EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (SURPLUSES AND SELF-EMPLOYED LOSSES) (CHANGE OF COMING INTO FORCE) REGULATIONS 2017

2017 No. 197

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 The instrument amends the coming into force date of a previous instrument – The Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015 (S.I. 2015/345) (the "UC Surpluses and Self-employed Losses Regulations") that were due to come into force on the 3 April 2017, to the new date of 2 April 2018.

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 the 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 The UC Surpluses and Self-employed Losses Regulations (S.I. 2015/345), laid on 26th February 2015, inserted new provisions into the Universal Credit Regulations 2013 (S.I. 2013/376). The intention at the time was to implement the policy set out in the UC Surpluses and Self-employed Losses Regulations in the Universal Credit Digital Service, from 6 April 2016. The implementation of the Regulations was previously delayed to 3 April 2017 (by S.I. 2016/215). These new regulations provide for a second delay and a new coming into force date of 2 April 2018.

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.

5.3 Northern Ireland will make their own reciprocal arrangements to introduce these regulations.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The Explanatory Memorandum to the UC Surpluses and Self-employed Losses Regulations gives full details of the background to the original instrument.

7.2 In short, those regulations – which apply to the Universal Credit Digital Service only – make provision for a claimant's past earnings to be taken into account in the income calculation for an award of Universal Credit, where the claimant returns to Universal Credit within six months of a previous award ending. Additionally, the regulations allow self-employed claimants to carry forward a loss from one assessment period into the next, for up to eleven assessment periods. This is to ensure Universal Credit treats claimants fairly regardless of their earnings pattern.

7.3 The Department is rolling out Universal Credit in a safe and controlled way, testing each aspect of the service in order to learn and improve as the service is gradually scaled across Great Britain. Following the revised Universal Credit roll-out plans announced in a Written Statement delivered by the Secretary of State on 20th July, further time is needed for the Digital team to prioritise and complete activity essential for delivering the key features of the Full Service. Other essential features of the service are required more urgently and will improve the service more rapidly than implementing the platform for administrating the policy specified in the UC Surpluses and Self-employed Losses Regulations. This change does not affect the overall delivery timetable for Universal Credit.

7.4 The new date ensures the Department has sufficient time to test and build the platform for administrating the surpluses and self-employed losses policy - including putting in place detailed communications and guidance for staff and claimants, in order to ensure its safe landing. It also allows further time to gather additional evidence on the interaction of the UC Digital service with self-employed people in order to ensure efficient implementation of this new policy.

7.5 The number of claimants impacted by the change in the coming into force date of the policy will be relatively small, and no claimant will be made worse off in cash terms. Most of the affected claimants would have had more earnings taken into account in their Universal Credit assessment as a result of the UC Surpluses and Self-Employed Losses Regulations and will therefore benefit temporarily from the changed date. A small number of self-employed claimants will be notionally disadvantaged as they will not have their financial losses offset against future earnings, although some self-employed claimants with irregular earnings will benefit from not having the surplus from a large profit in a particular month carried forward. The Department intends to use the opportunity provided by the revised timescale to monitor closely and learn from the claims of Universal Credit claimants who are self-employed or have fluctuating earnings and use that insight to improve its delivery plans.

Consolidation

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

8. Consultation outcome

8.1 The Social Security Advisory Committee (SSAC) held a public consultation on the original UC Surpluses and Self-employed Losses Regulations, open to organisations and individuals, between the 17th October and 7th November 2014.

8.2 The Department for Work and Pensions full response to the SSAC consultation response can be found here: https://www.gov.uk/government/consultations/universal-credit-government-proposal-to-take-account-of-past-earnings-in-repeat-claims. In summary, in response to the recommendations made by SSAC, the Department confirmed it would increase the level of the de minimis from £100 to £300, continue to run the Self-Employed Stakeholder Advisory Group, and introduce an exemption from the surplus earnings policy for victims of domestic abuse.

8.3 The Department consulted SSAC on this amendment to the coming into force date of the original regulations. On 16 December 2016 SSAC wrote to the Department to confirm that they were content for the amendment to proceed. No public consultation has been undertaken as the Department has taken this decision on the basis of its operational priorities and this second delay has a relatively minor impact on claimants.

9. Guidance

9.1 As a result of the amendment made by this instrument, the UC Surpluses and Self-employed Losses Regulations will not come into effect until 2 April 2018. Detailed communication and guidance for staff will be produced ahead of this date to ensure that they are suitably trained to advise claimants as to the impacts of these regulations, ensuring the safe landing of the surpluses and self-employed losses policy. The Department has made a clear commitment to providing claimants with advice and guidance so that they understand the policy and how it may affect them well in advance of the changes taking place. This will enable claimants to discuss the implications with service agents or work coaches and factor this knowledge into their spending decisions in the period after their Universal Credit award ceases.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is low for the financial year 2017/18 with the total AME impact estimated to be £10 million.

10.3 The Universal Credit Impact Assessment published in December 2012 can be found here: https://www.gov.uk/government/publications/universal-credit-impactassessment. This includes analysis of the impact of Universal Credit on claimants with characteristics protected under the Equality Act 2010. A separate impact assessment has not been produced for the UC Surpluses and Self-employed Losses Regulations or for this instrument since they do not impact business or civil society organisations.

10.4 The Department has undertaken an Equality Analysis for the UC Surpluses and Self-employed Losses Regulations, in line with the Equality Duty which can be found here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364576/uc-earnings-Equality-Analysis.pdf, and concluded that these regulations will not result in any particular advantage or disadvantage for protected groups. An Equality

Analysis is not needed for this instrument as there is no further advantage or disadvantage for protected groups caused by the change of the coming into force date.

10.5 The new date for implementation of those regulations by way of this instrument will have an impact on Universal Credit claimants as follows:

- **Self-employed** – financial losses from self-employment will not be set against future earnings until April 2018, notionally disadvantaging some self-employed claimants in the meantime. On the other hand, self-employed claimants with irregular earnings will benefit in the meantime from not having the surplus from a large profit in a particular month carried forward. Our forecasting based on the revised transition plan for scaling up the Digital Service suggests that the number of self-employed claimants in UC will have grown to around 30,000 in the year 2017/2018. However we expect 40-50% of these to be unaffected by the minimum income floor (MIF) due to being a start-up or by having earnings in excess of MIF levels. As the MIF still applies to claimants affected by the Surplus Earnings and Self-Employed Losses policy, those who have their actual earnings reduced by losses carried forward from a previous Assessment Period will still be taken as having earned an assumed level of income, their MIF.
- **Claimants in paid employment** – some workers have irregular earnings patterns and therefore may be advantaged as a result of this delay over other claimants who earn the same amount but are paid monthly. The revised transitional plan for scaling up the Digital Service means that the number who might gain from delaying the introduction of these regulations in this way is low.

11. Regulating small business

11.1 The UC Surpluses and Self-employed Losses Regulations impact on the amount of Universal Credit paid to certain self-employed individuals who may be running small businesses. However the policy has no direct impact on small businesses themselves.

11.2 The Department established The Universal Credit Self-Employed Stakeholder Advisory Group in December 2014 to help review and monitor this policy, amongst its other work, as part of the Department's 'Test and Learn' approach. This will help the Government to provide support as required to self-employed claimants impacted by this policy who may be running small businesses.

12. Monitoring & review

12.1 Universal Credit operates under the 'Test and Learn' approach. This means that policy is constantly under review and evaluated taking account of evidence from operational staff, claimants and stakeholders.

13. Contact

13.1 Liz Roebuck at The Department for Work and Pensions (Tel: 0113 232 7203 or email: liz.roebuck@dwp.gsi.gov.uk) can answer any queries regarding the instrument.