EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT AND MISCELLANEOUS AMENDMENTS (No. 2) REGULATIONS 2014

2014 No. 2888

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

This instrument makes amendments to Regulations that were made in 2013 in connection with the introduction of Universal Credit. It also makes amendments to certain of the benefits which will eventually be replaced by Universal Credit, as listed in paragraph 4.3 below ("legacy benefits") to reflect the changes being made here to Regulations connected to the introduction of Universal Credit. The reasons for the amendments include the need to make minor changes to support delivery of Universal Credit and ensure appropriate alignment with existing benefits.

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

None.

4. Legislative Context

4.1 The Welfare Reform Act 2012[1] provided 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 Child and Working Tax Credits.

4.2 The legislation for Universal Credit is currently in force only for certain categories of claimant in specified postcode areas.

4.3 This instrument makes changes to a number of Instruments relating to Universal Credit, as well as to other new social security benefits introduced under the Welfare Reform Act 2012. These Instruments are as follows:

- The Universal Credit Regulations 2013 (SI 2013/376)[2] "the Universal Credit Regulations".
- The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (SI 2013/380)[3]
- The Social Security (Payments on Account of Benefit) Regulations 2013 (2013/383)[4].

[1] Welfare Reform Act 2012: http://www.legislation.gov.uk/ukpga/2012/5/contents
[2] Universal Credit Regulations 2013: http://www.legislation.gov.uk/uksi/2013/376/contents
[3] Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013: http://www.legislation.gov.uk/uksi/2013/380/contents/made
[4] The Social Security (Payments on Account of Benefit) Regulations 2013: http://www.legislation.gov.uk/uksi/2013/383/contents

It also makes equivalent changes to certain Regulations that underpin certain legacy benefits, and finally it also makes amendments to two Acts of Parliament. These are listed below:

- The Income Support (General) Regulations 1987 (SI 1987/1967)[5]
- The Jobseeker's Allowance Regulations 1996 (SI 1996/207)[6]
- The State Pension Credit Regulations 2002 (SI 2002/1792)[7]
- The Housing Benefit Regulations 2006 (SI 2006/213)[8]
- The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (2006/214)[9]
- The Employment and Support Allowance Regulations 2008 (2008/794)[10]
- The Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968)[11]
- The Social Security Administration Act 1992 (1992 c.5)[12]
- The Welfare Benefits Up-rating Act 2013 (2013 c.16)[13]
- The Rent Repayment Orders (Supplementary Provisions) (England) Regulations 2007 (SI 2007/572)[14]

5 Territorial Extent and Application

This instrument extends to Great Britain except for Regulation 9(2), which extends to England and Wales but applies in relation to England only. The Department for Social Development in Northern Ireland will be producing its own legislation for Northern Ireland.

6 European Convention on Human Rights

The Parliamentary Under Secretary of State for Work and Pensions, Lord Freud, has made the following statement regarding Human Rights: In my view the provisions of the Universal Credit and Miscellaneous Amendments (No. 2) Regulations 2014, are compatible with the Convention rights

7 Policy background

7.1 Currently, Universal Credit may only be claimed by a person who meets specified criteria ("the gateway conditions") and who lives in one of the postcode districts in which Universal Credit Live Service operates. However, the Department will soon begin to test an enhanced online Digital Service which will make provision for the full range of claimants' circumstances**.** The amendments made by this instrument, will apply to all Universal Credit claimants, whether claiming under the Live Service or the Digital

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[5] The Income Support (General) Regulations 1987: http://www.legislation.gov.uk/uksi/1987/1967/contents/made
[6] The Jobseeker's Allowance Regulations 1996: http://www.legislation.gov.uk/uksi/1996/207/contents/made
[7] The State Pension Credit Regulations 2002: http://www.legislation.gov.uk/uksi/2002/1792/contents/made
[8] The Housing Benefit Regulations 2006: http://www.legislation.gov.uk/uksi/2006/213/contents/made
[9] The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006: http://www.legislation.gov.uk/uksi/2006/214/contents/made
[10] The Employment and Support Allowance Regulations 2008: http://www.legislation.gov.uk/uksi/2008/794/contents/made
[11] The Social Security (Claims and Payments) Regulations 1987: http://www.legislation.gov.uk/uksi/1987/1968/contents/made
[12] The Social Security Administration Act 1992: http://www.legislation.gov.uk/ukpga/1992/5/contents/enacted
[13] The Welfare Benefits Up-rating Act 2013: http://www.legislation.gov.uk/ukpga/2013/16/contents
[14] The Rent Repayment Orders (Supplementary Provisions) (England) Regulations 2007: http://www.legislation.gov.uk/uksi/2007/572/contents/made

Service arrangements.

7.2 Meaning of "blind"

Regulation 3 amends the Universal Credit Regulations and a number of legacy benefit Regulations to change the method by which we determine whether a person is "blind" in the legislation. This is relevant for the purposes of calculating the amount of benefit payable to a claimant, such as when determining entitlement to an additional amount of benefit or calculating income.

In certain income-related benefits we currently determine a person to be blind if they are registered as blind in a register compiled by a local authority. This condition is defective for two reasons. It excludes under 18s, as the registration requirement referred to in legislation does not apply to children under the age of 18. For adults, although the legislation provides for registration, it does not specifically require a local authority to maintain a register of blind people and this may result in them not maintaining such registers. Regulation 3 amends the current meaning of blind by removing the need to register as blind and introducing the requirement to be certified as severely sight impaired or blind by a consultant ophthalmologist.

Certification by an ophthalmologist is an essential precursor to registration as severely sight impaired or blind and reliance on that certification in the amendments provides the closest possible alternative in terms of policy outcome to the existing definition. This reflects the original policy intent to pay additional amounts where people are severely sight impaired or blind, and brings the definition in line with the determination of 'blindness' in practice. This will not result in claimants who are currently entitled being disentitled, but rather, will uphold the original policy aim and ensure that all children and adults who should qualify for the relevant additional amounts are covered by the Regulations.

7.3 Calculation of earned income

Regulation 4 amends the Universal Credit Regulations to clarify the treatment of tax refunds, business assets, information for calculating earned income(Real Time Information (RTI))[15] and the minimum income floor (MIF) for self employed earnings.

Tax refunds - Regulation 4(2) provides that a repayment of tax and national insurance which relates to a tax year in which the person was in paid work is treated as employed earnings, unless it is taken into account as self-employed earnings under Regulation 57(4) of the Universal Credit Regulations. Currently a repayment relating to self-employment must be reported as a receipt for that self-employment. There is no clear rule for an employed claimant to report a repayment received after the end of the tax year. The amendment will ensure greater consistency in the treatment of repayments of tax and national insurance within Universal Credit.

Business Assets - Regulation 4(3) covers the situation where a self-employed person purchases a business asset and declares that purchase as a permitted expense for the purpose of calculating their self-employed earnings in relation to Universal Credit. The Regulation makes it clear that if the asset was declared as a permitted expense, then when

[15] Real Time Information is a system for employers to report information about PAYE earnings to HMRC. DWP uses RTI information to calculate earnings for employed UC claimants where appropriate

it is sold or transferred to personal use the value must also be declared as a self-employed receipt. This was always the policy intention but this Regulation seeks to make the requirement clear.

Information for calculating earned income – real time information etc. **–** Regulation 4(4) provides for amendments in relation to the use of information for calculating earned income. Universal Credit uses RTI as the basis for all employed earnings calculations where the claimant is a Pay as You Earn (PAYE) employee and they work for a RTI employer. This reduces the reporting burden on claimants. The Department's on-going process of monitoring and evaluation, identified some circumstances where it is not appropriate for Universal Credit purposes simply to take the RTI at face value or where the Secretary of State should clarify contingency arrangements. The amendment clarifies the policy intention in these cases, for example:

- if a claimant is a PAYE employee with an RTI employer and no information is received in an assessment period, the amount of earnings in relation to that period is nil.
- where an employer notifies DWP in advance of a problem with their reporting system or previous data feeds have raised concerns about the standard of the information, wider evidence can be used to calculate the claimant's employed earnings.
- where an employer is exempt from filing electronic returns.

There is a requirement in all these situations that the claimant must provide the information relating to their earnings calculation as requested. A claimant may only have a limited time in which to self-report, so to avoid delaying the payment of Universal Credit or creating an overpayment, the new Regulation would allow the Secretary of State to treat a payment of employed earnings received in one assessment period as if it was received in a later assessment period. Where information reported by the claimant is used as the basis of the earnings calculation, then any RTI data for that same payment would be disregarded in order to avoid double counting the earnings.

Minimum Income Floor(MIF) - Regulation 4(5) clarifies provisions in relation to the MIF. There is no change of policy. The amendment makes clearer provision about the calculation of the MIF when a self-employed person is a member of a couple (or when both members of a couple are self-employed).

7.4 Payments on account and accounts into which payment may be made

Regulation 5(1)(a) amends the Social Security (Payments on Account of Benefit) Regulations 2013, to make it clear that in cases where the claimant has to serve waiting days before entitlement to certain benefits begins, a payment on account (known as an "advance") may be paid during (but not for) those days.

Regulations 5(1)(b) and (c) allow benefit to be paid into any type of bank account. The law currently only allows for benefit to be paid into an account in the name of the benefit claimant or that of the person acting on their behalf. This potentially operates to prevent payment into those accounts where the individual does not have their own account but instead has access to a non-standard account. Although non-standard accounts exist currently, an example being the Department's Simple Payment scheme, the amendment is aimed specifically at allowing payment into accounts administered by Credit Unions which give ready and easy access to their users but are not individual accounts. Such accounts have grown significantly in recent years and are now used by more and more benefit claimants. The amendment improves customer service at no added cost to the Department. The amendments make the necessary consequential changes in relation to the payment of short-term benefit advances and budgeting advances in Universal Credit. Regulation 5(2) and (3) respectively make amendments to Claims and Payments secondary legislation, to enable payments of benefit by direct credit transfer into a wider range of accounts, including Credit Union accounts.

7.5 Deductions from benefit and direct payments

Regulation 6 amends current provisions in Universal Credit for deductions to repay rent arrears of an amount equal to 5% of the standard allowance. It allows for deduction of an increased amount equal to between 10% and 20% of a claimant's standard allowance in order to repay rent arrears in a shorter time. In the majority of cases the full Universal Credit award, including the housing costs element, will be paid direct to the claimant, therefore there is potentially a greater risk that rent arrears could accrue. Repaying arrears more quickly will protect the claimant by reducing the risk of eviction and ensure a secure income stream for landlords. The provision is for a minimum priority deduction of 10% and up to a further 10% where possible, subject to other priority deductions. A deduction will only be made where the claimant is in arrears and has no other means of clearing the debt or has continually failed to repay the debt. In these Regulations, rent is defined as rent and service charges included in rent.

Regulation 6(2)(a) amends the provision to exceed the overall maximum amount that can be deducted from Universal Credit each month where it appears to be in the claimant's interest. The amount that can be deducted to repay rent arrears is increased from 5% to an amount equal to 10% of the claimant's standard allowance.

Regulation 6(2)(b)(i) amends the priority rate of deduction for rent arrears from 5% to an amount equal to 10% of the claimant's standard allowance. The 10% will be referred to as the minimum deduction rate for rent arrears and retains a high priority where there are competing liabilities.

Regulation 6(2)(b)(ii) amends the provision for priority between certain debts by allowing for a deduction from benefit of a further amount equal to up to 10% of the claimant's standard allowance to repay rent arrears. This will be referred to as the maximum deduction rate for rent arrears and has a low priority where there are competing liabilities. The maximum deduction rate will be reduced pro rata where other deductions have a higher priority, so that the total amount for all deductions will not exceed the overall maximum.

Regulation 6(2)(c) provides for deductions to repay rent arrears of an amount equal to between 10% and 20% of standard allowance. The current rate is fixed at 5%.

7.6 **Up-rating of Universal Credit**

Regulation 7 amends the primary powers in relation to the up-rating of Universal Credit, to ensure that the primary legislation applies clearly and directly to Universal Credit, as well as to existing weekly benefits, and aligns with the monthly assessment period cycle in Universal Credit. Both sections 150 and 150A of the Social Security Administration Act 1992 and section 1 of the Welfare Benefits Up-rating Act 2013 currently provide for benefit up-ratings made under Orders using those powers to come into force from either the week beginning with the first Monday in the relevant tax year or an earlier date in April specified in the Order. However, these provisions do not fit well with the monthly assessment periods used in Universal Credit.

Universal Credit is paid monthly in arrears on the basis of a one month assessment period. Given the constraints of the existing primary powers, the 2014 up-rating Orders provided for all up-rating changes to come into force for Universal Credit in the assessment period which began in the first week of the new tax year, or which included the whole of that week. The amendments in Regulation 7 restore the original policy intention to Universal Credit up-rating so that, for the purposes of Universal Credit, up-ratings to the various elements of Universal Credit come into force from the start of the first assessment period beginning on or after the first Monday of the tax year (or from the start of the first assessment period beginning on or after any earlier date in April specified under the relevant Order(s)). This is in line with the assumptions built into the model used for forecasting Universal Credit and is consistent with the Universal Credit business case.

The amendments also provide for the up-rating of other benefits or elements taken into account in Universal Credit (for example, any change to the benefit cap or the up-rating of other benefits treated as unearned income), to be applied in Universal Credit only from the start of the same assessment period in which the various elements of the claimant's Universal Credit award itself is up-rated.

7.7 Suspension of work related requirement where child affected by death or violence

Regulation 8 amends Regulations 98 and 99 of the Universal Credit Regulations.

Regulation 98 makes provision for work-related requirements to cease to have effect on claimants who are victims of domestic violence for a period of 13 weeks. New Regulation 98(1A) prevents the Secretary of State from imposing work-related requirements for a further 13 weeks where a claimant has recently been a victim of domestic violence and is also a responsible carer of a child. The two 13 week periods will run consecutively. This suspension of work-related requirements provides the victim of domestic violence with a longer period of time to concentrate on providing additional support and care to their child/children.

Regulation 99 sets out circumstances in which certain work-related requirements must not be imposed on claimants. New paragraph (4A) introduces new suspensions of work-related requirements to enable a responsible carer to deal with an immediate crisis and provide additional care and support to a child following:

- the death of a parent, sibling, previous responsible carer of a child or a person who was previously living in the same household as the child who was not liable to make commercial payments for that accommodation;
- the child experiencing or witnessing violence or abuse (which would include domestic violence and abuse) where the claimant is not the perpetrator of that violence or abuse.

This one month period is in addition to the initial period of suspension of work-related requirements a claimant is entitled to due to bereavement or domestic violence. The responsible carer of the child would be able to access this suspension of requirements for a maximum of one month in every six months for a total period of up to two years following the death or incident of domestic violence, violence or abuse.

7.8 Rent Repayment Orders and the supply of Universal Credit Information

Regulation 9 inserts a new section 133A into the Social Security Administration Act 1992 which will enable the Secretary of State to supply information on Universal Credit paid for housing to Local Housing Authorities and Licensing Authorities in England and Wales in order for them to apply to the appropriate tribunal for Rent Repayment Orders. Currently, Scottish legislation does not provide for the obtaining of Rent Repayment Orders. The information can also be shared with persons authorised by the Local Housing Authority to exercise its relevant related functions.

Rent Repayment Orders are effectively fines for Landlords who have let unfit or inappropriate accommodation or let accommodation without or in contravention of a licence. Currently, where the accommodation is being rented by a person in receipt of Housing Benefit, an Order made on the application of a Local Housing Authority or Licensing Authority is set at the amount of the Housing Benefit that has been paid, although an Order does not recover the Housing Benefit. Local Housing Authorities and Licensing Authorities already have access to information on the Housing Benefit paid. Consequential amendments have already amended housing legislation to enable an Order to be set at the amount of the Universal Credit housing costs element or the amount of any Universal Credit paid where it is less.

Regulation 9 also amends the Rent Repayment Orders (Supplementary Provisions) (England) Regulations 2007 (S.I. 2007/572) in order to make it clear that the Regulations apply both to rent repayment orders under section 73 of the Housing Act 2004 and to such orders under section 96 of that Act. The Welsh Government will clarify Welsh legislation similarly.

7.9 Consolidation

Informal consolidation of these instruments will be provided in due course with other informal consolidated text of instruments which are available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website legislation.gov.uk . An explanation as to which instruments are maintained on each site is available here.

8 Consultation outcome

These amending Regulations were subject to statutory consideration by the Social Security Advisory Committee. The Committee considered the amendments over two separate meetings on 3rd September 2014 and 1st October 2014[16] and decided it did not wish to have the Regulations formally referred.

[16] http://ssac.independent.gov.uk/meetings/

The amendments in Regulation 6 to deductions for rent arrears, followed an informal consultation. The Department received 59 responses to a short questionnaire sent to specific advice sector organisations and a number of social landlords

The amendments in Regulation 8 are the result of a review that involved consultation with a range of external stakeholder groups that included charities and voluntary organisations. The Department invited 36 external stakeholder organisations to contribute to the review over a 5 week period. This involved holding a series of face to face workshops as well as inviting written evidence. Two external expert advisers, both practitioners familiar with dealing with children and families impacted by child distress, supported the review and provided advice on the draft regulations.

The amendments to the Housing Benefit Regulations, Regulation 3 (meaning of "blind") were subject to consultation with Local Authority Associations under s176 of the Social Security Administration Act 1992.

9 Guidance

Guidance is being developed for advisers and decision makers who administer Universal Credit and legacy benefits. The Department will issue a Memo for both the Decision Makers Guide and the Advice for Decision Making to ensure that staff are aware of the changes. In relation to regulation 8, the Department will work with external stakeholder groups such as Childhood Bereavement Network, WAY, Gingerbread, Child Poverty Action Group, Grandparents Plus and Refuge to improve the guidance for staff in relation to the amendments.

10 Impact

There is no impact on business, civil society organisations or the public sector. Impact assessments have not been separately prepared for these Regulations. However, an assessment has been made of the impact of the introduction of Universal Credit and has been published[17]. This also covers information concerning the Department's obligations regarding its Equality Duty.

11 Regulating small business

These Regulations do not apply to small business.

12 Monitoring & review

The Department is firmly committed to evaluating and monitoring the impact and effects of Universal Credit and the new Jobseeker's Allowance and Employment and Support Allowance. A high level evaluation strategy was published by the Department for Work and Pensions on 10 December 2012[18].

13 Contact

Adrian Reed at the Department for Work and Pensions can answer any queries regarding the instrument. Tel: 020 7449 5095 or email: adrian.reed@dwp.gsi.gov.

[17] https://www.gov.uk/government/publications/universal-credit-impact-assessment
[18] https://www.gov.uk/government/publications/universal-credit-evaluation-framework