

EXPLANATORY MEMORANDUM TO
THE UNIVERSAL CREDIT, PERSONAL INDEPENDENCE PAYMENT,
JOBSEEKER'S ALLOWANCE AND EMPLOYMENT AND SUPPORT
ALLOWANCE (DECISIONS AND APPEALS) REGULATIONS 2013

2013 No. 381

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 make provision in relation to the administration of Universal Credit, Personal Independence Payment, contribution-based Jobseeker's Allowance and contribution-related Employment and Support Allowance. In particular, the Regulations make provision as to the making of decisions and in relation to rights of appeal.
3. **Matters of special interest to the Secondary Legislation Scrutiny Committee**
 - 3.1. None.
4. **Legislative context**
 - 4.1. The Social Security Act 1998 (c. 14) ("the 1998 Act") and the Social Security Administration Act 1992 (c. 5), as amended by the Welfare Reform Act 2012 (c. 5) ("the 2012 Act"), make provision for the administration of all social security benefits, including Universal Credit, Personal Independence Payment, Jobseeker's Allowance (contributory) and Employment and Support Allowance (contributory). These Regulations are made by virtue of, or in consequence of, those Acts and the decision-making processes they introduce.
 - 4.2. The Regulations are modelled closely on the provisions that are contained in the existing Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991) ("the 1999 Decisions and Appeals Regulations"). However, the opportunity is being taken to rationalise and combine the provisions relating to decision-making and appeals for Universal Credit, Personal Independence Payment, contribution-based Jobseeker's Allowance and contribution-related Employment and Support Allowance in a single instrument.
 - 4.3. These Regulations also make use of an additional power, inserted by section 102 of the 2012 Act, which enables provision to be made requiring a person to apply to the Secretary of State for a decision to be revised before they are permitted to appeal and the powers in section 104 of that Act relating to the use of electronic communications in relation to the administration of the benefits to which these Regulations apply.

- 4.4 These Regulations are made in association with the following Regulations: the Universal Credit Regulations 2013, SI 376, the Social Security (Personal Independence Payment) Regulations 2013, SI 377, the Jobseeker's Allowance Regulations 2013, SI 378, the Employment and Support Allowance Regulations 2013, SI 379, the Social Security (Payments of Account of Benefit) Regulations 2013, SI 383, and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013, SI 380.

5. Territorial extent and application

- 5.1. This instrument applies to Great Britain.

6. European Convention on Human Rights

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

“In my view, the provisions of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 are compatible with the Convention Rights”.

7. Policy background - What is being done and why

- 7.1. The Department for Work and Pensions (“the Department”) is introducing a new set of Decisions and Appeals Regulations to ensure that the decision-making and appeals framework which currently applies to all social security benefits applies to the new benefits introduced by the 2012 Act.
- 7.2. The Department considered amending the existing 1999 Decisions and Appeals Regulations, but decided that, as Universal Credit and Personal Independence Payment are brand new benefits, and with income-related Employment Support Allowance and income-based Jobseeker's Allowance being phased out, there should, in terms of supporting administrative arrangements, be a clean break with the past. The 1999 Decisions and Appeals Regulations have been subject to numerous changes since they were introduced. This has led to substantial additional complexity in an already complex policy area. To have mixed the old and the new would have added to that complexity.
- 7.3. That said, many of the provisions of the existing Regulations have been carried forward in these Regulations. They are tried and tested and provide a credible basis for decision-making in the new regime. However, the Department has taken the opportunity to restructure and modernise the drafting and, where it is considered appropriate, to align the rules across the benefits to which the new Regulations apply. The intent is that the legislation should be more accessible to users so that claimants and others can better understand their rights and the rules that govern benefit administration.

- 7.4 The following paragraphs set out, for each of the benefits in scope of these Regulations, some areas where the Department is introducing new provisions or changing how the existing provisions work.

General provision – new for all benefits

- 7.5 A key change in approach is being made consequent on section 102 of the 2012 Act. This enables regulations to be made so that claimants must first apply for a disputed decision to be reconsidered by a decision maker (ie revised) before they can appeal a decision – known as “mandatory reconsideration”. This follows the Department’s principle that issues should be resolved, and errors should be identified and corrected, at the earliest possible opportunity. If the decision maker does reconsider and revise (i.e. change) the decision, the person will have the right of appeal against the new outcome decision. This provision was the subject of debate during the passage of the Bill – <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111123-gc0001.htm#111123104000283> (column GC451)

Universal Credit

- 7.6 As Universal Credit is being designed as primarily an online benefit the intention is that claimants should notify the Department of changes of circumstance, and be notified of decisions relating to their Universal Credit award, through the online channel in the majority of cases. There will continue to be other options where needed, for example, reporting changes by telephone.
- 7.7 Universal Credit will be calculated on the basis of a wide range of personal circumstances and is assessed and paid monthly, known as the “whole month” approach¹. If a claimant’s circumstances change while receiving Universal Credit the Department wants to ensure that, at the end of each assessment period, they are paid the amount the Department thinks they will need to manage over the coming month. This will be done by treating reported changes, for the purpose of the award calculation, as if they occurred at the start of the relevant assessment period – rather than attempting to calculate payment pro rata. This whole month approach means that Universal Credit payments will reflect the claimant’s circumstances at the point of payment, and so leave them better able to manage from pay day to pay day.
- 7.8 In the main, Universal Credit will follow existing policy on appeal rights, and which decisions do or do not carry the right of appeal (Schedule 2 and 3 to the 1998 Act and the 1999 Decisions and Appeals Regulations refer). This is to ensure that, where possible, claimants are treated consistently and that the Regulations are

¹ Universal Credit will be a calendar monthly assessed benefit that will be paid monthly in arrears. Claimants will receive a single household payment to go towards their household needs. This approach reflects the world of work, where around 75% of all employees receive their wages monthly. Paying in this manner will encourage claimants to take personal responsibility for their finances and to budget on a monthly basis which could save households money. For example, monthly direct debits for household bills are often cheaper than more frequent billing options. Assessing Universal Credit on a monthly basis will also ensure that we receive at least one update of earnings information for each working member of a household, meaning that the benefit calculated accurately reflects the needs of the household.

compatible with claimants' Convention rights. A key difference under Universal Credit is that, unlike Housing Benefit, landlords will not be able to appeal a decision whether to pay housing costs directly to them, in order to protect claimant welfare.

Personal Independence Payment

- 7.9 The entitlement criteria for Personal Independence Payment will be different to that for Disability Living Allowance. There will be a much fuller engagement with the claimant within the evidence gathering process, including for the majority a face-to-face assessment with a Health Care Professional. The policy intention is that decision notices will, much more than they do now, fully explain why a decision was made, allowing claimants to making informed decisions about their next step without first having to contact the Department.

Employment and Support Allowance and Jobseeker's Allowance

- 7.10 For the most part, the decisions and appeals policy for Jobseeker's Allowance and Employment and Support Allowance remain unchanged as, although the two benefits will be entirely based on contributions in the future, most of the rules that give rise to changes that could occur during an award will be carried forward from the 1999 Decisions and Appeals Regulations.

Consolidation

- 7.11 These Regulations will be published in the Law Relating to Social Security ("Blue Books") and will sit alongside the existing Decision and Appeals Regulations. Consolidation will be considered as appropriate.

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

8. Consultation outcome

- 8.1 Proposals for regulations were presented to the Social Security Advisory Committee on 13 June 2012 and at its August and November meetings. The Committee chose not to refer the proposals for formal consultation, instead publishing them on its website when it formally consulted on a number of other regulations made under the 2012 Act. This consultation ran from 15 June 2012 to 31 July 2012.
- 8.2 At this meeting the Social Security Advisory Committee itself only commented on two matters:

“Given that claimants are subject to quite onerous time-limits, should not decision-makers be subject to similar time constraints in the making of decisions?”

and

“It is noted that Personal Independence Payment has a different date of change than Universal Credit which relies on a monthly assessment period with changes taking effect from the end of the assessment period. Does this add another layer of complexity?”

8.3 The Department has never had a strict time-limit for decision makers. Under the 1975 Social Security Act adjudication officers were expected to decide a claim within 14 days or as soon as practicable. The addition of the latter caveat in effect made the target meaningless. A prescribed target could only be of meaning if there was a sanction for failing to meet it; it would also engender a culture where speed was more important than quality. The Social Security Advisory Committee was told there were no plans to introduce such a target.

8.4 For Personal Independence Payment, the effective date of a change of circumstance will be the date of the actual change. This is because Personal Independence Payment is not an income-replacement benefit like Universal Credit, but is awarded specifically to help people meet some of the extra costs arising from having a long-term health condition. If someone’s circumstances change on an identifiable day then it is important that their Personal Independence award promptly reflects that change. The Regulations reflect this approach.

8.5 The only comments received in relation to the informal consultation were in relation to supersession for change of circumstances in Universal Credit:

“The Department should continue the current system of backdating changes of circumstances to the start of week in which they occurred, rather than the start of the monthly assessment period.”

As the ‘whole month’ approach is key to the administration of Universal Credit, for the reasons set out above, the Department did not amend the regulations in response to this request.

8.6 Although the Social Security Advisory Committee did not formally consult on these Regulations, there had already been a public consultation exercise on the introduction of mandatory consideration of revision before appeal – para 7.2 above. The consultation exercise commenced on 9 February 2012 and closed on 4 May 2012. - <http://www.dwp.gov.uk/docs/mandatory-consideration-consultation.pdf>

An interim response was published by the Department on 12 June 2012 and a full response on 26 September 2012 - <http://www.dwp.gov.uk/consultations/2012/mandatory-consideration.shtml>

8.7 In summary, there were 154 responses received to the consultation from a wide range of organisations and individuals. Three common issues were raised by respondents:

- that the Department should have a time limit to complete the mandatory reconsideration process. *The Department has no plans to introduce a statutory limit. However, it is working up a process which will ensure that applications*

are dealt with without delay. A key to this will be that the application can be made by telephone.

- issues around the payment of Employment and Support Allowance pending appeal. *The current policy is to continue to pay Employment and Support Allowance where someone is found fit for work and appeals that decision. This policy will not change when Universal Credit is introduced.*
- the need for improvement to the standards of decision-making. *Whilst this is an ongoing challenge for the Department, the Committee may wish to note the work it has done in response to Professor Harrington's reports on Employment and Support Allowance - [Work Capability Assessment – Year 3 call for evidence](#). Also, the Department in conjunction with Her Majesty's Courts and Tribunal Service has developed a 'dropdown' menu which First-tier Tribunal judges are using to record why they made their decision. A pilot was run between July and October 2012 using cases where the Tribunal overturned the Department's decision. The results are being evaluated, so that focus can be given to potential improvements in processes and procedures.*

8.8 The Social Security Advisory Committee considered the Regulations for a second time in November 2012 having been appraised of amendments made subsequent to the July meeting. They made a number of observations which resulted in further amendments being made. These were all of a technical nature which did not affect the policy. For example:

- a provision which suggested that it would be possible to suspend the payment of Jobseeker's Allowance (and terminate entitlement) where the issue concerned actively seeking work and availability for work, has been removed because for Jobseeker's Allowance (contributions) the award will be sanctioned; entitlement will not be affected;
- the opening words of regulation 46 have been clarified to put it beyond doubt that when a suspension is lifted the claimant will receive all benefit which has been suspended. As drafted it read as if it would only be paid from the date that the decision was made to lift the suspension – this was never the intention.

8.9 Extensive stakeholder engagement has taken place throughout the development of Universal Credit. As part of this a workshop was held with customer representative organisations and Devolved Administrations to outline the detail in the draft Regulations and provide the opportunity for them to seek clarification. As above the concerns were around the effect of the whole month approach and potential delays with mandatory reconsideration.

9. Guidance

9.1 The Decision Maker's Guide will be updated to reflect the new Regulations. As now, we intend that it will be published on the main Department for Work and Pensions website. It will be in place before April 2013. Prior to publication, the guidance in key policy areas will be shared with key stakeholders and the Social Security Advisory Committee. Once published, using the website, interested

parties are able to join a mailing list to be informed as soon as updates are published.

10. Impact

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

10.2 In relation to the impact on the public sector of these Regulations, we have considered the possible impact the changes will have on decision makers, claimants and stakeholders of having to operate with two sets of decision-making regulations. The Department considers this is manageable, and will not have an adverse impact. The Regulations clearly specify the benefits to which they apply (see regulation 1). Decision makers will, of course, be trained specifically for Universal Credit and Personal Independence Payment; the computer systems relating to these benefits will operate independently of any other benefit system. The decision notifications sent to claimants will reflect the decision-making process which will apply to them.

10.3 The impact of the new mandatory reconsideration process on the DWP and Her Majesty's Courts and Tribunals Service is included in the published Impact Assessment which is on the DWP website at

<http://www.dwp.gov.uk/docs/consideration-of-revision-wr2011-ia.pdf>

Apart from the above, an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 This instrument does not apply to small business.

12. Monitoring and review

12.1 As part of the Department's on-going evaluation of decision-making and appeals, the effects of these Regulations will be monitored by examining:

- the number of requests for decisions to be reconsidered – *a database is being developed to this end;*
- the number and subject matter of appeals made by individuals to the First-tier and Upper Tribunals – *this will build on the current practice; this information is published by Her Majesty's Courts and Tribunals Service quarterly and is available on their website -*
<http://www.justice.gov.uk/statistics/tribunals/quarterly>
- the success rates of appeals made by individuals to the First-tier and Upper Tribunal – *again this builds on the current practice; this information is published as above;*
- the number and success rates of appeals lodged by the Department against First-tier Tribunal decisions – *this information is already collected and published as above.*
- the whole month approach – *this will be looked at as part of the Universal Credit evaluation, both in qualitative and quantitative projects.*

13. Contact

- 13.1. Lyndon Walters at the Department for Work and Pensions can answer any questions regarding the instrument. Tel: 0207 449 7347 or email: lyndon.walters@dwp.gsi.gov.uk

