

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (JOBSEEKER'S ALLOWANCE, EMPLOYMENT AND
SUPPORT ALLOWANCE AND UNIVERSAL CREDIT) (AMENDMENT)
REGULATIONS 2016

2016 No. 678

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 Her Majesty.

2. Purpose of the instrument

- 2.1 These regulations amend the sanctions provisions in various sets of existing regulations relating to social security benefits so as to clarify the length of a sanction to be imposed on a claimant. In each case, the existing provisions do not meet the policy intention in a number of certain circumstances concerning multiple sanctions and this instrument rectifies that anomaly.
- 2.2 These regulations also amend the Universal Credit provisions to enable all those awarded Universal Credit to have their existing sanctions and recoverable hardship debt written off if they earn a specified amount from paid work for a specified period.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Social Security legislation enables the Secretary of State for Work and Pensions to require claimants of jobseeker's allowance, employment and support allowance and universal credit to comply with work-related activity. Work-related activity is action for the purpose of making it more likely that the claimant will obtain work (or more paid work or better paid work) or be able to do so.
- 4.2 Sanctions, or reductions in the amount of benefit paid to a claimant, are imposed if a claimant fails to comply with work-related activity without good reason. The length of a sanction is provided in regulations and increases depending on the number of previous occasions that a claimant has failed to comply with work-related activity and the period between such failures. <http://www.legislation.gov.uk/uksi/1996/207>
- 4.3 This instrument amends the provisions which provide for the length of a sanction in the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207) <http://www.legislation.gov.uk/uksi/1996/207>, the Employment and Support Allowance Regulations 2008 (S.I. 2008/794)

<http://www.legislation.gov.uk/uksi/2008/794>, the Universal Credit Regulations 2013 (S.I. 2013/376) <http://www.legislation.gov.uk/uksi/2013/376>, the Jobseeker's Allowance Regulations 2013 (S.I. 2013/378) <http://www.legislation.gov.uk/uksi/2013/378> and the Employment and Support Allowance Regulations 2013 (S.I. 2013/379) <http://www.legislation.gov.uk/uksi/2013/379>. The amendments are being made because it was realised that, in certain circumstances, the existing provisions could result in a sanction being imposed on a claimant that is longer or shorter than the policy intention.

- 4.4 Within Universal Credit any outstanding sanctions are written off when the claimant undertakes paid work earning an amount equal to or more than their earnings threshold for six months from the date of the most recent sanctionable failure. Once all outstanding reductions for sanctions (or fraud loss of benefit penalty) have ended recovery of any hardship debt (payments made to claimants subject to a sanction) will begin. Recovery of hardship debt is suspended when the claimant is in paid work earning an amount equal to or more than their earnings threshold and after six months of such earnings the outstanding hardship debt is written off.
- 4.5 Regulation 90 (Claimants subject to no work related requirements – the earning thresholds) of the UC Regulations makes provision for the earnings threshold to be calculated and account is taken of a claimant's capability for work taking health and caring issues. But the Regulations do not enable an earnings threshold to be calculated for claimants who fall within section 19 of the Welfare Reform Act 2012 (Claimants subject to no work related requirements by reason other than the amount of their earnings). This instrument amends the provisions which provide for sanctions and repayable hardship debt to be written off in the Universal Credit Regulations 2013 (S.I. 2013/376). The amendment is being made to ensure all Universal Credit claimants, even those without an earnings threshold, have the opportunity to write off these debts if they choose to work and earn at a specified level.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 As set out above, sanctions are imposed on claimants of jobseeker's allowance, employment and support allowance and universal credit when a claimant fails, without good reason, to complete work-related activity.
- 7.2 The policy intention in relation to sanctions is for those who persistently fail to meet their responsibilities to incur the longest penalties. There is a sliding scale of sanction periods and where a claimant falls on it depends on whether the claimant has incurred a sanction before and, if so, the length of time between the current sanctionable failure and the most recent previous failure and the duration of the previous sanction.

Broadly, the greater the number of previous sanctions incurred by a claimant the longer the length of the next sanction.

- 7.3 By way of exception, any sanction imposed for a failure more than twelve months before the failure currently under consideration will not increase the duration of the next sanction. Secondly, in order to prevent anyone incurring lengthy penalties over a short period the policy is for a failure which occurs within 2 weeks of the most recent previous failure to incur a sanction of the same length as the sanction imposed for that previous failure rather than the length of the sanction increasing.
- 7.4 The Department identified the existing regulations did not fully support this policy in specific, limited circumstances namely when a claimant has three or more sanctionable failures and either
- Each occurred within 14 days of the next and there are more than 14 days between the first and third or
 - The last 2 occurred within 14 days of each other and there are more than 365 days between the first and third.
- 7.5 The amendments made by this instrument will ensure that in all cases where a failure has occurred within 14 days of a previous one the length of the subsequent sanction is for the same duration as the previous sanction so as to fully reflect the current policy.
- 7.6 Those claiming universal credit who are expected to work have an earnings threshold which is the amount they should be aiming to earn if working as many hours as they are able. If they work and earn an amount at or over their threshold for 6 months any outstanding sanctions are written off. Once their sanctions end, repayments on any repayable hardship debt if they have any are suspended. If hardship repayment is suspended because of earnings for 6 months any outstanding hardship debt is written off.
- 7.7 Some claimants are not expected to work because of their circumstances, for example those caring for a child under age one, those caring full time for a disabled adult or those found not capable of work or work related activity. As they are not required to work they do not have an earnings threshold. This means these people are unable to write off their sanctions or hardship debt even if they choose to undertake a reasonable level of work.
- 7.8 If they choose to work, provided they earn a weekly amount equal to or over 16 hours at national minimum wage for a period of 6 months, the amendments made by this instrument will ensure that claimants who are not required to work or undertake any work related activity in order to be entitled to universal credit have the opportunity to write off their sanctions or hardship debt.

Consolidation

- 7.9 Informal consolidated text of instruments is 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](http://www.legislation.gov.uk). An explanation as to which instruments are maintained on each site is available from <http://www.dwp.gov.uk/docs/lawvolnews.pdf>.

8. Consultation outcome

- 8.1 A formal consultation has not been carried out on these Regulations. Consultation was not considered necessary as the amendments make a minor change to existing policy and also clarify existing legislation to reflect the policy intention.
- 8.2 The proposed changes were scrutinised by the Social Security Advisory Committee on 2 December 2015 and 6 April 2016, under the provisions of section 173 of the Social Security Administration Act 1992. The Committee decided that it did not require the proposed changes to be formally referred to it and, accordingly, it did not conduct a public consultation exercise on the proposals.

9. Guidance

- 9.1 Prior to these regulations coming into force existing guidance will be amended to make clear how the length of a sanction may change depending on the date of the previous sanctionable failure(s). This includes guidance for staff in Jobcentre Plus offices who advise customers, and for decision makers who impose sanctions. New guidance will be provided for staff dealing with universal credit claimants to explain the changes concerning those claimants who choose to work and the key points such claimants need to consider before choosing to work.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

- 12.1 Monitoring will be via the existing processes of checking a percentage of claims with sanctions to ensure these have been applied correctly. We will also monitor enquiries concerning sanctions received from work coaches and decision making staff as well as enquiries from members of the public.

13. Contact

- 13.1 Olwen Mitton at the Department for Work and Pensions (Telephone: 01142408614 or email: olwen.mitton1@dwp.gsi.gov.uk) can answer any queries regarding the instrument.