EXPLANATORY MEMORANDUM TO

THE BENEFIT CAP (HOUSING BENEFIT AND UNIVERSAL CREDIT) (AMENDMENT) REGULATIONS 2016

2016 No. 909

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 Housing Benefit Regulations 2006 (S.I. 2006/213) and the Universal Credit Regulations 2013 (S.I. 2013/376) to make provision for two new exemptions from the benefit cap and to provide for the determination of the new lower, tiered, levels of the benefit cap as legislated for in the Welfare Reform and Work Act 2016 (the 2016 Act). It also makes consequential amendments to the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (S.I. 2001/1002) and the Universal Credit (Transitional Provisions) Regulations 2014 (S.I 2014/1230).

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 The Welfare Reform Act 2012 introduced a cap on the amount of benefits workless working age households can receive. This was to restrict the total amount of money a non-working household can receive to broadly the level of the average earned income of working households after tax and national insurance contributions are deducted.

4.2 Section 8 of the Welfare Reform and Work Act 2016 ("the 2016 Act") amends Section 96 of the Welfare Reform Act 2012 to provide for a further reduction in the level of the benefit cap and for a tiered approach for claimants residing in Greater London or the rest of Great Britain. "Greater London" is defined as the 32 London boroughs and the City of London.

4.3 The new lower, tiered cap aims to strengthen work incentives, achieve fairness for taxpayers and ensure there is a reasonable safety net of support for the most vulnerable.

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

Background

7.1 The Welfare Reform Act 2012 introduced a cap on the amount of benefits workless working age households can receive. This was to restrict the total amount of money a non-working household can receive to broadly the level of the average earned income of working households after tax and national insurance contributions are deducted. Pursuant to this from April 2013 the annual level of cap was set at £26,000 (£2,166.67 monthly, £500weekly) for a couple (with or without children) and single parent households. It was set at £18,200 (£1,516.67 monthly, £350 weekly), for single adult households without children.

7.2 Recipients of certain benefits and payments such as Working Tax Credit and disability benefits are exempt from the cap. The cap is applied by local authorities in respect of Housing Benefit and by the Department for Work and Pensions in respect of Universal Credit (UC). When the amount of welfare benefits a person receives is more than the level of the cap the person's Housing Benefit or universal credit is reduced to reflect the level of the cap.

7.3 The 2016 Act provides for a further reduction in the level of the benefit cap and for a tiered approach across Great Britain.

7.4 The benefit cap is administered on a '*benefit unit*' basis, to determine whether total benefit entitlement exceeds the relevant cap level. To ensure this document is easy to understand, the term 'household' is used to describe a 'benefit unit'. For the purposes of benefits administration, a '*benefit unit*' may comprise of: a single eligible adult; a couple with or without a child (children) and/or a qualifying person(s) for whom they are responsible; joint claimants (for UC), with or without a child (children) and/or a qualifying person(s) for whom they are responsible; a lone parent with relevant dependent children and/or a qualifying young person; a qualifying young person. These descriptions are common across the benefits system and the administration of the benefit cap therefore mirrors this approach for consistency.

7.5 Other people can be living normally in a claimant's home other than their partner, their children or a qualifying young person for whom the claimant or their partner is responsible. These people are termed "non-dependents." Any benefits paid to a "non-dependent" are not taken into account in the application of the benefit cap.

What is being done and why

7.6 This instrument makes amendments in connection with the new lower levels of benefit cap from 7 November 2016. It also creates new exemptions from the cap for households entitled to Carer's Allowance, those whose award of UC includes the Carer's Element, and for households entitled to Guardian's Allowance. It also makes some minor and consequential amendments.

Reducing the Benefit Cap

7.7 The 2016 Act reduces the level of benefit cap. A summary of those changes is set out in the table below. This instrument sets out how the weekly (for the purposes of HB) and the monthly (for the purposes of UC) are calculated by reference to those annual limits. Those weekly and monthly amounts are also shown in the table below.

Changes in the level of the benefit cap		Couples[1] (with or without children) or single claimants with a child or qualifying child	Single adult households without children
Greater London	Reduction in annual level of benefit cap	£26,000 to £23,000	£18,200 to £15,410
	Monthly equivalent	£2,167 to £1,916.67	£1,517 to £1,284.17
	Weekly equivalent	£500 to £442.31	£384 to £296.35
Rest of Great Britain	Reduction in annual level of benefit cap	£26,000 to £20,000	£18,200 to £13,400
	Monthly equivalent	£2,167 to £1,666.67	£1,517 to £1,116.67
	Weekly equivalent	£500 to £384.62	£350 to £257.69

7.8 The Government is committed to building on the successful outcomes of the cap by lowering the maximum amount that a household can claim in benefits each year. This emphasises the objective of fairness for working households and strengthens the rewards of work in the benefit system. The new lower, tiered cap aims to strengthen work incentives, achieve fairness for taxpayers and ensure there is a reasonable safety net of support for the most vulnerable.

7.9 An evaluation[2] of the current benefit cap showed capped households were 41% more likely to enter work than comparable households not affected by the benefit cap (households in London were 70% more likely.) The evaluation also showed that the greater the amount by which benefit receipt was reduced by the cap, the greater the proportion moving into employment.

7.10 A lower cap recognises that many hard working families earn less than median earnings – a lower cap provides a strong work incentive.

[1] In Universal Credit this only includes couples who are joint claimants. It does not include couples where one member is not eligible to receive Universal Credit.

[2] Available at https://www.gov.uk/government/publications/benefit-cap-evaluation

7.11 The tiered approach to the reduction recognises that almost half of all households currently capped are living in London. In contrast only 3% of capped households live in the North East. The tiered approach aims to spread work incentives more widely across the country.

7.12 The lower, tiered cap aims to better reflect households' circumstances nationally. For instance, average Housing Benefit costs are around £3000 higher in London than the rest of country, whilst average private rents are over three times more expensive in London than in the North East[3]. Furthermore, around 4 out of 10 households earn less than £23,000 in London, whilst around 4 out of 10 households in GB (excluding London) earn less than £20,000[4]. Although there are pockets of high rental areas across the country, there are also large areas of cheaper accommodation available in all regions. This is less the case in London, where housing costs are consistently higher across the region.

7.13 For Housing Benefit the regulations provide that a claimant is resident in Greater London if the dwelling they are treated as occupying as his or her home is in Greater London. If the claimant is treated as occupying more than one dwelling as his or her home, including one in Greater London the clamant is considered to be resident in Greater London.

7.14 Where an award of Universal Credit (UC) includes the housing costs element for accommodation located in Greater London a claimant is considered to be resident in Greater London. Again the approach is that if a claimant is considered to occupy a residence in Greater London for the purpose of the housing costs element then the level of cap applied to them should reflect that. If a claimant receives the housing costs element in respect of more than one accommodation, they will be considered resident in Greater London if either is in Greater London. UC claimants who are also receiving Housing Benefit because they are in specified accommodation will be deemed to be resident in Greater London if the specified accommodation is located there. Where the UC claimant does not have the housing costs element, the claimant will be considered resident in Greater London if the accommodation normally occupied as their home is in Greater London. Where claimants do not occupy accommodation as their home they will be considered resident in Greater London if the Jobcentre Plus office to which their UC claim is allocated is in Greater London in the event that their income requires consideration of benefit cap limits.

7.15 A number of measures are in place to ease the transition for families affected by the policy. Claimants who may be affected by the reduced levels of cap are given early notice, so that appropriate support can be offered to change their circumstances and move into work. Those affected by the cap will have access to immediate employment support from Jobcentre Plus and its partners, the Work Programme and Work Choice. The Department will work intensively with claimants explaining and identifying the support available locally and how they can look at other options if appropriate.

7.16 When the benefit cap was introduced the Government responded to concerns about the potential impact by providing additional funding to support those affected by this measure. This support continues. In 2014/15 £45m was allocated to support those affected by the cap and in 2015/16 £25m was allocated. A total of £870m is being provided over the next 5 years from 2016/17 to support vulnerable people. These

[3] https://www.gov.uk/government/statistics/private-rental-market-statistics-may-2016

[4] Family Resource Survey 2013/14 and uprated in line with average earnings growth.

funds are intended to give short-term, temporary relief to families who may face a variety of challenges. Each case is decided on its own merits rather than on pre-defined criteria.

New exemptions for Carers and Guardians

7.17 Currently people who move into work and who are entitled to Working Tax Credit, or who meet/exceed the earnings threshold in Universal Credit (UC) are exempt from the benefit cap, creating a clear incentive to move into employment. Currently there are also exemptions for disability benefits and payments. These are Personal Independence Payment, Disability Living Allowance, Attendance Allowance, Industrial Injury Benefits and equivalent payments in the War Pension and Armed Forces Compensation Schemes, pensions paid to War Widowers and Widowers under the War Pensions and Armed Forces Compensation Schemes, Employment and Support Allowance which includes a support component and UC if the claimant is not capable of both work and work-related activity. The benefit cap and exemptions maximise the impact on promoting work whilst protecting vulnerable claimants for whom work is not currently a viable option.

7.18 The new cap levels were subject to considerable debate and scrutiny during the passage of the Bill. As a consequence these regulations introduce two new exemptions to the benefit cap.

7.19 This instrument extends exemptions to households where someone is entitled to Carer's Allowance (CA) or whose UC award includes the Carer Element. This proposed change fits in with the wider Government strategy to do more to support and invest in carers. Set alongside the investment provided through the Care Act and the help available to find work, the exemption will continue the Government's strategy to enable carers to stay or move into paid employment where appropriate for them, whilst also fulfilling their valuable caring responsibilities.

7.20 This instrument also provides an exemption for households entitled to Guardian's Allowance. This Government values and recognises the service that guardians provide through offering a stable home for children who have lost one or both of their parents. The proposed exemption from the benefit cap emphasises that the Government both recognises the difficult circumstances these families face and strongly values the role of guardians in helping vulnerable and bereaved children stay with their families.

Consolidation

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

8. Consultation outcome

There has been no consultation specifically in relation to this instrument but over the course of the passage of the Welfare Reform and Work Bill, Ministers and policy teams engaged regularly with stakeholders and interest groups. The Public Bill Committee had 6 oral evidence sessions with a range of stakeholders, with an open call for evidence with 86 submissions that were carefully considered. A record of evidence taken by he House of Commons Public Bill Committee is provided on the Parliament website at: House of Commons Public Bill Committee - Welfare Reform and Work Act 2016.

8.1 The Department has and is continuing to engage with stakeholders on the rollout and implementation plans for the lower cap levels. Throughout the passage of the 2016 Act through Parliament and following Royal Assent, we have engaged and listened to a range of key issue-based stakeholders – from organisations including (but not limited to): Shelter, National Housing Federation, Crisis, Carers UK, Gingerbread, Child Poverty Action Group, Barnados, the Children's Society, Joseph Rowntree Foundation, Citizens Advice, the Disability Benefits Consortium, the DWP Operational Stakeholder Engagement Forum and the DWP Lone Parent Voluntary Group and this has shaped the policy and support offer for claimants. Engagement has been via face-to-face meetings, presenting at stakeholder forums, receiving written briefings and monitoring social media activity. To ensure that key delivery partners are signposting affected households to a range of support, a Benefit Cap External Partner Briefing pack has been provided so that organisations could update the advice on websites and helplines in parallel with the claimant notifications that were issued in May 2016. For example Stratford-on-Avon Council have published the Briefing Pack at Benefit Cap External Partner Briefing Pack.

8.2 The two new exemptions were welcomed by members of the House of Lords during the passage of the Welfare Reform and Work Act. We will continue to engage with Carers UK on the exemptions for carers.

8.3 These Regulations were referred to the Social Security Advisory Committee (SSAC) and were discussed at their meeting on 22nd June 2016 and they decided they did not wish to take on formal reference those regulations subject to referral to SSAC.

8.4 A formal consultation with Local Authority Associations regarding the changes to the Housing Benefit regulations commenced on 21st July for a 6 week period. This closed at the end of August. One response was received but no concerns have been raised.

9. Guidance

9.1 Comprehensive guidance and training products are being developed and will be available to staff in DWP in time to support implementation. This training and guidance will cover the full details of the lower, tiered cap levels, the customer support that is available to claimants requiring additional help and the new exemptions to those entitled to Carer's Allowance, the carer's element of Universal Credit and Guardian's Allowance.

9.2 The Department is also continuing to work closely with local authorities and is providing comprehensive guidance about the changes and their implementation to assist them with the effective delivery and communication of the changes. The Department will provide details to local authorities of their residents who have been notified that they may be affected by the new cap levels so that they can fully prepare to support claimants who might be affected by the lower cap in their area from the autumn.

9.3 Local authorities also have access to the Discretionary Housing Payments (DHP) Guidance Manual, which includes a Good Practice guide for local authorities which has been updated to help local authorities protect the most vulnerable and to support households adjusting to the reforms.

10. Impact

10.1 There is no direct impact on business, charities or voluntary bodies. There may be some indirect impacts, for example, increased contact with advice centres which cannot be quantified with any degree of certainty at this stage as it is not possible to predict the behavioural responses of those affected by the benefit cap. The Department is putting support and advice in place as part of the implementation plan.

10.2 There will be some impact on the public sector with one-off costs for local authority Housing Benefit and housing departments to implement these changes. There are also likely to be ongoing additional administration costs to meet increased levels of activity on Discretionary Housing Payment requests. The Department is working closely with the Department for Communities and Local Government to assess the impact of these changes on local authorities.

10.3 An initial impact assessment of the new lower, tiered cap levels was published in July 2015. An updated impact assessment was published in August 2016 which takes into account the additional exemptions for Carers and Guardians and is available on gov.uk: Impact Assessment for the Benefit Cap. This impact assessment shows the headline number of households affected to be 88,000 compared to the July 2015 figure of 120,000. The reduction in the number of households reflects a number of changes since July 2015, including a record number of people in employment which reduces the numbers on out-of-work benefits and a fall in the number affected by the current cap, with thousands of households moving into work. Other changes since July 2015 include a change in the economic assumptions at the Budget 2016 and the additional exemptions of Carer's Allowance, the carer's element of Universal Credit and Guardian's Allowance. The exemptions reduce the estimated numbers of households affected by the cap by 7,000 to 88,000 and this may reduce the indirect impacts mentioned as people may have less need for advice. Again this cannot be quantified with certainty.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department published a full evaluation of the introduction of the benefit cap in December 2014 which is at: Post-implementation effects of the Benefit Cap. We are committed to monitoring the impacts of our policies and to establishing the extent to which they have met their objectives and are therefore developing plans to evaluate the impact of the new, lower, tiered benefit cap and the new exemptions. The evaluation will aim to better understand claimants' behaviours and attitudes to looking for work; how local services have been affected by the change in the cap and how organisations such as local authorities are working with capped claimants.

12.2 The Department will also continue to produce Official Statistics on the benefit cap on a quarterly basis allowing frequent monitoring on the number of households affected by the policy. The statistics are available at Benefit cap : number of households capped to May 2016. The statistics cover:

- Cumulative and point-in-time statistics on the number of households capped in Great Britain, regional and local authority level by household type, number of children and amount of the benefit cap.

- Great Britain and regional level off-flow statistics from the benefit and by reason of the off-flow.
- Further breakdowns are also available by local authority and Parliamentary Constituency.

13. Contact

13.1 David Edson at the Department for Work and Pensions. Telephone: 0113 2327506 or email: davd.edson1@dwp.gsi.gov.uk can answer any queries regarding the instrument.