

2013 No. 1508

SOCIAL SECURITY

**The Social Security (Miscellaneous Amendments) (No. 2)
Regulations 2013**

Made - - - - - *20th June 2013*

Laid before Parliament *27th June 2013*

Coming into force in accordance with regulation 1(2)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 1(1)(b), 5(1)(p) and (r), 71ZC(1), 189(1) and (4) and 191 of the Social Security Administration Act 1992(a), sections 6H(5) and (6), 12(4)(b), 35(1) and 36(2) and (4) of, and paragraphs 1(2) and 16 of Schedule 1 to, the Jobseekers Act 1995(b), sections 11H(5) and (6), 24(1) and 25(2) to (5) of, and paragraph 1(a) of Schedule 2 to, the Welfare Reform Act 2007(c) and sections 4(5), 11(4), 12(1) and (3), 24(5) and (6), 37(6), 40 and 42(2) and (3) of, and paragraphs 4(1) and 5(1) of Schedule 1 to, the Welfare Reform Act 2012(d).

The provisions in regulations 3, 4(2) and 5(3) and 7 have not been referred to the Social Security Advisory Committee because they contain only provisions made by virtue of or consequential on provisions in, or introduced by, the Welfare Reform Act 2012. Those provisions are made before the end of the period of six months beginning with the coming into force of those provisions in that Act.

The Social Security Advisory Committee has agreed that the proposals in respect of the provisions in regulations 2, 4(3) to (5), 5(2) and (4), 6 and 8 should not be referred to it(e).

In accordance with section 176(2)(b) of the Social Security Administration Act 1992 and in so far as these Regulations relate to housing benefit, the Secretary of State has obtained the agreement of organisations appearing to him to be representative of the authorities concerned that proposals in respect of these Regulations should not be referred to them.

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- (a) 1992 c.5. Section 5(1)(r) was substituted by section 101 of the Welfare Reform Act 2012 (c.5). Section 71ZC was inserted by section 105(1) of the Welfare Reform Act 2012. Section 189(1) was amended by paragraph 109(a) of Schedule 7 to the Social Security Act 1998 (c.14), paragraph 57(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2) and Schedule 6 to the Tax Credits Act 2002 (c.21). Section 189(4) was amended by paragraph 109(c) of Schedule 7 to the Social Security Act 1998 and S.I. 2013/252. Section 191 is cited for the meaning it gives to “prescribed” and was amended by paragraph 10 of Schedule 5 to the Welfare Reform Act 2007 (c.5).
- (b) 1995 c.18. Section 6H was inserted by section 49(3) of the Welfare Reform Act 2012. Section 35(1) is cited for the meaning it gives to “prescribed” and “regulations”. Those definitions were amended by paragraph 62 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999. Section 36(4) was amended by paragraph 63 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999. Paragraph 16 of Schedule 1 was amended by Schedule 14 to the Welfare Reform Act 2012.
- (c) 2007 c.5. Section 11H was inserted by section 57(2) of the Welfare Reform Act 2012. Section 24(1) is cited for the meaning it gives to “prescribed” and “regulations”.
- (d) 2012 c.5.
- (e) See sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992 (c.5).

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Amendments) (No. 2) Regulations 2013.

(2) These Regulations come into force—

- (a) except in relation to regulations 3(2), (5) and (9), 4(2) and 5(3) and (4), on 29th July 2013; and
- (b) in relation to regulations 3(2), (5) and (9), 4(2) and 5(3) and (4), on 29th October 2013.

Amendment of the Social Security (Claims and Payments) Regulations 1987

2.—(1) The Social Security (Claims and Payments) Regulations 1987(a) are amended as follows.

(2) In regulation 2(1) (interpretation), after the definition of “the 2002 Act”(b) insert—

““the 2013 Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013;”.

(3) In Schedule 9 (deductions from benefit and direct payment to third parties), after paragraph 7C(6) (eligible loans)(c) insert—

“(6A) The Secretary of State shall not make deductions from a benefit mentioned in sub-paragraph (2) where the borrower is in receipt of any benefit within the meaning of “eligible benefit” in paragraph 11(8) (eligible loans) of Schedule 6 (deductions from benefit and direct payment to third parties) to the 2013 Regulations unless the amount of benefit mentioned in that definition is insufficient to meet the deduction.”.

(4) In Schedule 9B (deductions from benefit in respect of child support maintenance and payment to persons with care)(d), after paragraph 2(2) (deductions) insert—

“(2A) Where paragraph 5 (flat rate maintenance) of Schedule 7 (deductions from benefit in respect of child support maintenance and payment to persons with care) to the 2013 Regulations applies, the Secretary of State shall not make deductions under paragraphs 5 and 6 of this Schedule, unless the amount of “specified benefit” within the meaning of paragraph 1 of Schedule 7 to the 2013 Regulations is insufficient to meet the deduction under paragraph 5 of that Schedule.”.

Amendment of the Universal Credit Regulations 2013

3.—(1) The Universal Credit Regulations 2013(e) are amended as follows.

(2) In regulation 2 (interpretation) in the definition of “attendance allowance”, omit paragraph (c).

(3) In regulation 4(6) (when a person is responsible for a child or qualifying young person)—

- (a) at the beginning, insert “Subject to regulation 4A,”; and
- (b) omit the words after sub-paragraph (b) (the full-out words).

(4) After regulation 4, insert—

“Responsibility for children looked after by a local authority

4A.—(1) There is excluded from regulation 4(6)(a)—

(a) S.I. 1987/1968.
(b) The definition of “the 2002 Act” was inserted by S.I. 2002/3019.
(c) Paragraph 7C was inserted by S.I. 2006/3188.
(d) Schedule 9B was inserted by S.I. 2001/18.
(e) S.I. 2013/376.

- (a) any period which is in the nature of a planned short term break, or is one of a series of such breaks, for the purpose of providing respite for the person who normally cares for the child or qualifying young person;
- (b) any period during which the child or qualifying young person is placed with, or continues to live with, their parent or a person who has parental responsibility for them.

(2) For the purposes of this regulation, a person has parental responsibility if they are not a foster parent and—

- (a) in England and Wales, they have parental responsibility within the meaning of section 3 of the Children Act 1989(a); or
- (b) in Scotland, they have any or all of the legal responsibilities or rights described in sections 1 or 2 of the Children (Scotland) Act 1995(b).”.

(5) In regulation 9(4) (persons treated as not being in Great Britain), for sub-paragraph (e) substitute—

- “(e) a person who has been granted, or who is deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971(c) where that leave is—
- (i) discretionary leave to enter or remain in the United Kingdom,
 - (ii) leave to remain under the Destitution Domestic Violence concession(d), or
 - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005(e);”.

(6) In regulation 35 (meaning of “relevant childcare”)—

- (a) for paragraph (2)(b), substitute—

“(b) by or under the direction of the proprietor of a school as part of the school’s activities—

 - (i) out of school hours, where a child has reached compulsory school age, or
 - (ii) at any time, where a child has not yet reached compulsory school age; or”;
- (b) after paragraph (2)(b), insert—

“(c) by a domiciliary care provider registered with the Care Quality Commission in accordance with the requirements of the Health and Social Care Act 2008(f).”;
- (c) in paragraph (3)(a) for the words from “section 2” to the end, substitute “schedule 12 to the Public Services Reform (Scotland) Act 2010(g) and is registered under Part 5 of that Act; or”;
- (d) in paragraph (3)(b) for the words from “section 2(7) and (8)” to the end, substitute “paragraph 5 of schedule 12 to the Public Services Reform (Scotland) Act 2010; or”;
- (e) in paragraph (3)(c) for the words from “section 2 of the Regulation” to the end, substitute “schedule 12 to the Public Services Reform (Scotland) Act 2010 and is registered under Part 5 of that Act”;
- (f) for paragraph (4)(d) substitute—

“(d) out of school hours, by a school on school premises or by a local authority;”;
- (g) after paragraph (5), insert—

(a) 1989 c.41.

(b) 1995 c.36.

(c) 1971 c.77.

(d) The Destitution Domestic Violence concession is published by the Home Office at: <http://www.ukba.homeoffice.gov.uk/>.

(e) S.I. 2005/1379 as amended by S.I. 2013/630 and other amending instruments which are not relevant for this amendment.

(f) 2008 c.14.

(g) 2010 asp.8.

“(5A) In paragraph (2)(b), “school” means a school that Her Majesty’s Chief Inspector of Education, Children’s Services and Skills is, or may be, required to inspect.”.

(7) In regulation 58 (permitted expenses)—

- (a) in paragraph (3)(c), omit “or payment of interest”; and
- (b) after paragraph (3), insert—

“(3A) A deduction for a payment of interest in relation to a loan taken out for the purposes of the trade, profession or vocation may not exceed £41.”.

(8) In regulation 59(2) (flat rate deductions for mileage and use of home and adjustment for personal use of business premises), in the full-out words after sub-paragraph (b) omit “or motorcycle”.

(9) In regulation 98(4) (victims of domestic violence), for the definition of “domestic violence” substitute—

““coercive behaviour” means an act of assault, humiliation or intimidation or other abuse that is used to harm, punish or frighten the victim;

“controlling behaviour” means an act designed to make a person subordinate or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance or escape or regulating their everyday behaviour;

“domestic violence” means any incident, or pattern of incidents, of controlling behaviour, coercive behaviour, violence or abuse, including but not limited to—

- (a) psychological abuse;
- (b) physical abuse;
- (c) sexual abuse;
- (d) emotional abuse;
- (e) financial abuse,

regardless of the gender or sexuality of the victim;”.

(10) In Schedule 4 in paragraph 24(4) (core rent for joint tenants) and paragraph 35(4) (determining the amount from which HCC deductions are to be made: joint tenants), after ““C” is the number of listed persons” insert “liable to make relevant payments”.

(11) In paragraph 2(3) of Schedule 8 (circumstances in which a claimant is to be treated as having limited capability for work – in hospital), for “overnight or for a longer period” substitute “for a period of 24 hours or longer”.

Amendment of the Jobseeker’s Allowance Regulations 2013

4.—(1) The Jobseeker’s Allowance Regulations 2013(a) are amended as follows.

(2) In regulation 15(5) (victims of domestic violence), for the definition of “domestic violence” substitute—

““coercive behaviour” means an act of assault, humiliation or intimidation or other abuse that is used to harm, punish or frighten the victim;

“controlling behaviour” means an act designed to make a person subordinate or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance or escape or regulating their everyday behaviour;

“domestic violence” means any incident, or pattern of incidents, of controlling behaviour, coercive behaviour, violence or abuse, including but not limited to—

- (a) psychological abuse;

(a) S.I. 2013/378.

- (b) physical abuse;
- (c) sexual abuse;
- (d) emotional abuse;
- (e) financial abuse,

regardless of the gender or sexuality of the victim;”.

(3) For regulation 44(1)(c)(i) and (ii) (persons treated as not engaged in remunerative work), substitute—

“(i) a part-time fire-fighter employed by a fire and rescue authority under the Fire and Rescue Services Act 2004^(a) or by the Scottish Fire and Rescue Service established under section 1A of the Fire (Scotland) Act 2005^(b);”.

(4) In regulation 73(3) (calculation of earnings for share fishermen), in the substituted regulation 61(5)(b) for “£15” substitute “£20”.

(5) For paragraph 6(a) and (b) of the Schedule (sums to be disregarded in the calculation of earnings), substitute—

“(a) a part-time fire-fighter employed by a fire and rescue authority under the Fire and Rescue Services Act 2004 or by the Scottish Fire and Rescue Service established under section 1A of the Fire (Scotland) Act 2005;”.

Amendment of the Employment and Support Allowance Regulations 2013

5.—(1) The Employment and Support Allowance Regulations 2013^(c) are amended as follows.

(2) In regulation 21 (hospital patients)—

- (a) in paragraph (1), after “similar institution, or” insert “on any day”; and
- (b) in paragraph (3), for “overnight or for a longer period” substitute “for a period of 24 hours or longer”.

(3) In regulation 49(5) (victims of domestic violence), for the definition of “domestic violence” substitute—

““coercive behaviour” means an act of assault, humiliation or intimidation or other abuse that is used to harm, punish or frighten the victim;

“controlling behaviour” means an act designed to make a person subordinate or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance or escape or regulating their everyday behaviour;

“domestic violence” means any incident, or pattern of incidents, of controlling behaviour, coercive behaviour, violence or abuse, including but not limited to—

- (a) psychological abuse;
- (b) physical abuse;
- (c) sexual abuse;
- (d) emotional abuse;
- (e) financial abuse,

regardless of the gender of sexuality of the victim;”.

(4) In regulation 94(7) (meaning of “person in hardship”) in the definition of “attendance allowance”, omit paragraphs (c) and (d).

(a) 2004 c.21.
 (b) 2005 asp 5.
 (c) S.I. 2013/379.

Amendment of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013

6.—(1) The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013^(a) are amended as follows.

- (2) In regulation 9(8), after sub-paragraph (b) insert the following words (as full-out words)—
“and the claim is to be treated as made on the day after the member of the couple mentioned in sub-paragraph (a) ceased to be entitled to universal credit.”.
- (3) In Schedule 6 (deductions from benefit and direct payment to third parties)—
- (a) renumber paragraph 1 (interpretation) as paragraph 1(1);
 - (b) in the renumbered paragraph 1(1), omit the definition of “5% of the standard allowance”;
 - (c) after the renumbered paragraph 1(1), add—
“**(2)** For the purposes of this Schedule, where the relevant percentage of the standard allowance results in a fraction of a penny, that fraction is to be disregarded if it is less than half a penny and otherwise it is to be treated as a penny.”;
 - (d) in paragraph 3(3) (limitations applicable to deductions made under Schedule 6), for “five times 5%” substitute “25%”;
 - (e) in paragraph 4(1) (maximum amount), for “eight times 5%” substitute “40%”.

Amendment of the Social Security (Payments on Account of Benefit) Regulations 2013

7.—(1) The Social Security (Payments on Account of Benefit) Regulations 2013^(b) are amended as follows.

- (2) In regulation 3(1)(f) (definition of “benefit”), for “and disability living allowance” substitute “, disability living allowance and guardian's allowance”.
- (3) In regulation 13 (earnings condition)—
- (a) in paragraph (2)—
 - (i) for “of six months” substitute “covered by the previous six complete assessment periods”; and
 - (ii) at the end, add “and for this purpose “assessment period” has the meaning given in regulation 21 of the Universal Credit Regulations”;
 - (b) for paragraph (3), substitute—
“**(3)** Earned income for each complete assessment period in the relevant period is to be calculated for the purpose of paragraph (1) in accordance with Chapter 2 of Part 6 of the Universal Credit Regulations save that in relation to the earned income of a person who is in gainful self-employment for the purpose of regulation 64 of those Regulations, regulation 62 of those Regulations (minimum income floor) is to be disregarded.”.

Amendment of the Social Security (Overpayments and Recovery) Regulations 2013

8.—(1) Regulation 11 of the Social Security (Overpayments and Recovery) Regulations 2013 (recovery by deduction from universal credit)^(c) is amended as follows.

- (2) In paragraph (2)—
- (a) in sub-paragraph (a), for “8 times 5 per cent.” substitute “40 per cent.”;
 - (b) in sub-paragraph (b), for “5 times 5 per cent.” substitute “25 per cent.”;

(a) S.I. 2013/380.
(b) S.I. 2013/383.
(c) S.I. 2013/384.

(c) in sub-paragraph (c), for “3 times 5 per cent.” substitute “15 per cent.”.

(3) For paragraph (6), substitute—

“(6) For the purpose of paragraph (2), where the relevant percentage of the appropriate universal credit standard allowance results in a fraction of a penny, that fraction is to be disregarded if it is less than half a penny and otherwise it is to be treated as a penny.”.

Signed on behalf of the Secretary of State for Work and Pensions.

20th June 2013

Freud
Parliamentary Under-Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments to social security Regulations. These amendments primarily relate to the new social security benefits introduced under the Welfare Reform Act 2012 (c.5), in particular Universal Credit. The following Regulations are amended:

- the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968);
- the Universal Credit Regulations 2013 (S.I. 2013/376);
- the Jobseeker’s Allowance Regulations 2013 (S.I. 2013/378);
- the Employment and Support Allowance Regulations 2013 (S.I. 2013/379);
- the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (S.I. 2013/380);
- the Social Security (Payments on Account of Benefit) Regulations 2013 (S.I. 2013/383);
- the Social Security (Overpayments and Recovery) Regulations 2013 (S.I. 2013/384).

Regulation 2 amends the Social Security (Claims and Payments) Regulations 1987. It does so by introducing a definition for the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (“the C&P Regulations”) and new provisions in relation to third party deductions for certain loan repayments and flat rate child support maintenance payments. These third party deduction provisions require that where a person is in receipt of an eligible benefit as defined by the C&P Regulations, then deductions should first be made as set out in the C&P Regulations from those benefits. If there is insufficient benefit in payment under the C&P Regulations to meet the amount of the deduction, then any outstanding amounts should be deducted under the equivalent provisions of the Social Security (Claims and Payments) Regulations 1987 from benefits paid under those Regulations.

Regulation 3 amends the Universal Credit Regulations 2013. Regulation 3(2) amends the definition of “attendance allowance” to remove references to legislation which has been repealed.

Regulation 3(3) and (4) amends the circumstances in which a person is deemed to be responsible for a child. Subject to certain very limited exceptions, in Universal Credit a person is not usually responsible for a child where that child is looked after by a local authority. These amendments provide for an additional exception to this rule where a child who is looked after by a local authority is placed with or continues to live with their parent or a person who has parental responsibility for them.

Regulation 3(5) amends the circumstances in which a person is treated as not being in Great Britain to reflect current legislation on when a person has leave to enter or remain in Great Britain.

Regulation 3(6) amends the definition of “relevant childcare”, which specifies which types of childcare are eligible to be covered (whether wholly or partly) by the childcare costs element of Universal Credit. In particular, the amendment updates reference to relevant Scottish legislation and ensures that categories of childcare which are currently eligible to be covered by Tax Credits will also be eligible to be covered by Universal Credit.

Regulation 3(7) and (8) relates to the calculation of self-employed earnings. It amends the provision for deduction of expenses so that these may include the full cost of the purchase of a motorcycle and up to £41 in respect of interest on a loan taken out for the purposes of the business.

Regulation 3(9) amends the definition of “domestic violence”. The revised definition reflects the new cross-government definition of “domestic violence and abuse”, which now also includes incidents of controlling or coercive behaviour (including but not limited to abuse of the kind previously specified on page 11 of section 2.2 of the handbook “Responding to domestic abuse: a handbook for health professionals” published by the Department of Health in December 2005).

Regulation 3(10) makes a minor amendment to the provision which specifies the proportion of the total rent a renter can be deemed liable for (for the purposes of the housing costs element of Universal Credit) when there are other joint tenants living in a property.

Regulation 3(11) makes an amendment which treats a person who has been in hospital for over 24 hours as having limited capability for work. This amendment brings the Universal Credit Regulations 2013 into line with other Regulations which include the same provision.

Regulation 4 amends the Jobseeker’s Allowance Regulations 2013. Regulation 4(2) makes the same change for Jobseeker’s Allowance as regulation 3(9) makes for Universal Credit. Regulation 4(3) and (5) makes provision so that earnings of part-time fire-fighters employed by either a fire and rescue authority under the Fire and Rescue Services Act 2004 (c.21) or by the Scottish Fire and Rescue Service established under section 1A of the Fire (Scotland) Act 2005 (asp.5) are disregarded in the calculation of capital and for such persons to be treated as not engaged in remunerative work. Regulation 4(4) corrects an amount which is used to work out disregards for certain share fishermen.

Regulation 5 amends the Employment and Support Allowance Regulations 2013. Regulation 5(2)(b) makes the same change for Employment and Support Allowance as regulation 3(11) makes for Universal Credit. Regulation 5(2)(a) makes a minor amendment in relation to hospital patients to bring the Employment and Support Allowance Regulations 2013 into line with other Regulations which include the same provision. Regulation 5(3) makes the same change for Employment and Support Allowance as regulation 3(9) makes for Universal Credit. Regulation 5(4) makes the same change for Employment and Support Allowance as regulation 3(2) makes for Universal Credit.

Regulation 6 amends the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013. Regulation 6(2) specifies the date on which a couple are to be treated as claiming universal credit where one member was not previously entitled.

Regulation 6(3) also amends those 2013 Regulations so as to enable the rounding to the nearest penny of the calculation of the maximum amount of deductions from Universal Credit made to make direct payments to third parties by reference to the relevant percentage of the appropriate Universal Credit standard allowance. Regulation 8 makes similar amendments to the Social Security (Overpayments and Recovery) Regulations 2013 in relation to the rounding of the calculation of the maximum amount of deductions made from Universal Credit to recover recoverable amounts under those Regulations. Those provisions also amend those Regulations so as to clarify the relevant maximum percentage of that allowance to be deducted in each case.

Regulation 7 amends the Social Security (Payments on Account of Benefit) Regulations 2013. Regulation 7(2) provides that guardian’s allowance is not to be a benefit in respect of which a payment on account of benefit may be awarded. Regulation 7(3) both clarifies and changes the

basis for calculating earned income, the amount of which must not exceed a certain amount over a certain period for a person to be awarded a budgeting advance. That basis is to be the total amount of earned income calculated under Chapter 2 of Part 6 of the Universal Credit Regulations 2013 for the previous six complete assessment periods as defined for the purpose of those Regulations. This is with the exception that the earned income of persons in gainful self-employment is not to be limited by the minimum income floor in accordance with regulation 62 of those Regulations.

A full impact assessment has not been published for these Regulations as they have no impact on the private sector or civil society organisations.

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