 2 of the Regulations enables payment of Advances of Benefit to be made. Regulation 4(2) provides that Advances of Benefit are not to be made where there is an appeal pending in relation to the benefit for which the advance has been applied for.

7.8 Regulation 5 prescribes when an Advance of Benefit may be made when there is no claim for benefit and Regulation 6 prescribes when an Advance of Benefit may be made where there is an award of benefit.

7.9 Regulation 7 defines financial need as “a serious risk of damage to the health or safety of the claimant or a member of their family”.

² The provisions also apply where there is no legal obligation to actually make a claim for the benefit concerned and where the Department for Work and Pensions can make a benefit entitlement decision without a formal claim. For example, certain Pension claims and in Universal Credit where entitlement had ceased for a short period due to an increase in earnings, but those earnings have now fallen.

7.10 Regulation 8 details the requirement for a written notice about how the advance will be recovered to be given to the claimant when Advances of Benefit are made. Regulation 9 allows for payments on account to be made by direct credit transfer; and regulation 10 allows for Advances of Benefit to be offset against future payments of benefit.

7.11 Those provisions are designed to strike a balance between providing support to those who need it and discouraging dependency on the benefit system and long-term repayment of loans, encouraging claimants to take more personal financial responsibility for themselves. Details on the size of awards and repayment periods will be covered in guidance.

Budgeting Advances

7.12 Budgeting Advances aim to help low income families defray intermittent expenses, such as the need to buy essential items like furniture or household equipment, or expenses related to, for example, maternity or starting work.

7.13 Part 3 of the Regulations enables payment of Budgeting Advances to be made to a person who is in receipt of Universal Credit. Regulation 12 specifies that the claimant must have been receiving Universal Credit or a relevant income-related benefit (Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or Pension Credit) for a continuous period of at least 6 months prior to making the application (except where the expense necessarily relates to obtaining or retaining employment). The 6 month period mirrors the current criteria for obtaining a Budgeting Loan.

7.14 To ensure that Budgeting Advances are available only to those on the lowest incomes (just as access to existing Budgeting Loans is restricted to those receiving income-related benefits for people working less than 16 hours a week), regulation 13 sets out a maximum earnings threshold during the six month period prior to making the application for eligibility for a Budgeting Advance. This will be £2,600 for single claimants and £3,600 for couples.

7.15 Regulation 14 adds two further conditions to ensure households can afford repayments and to prevent long-term debt: claimants will need to have repaid an outstanding Budgeting Advance before a further Budgeting Advance is awarded and, taking into account debts and other liabilities, the Secretary of State must be satisfied that the Budgeting Advance can reasonably be expected to be recovered.

7.16 Regulation 15 provides that the minimum amount payable is £100 and sets out the maximum amounts payable. The maximum amount depends on whether the Universal Credit claim is in respect of a single person or a couple, and on whether the claimant is responsible for any children or qualifying young people.

7.17 Regulation 16 provides that the amount of a Budgeting Advance would be reduced by any capital in excess of £1,000. The treatment of capital follows a similar provision in the present Budgeting Loans provided by the Discretionary Social Fund scheme. If this would reduce the amount of the Budgeting Advance otherwise payable to less than £100, then no advance is payable.

7.18 The main differences between Budgeting Advances and the current Budgeting Loans scheme are:

- The current scheme allows a claimant to take-out multiple loans up to a maximum debt limit. These loans can only be recovered one at a time in date order, with the oldest collected first. This means there is little incentive for claimants to anticipate needs and budget for themselves, and has led to claimants hovering at their maximum debt limit at levels of debt that many take a number of years to repay. The Budgeting Advances scheme ensures that households can afford repayments and prevents long term debt arising by limiting claimants to one Budgeting Advance at a time, which must be repaid before another Budgeting Advance can be considered. This is intended to encourage improved budgeting and personal financial responsibility, and should help claimants make the transition to work by preparing out of work households for the realities of budgeting for themselves on a monthly income.
- Decision Makers' guidance will set out a maximum recovery period of 12 months to minimise the length of time the claimant will be in debt, extendable to 18 months in exceptional circumstances. This compares with a maximum 104 weeks recovery period for a Budgeting Loan under the Discretionary Social Fund.

Other amendments made by the Regulations

7.19 Regulation 19(1) revokes Part 2 Of the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 (S.I.1988/664) under which payments on account of benefit (known as Interim Payments) are currently made. However, regulation 19(2) contains a saving provision, so that those provisions continue to apply for applications made before regulation 19(1) comes into force and to payments on account made pursuant to such applications.

7.20 Decisions on payments on account do not carry a right of appeal because they are discretionary in nature. Regulation 20 makes an amendment to Schedule 2 to the Social Security and Child Support (Decisions and Appeals) Regulations (SI 1999/991) (decisions against which no appeal lies) so that the scope of those regulations includes decisions made under these regulations (with the exception of decisions regarding offsetting of an award of benefit advances under regulation 10).

Other Financial Support

7.21 As part of wider welfare reform, with the Discretionary Social Fund being abolished, Local Authorities and Devolved Administrations are to be given responsibility for providing support in a crisis (and some other circumstances). Local design and delivery will mean that local providers will have the flexibility to design and deliver the new assistance in a way that best fits local circumstances and local needs. Where appropriate, DWP will signpost claimants to other financial support, including that provided by Local Authorities and Devolved Administrations.

8. Consultation outcome

8.1 Extensive stakeholder engagement has taken place throughout the development of the secondary legislation to support the introduction of Universal Credit. We have held workshops with customer representative organisations and Devolved Administrations to outline detail within the draft Regulations and provide the opportunity for them to seek clarification and to comment on proposals.

8.2 We have responded to the comments made including, for example, increasing the maximum earnings thresholds for eligibility to a Budgeting Advance following observations from welfare organisations that the proposed thresholds were insufficient to ensure broad parity between the arrangements for the legacy benefit system and for Universal Credit.

8.3 Officials have worked closely with the third sector organisations and other Government departments to learn from their experiences of working with relevant claimants groups and to ensure alignment of policy.

9. Guidance

Detailed guidance and training on both the changes to the legacy benefits and on Universal Credit will be provided to Decision Makers concerning the measures introduced by these Regulations. We intend to publish this guidance on the DWP website in line with established practice.

10. Impact

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

10.2 There is no significant cost to the public sector.

10.3 An impact assessment has not been produced for this instrument.

11. Regulating small business

These Regulations do not apply to small business regulation.

12. Monitoring & review

This policy will be monitored and reviewed as part of the Department's wide ranging Evaluation Programme which will cover the introduction of Universal Credit. In addition, it is the intention to specifically review Universal Credit Advances and Budgeting Advances in 2017. Short Term Benefit Advances will also be monitored and evaluated.

13. Contact

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