EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CIVIL PENALTIES) REGULATIONS 2012

2012 No.

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

The purpose of this instrument is to set the amount of a civil penalty at £50. The aim of the civil penalty is to address the financial loss to the Exchequer which arises from claimant error in benefit claims and make claimants more personally responsible for overpayments they incur in relation to such claims.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 Legislation was introduced in the Welfare Reform Act 2012 to allow for a civil penalty scheme to operate in relation to benefit claims.

4.2 New sections 115C and 115D of the Social Security Administration Act 1992 following their commencement on 1 October 2012, will allow both the Secretary of State and local authorities to start to consider imposing a civil penalty. This can be imposed both on people who make incorrect statements in their benefit claims without taking reasonable steps to correct them and on people who have been awarded benefit but who fail to disclose information or report changes in their circumstances without reasonable excuse. In each case, the action or inaction would have had to result in an overpayment of benefit. The new sections allow for the amount of the penalty be set by regulations.

5. Territorial Extent and Application

This instrument applies to Great Britain. Similar Statutory Rules are to be introduced in respect of Northern Ireland.

6. European Convention on Human Rights

Lord Freud, Minister for Welfare Reform, has made the following statement regarding human rights:

In my view the provisions of the Social Security (Civil Penalties) Regulations 2012 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The Exchequer loses £1.3 billion a year through overpaid benefits due to errors made by claimants http://statistics.dwp.gov.uk/asd/asd2/index.php?page=fraud_error The civil penalty is intended to help tackle the financial loss which arises from claimant error and to encourage all claimants to take responsibility for their benefit claim and for any overpayments they incur.

7.2 The strategy to tackle fraud and error and protect the integrity of the benefit system was announced by the Government on 18 October 2010 http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf. The strategy announced then that the Department for Work and Pensions (DWP) and local authorities would introduce, for the first time, a new civil penalty, modelled in part on the current civil penalty regime administered by Her Majesty's Revenue and Customs (HMRC).

7.3 The strategy made clear that benefit claimants are expected to understand their responsibilities in that they must make full and accurate disclosure of relevant information, both when claiming benefit and when requested by the relevant authority to supply information, as well as notifying relevant changes in circumstances straight away. It also made clear that where claimants fail to meet these requirements, then in the future a civil penalty of £50 may be imposed as a consequence.

7.4 Following the October 2010 announcement, a White Paper entitled 'Universal Credit Welfare that Works' http://dwp.gov.uk/docs/universal-credit-full-document.pdf was published by the Government on 11 November 2010. Chapter 5 outlined a plan for the Government to introduce a civil penalty for claimant error in benefit claims and also stated that the intention was to set that penalty at £50.

7.5 These Regulations set the amount of the civil penalty in each case at £50. That was considered an appropriate amount as DWP feels it should serve to make claimants more personally responsible for overpayments they incur and effect a positive change in their future behaviour. It is also significantly less than the harsher punishments available for benefit fraud offences.

7.6 The Secretary of State or local authorities will be able to consider imposing a civil penalty in addition to recovery of the overpayment in all cases where they are satisfied that a claimant has failed to take appropriate care of their benefit claim or award, and they have no reasonable excuse

for their failure or has not taken reasonable steps to correct their mistake and an overpayment has arisen as a result.

7.7 Where a claimant is found to have failed to disclose information or provides an incorrect statement that may impact against more than one benefit and which could result in more than one overpayment decision only one civil penalty will apply.

7.8 DWP recognises and appreciates that there are different reasons why someone might make a mistake in giving information to them about their claim. Not all of them mean that a claimant is at fault or deserves a civil penalty and this is understood. Similarly, DWP knows that some people may have a reasonable excuse for their failure to do something and the provisions allow for a penalty not to be imposed where this is the case.

7.9 Where a relevant authority has decided to impose a civil penalty, this will be added to the overpayment amount. The fact that it has been imposed will be notified to claimants at the same time as they are notified of an overpayment. This means that there will be just the one outcome decision which will comprise the overpayment and the civil penalty. The appeal rights (and the timescale for appeal) will flow from this one decision. The claimant will be able to appeal against the overpayment decision(s), the civil penalty or both.

7.10 The penalty will be recoverable by the same means as the overpayment. The penalty may be recovered by deductions from ongoing benefits; by instalments; by the new direct earnings attachment provisions also being brought forward by regulations under the 2012 Act or through the courts. DWP's policy is that recovery of that penalty should not cause undue hardship for the claimant. Rates of recovery will therefore be set to avoid undue financial hardship and take account of the financial and personal circumstances of the claimant.

7.11 The civil penalty is not changing the responsibility claimants have to give accurate information but underlining that responsibility, making sure that claimants understand the importance of giving information accurately, and encouraging them to take proper care of their benefit claims and awards.

- **Consolidation**

7.12 These are free-standing regulations.

8. Consultation outcome

8.1 The regulations are directly related to new legislation as enacted by the Welfare Reform Act 2012. The regulations simply prescribe the amount of the penalty in all cases at £50, this accords with what has already been previously announced by the Government as the intended penalty amount as outlined in greater detail below. Since then there has been no change to

or any intention to amend the stated intended amount of the civil penalty therefore formal consultation is not necessary.

8.2 The strategy announced by the Government on 18 October 2010, http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf to tackle fraud and error in the benefits and tax credits systems also announced that DWP would introduce for DWP and local authorities, for the first time a new civil penalty, part modelled on the current HMRC civil penalty regime. The strategy document invited comments; no comments were received on the matter of the intention to set the penalty amount at £50.

8.3 The Government's policy intention to introduce a £50 civil penalty was also re-affirmed in the strategy refresh document published February 2012. http://www.cabinetoffice.gov.uk/sites/default/files/resources/HMG-Fraud-and-Error-Report-Feb-2011-v35.pdf

8.4 The White paper 'Universal Credit Welfare that Works' http://dwp.gov.uk/docs/universal-credit-full-document.pdf was published by the Government on 11 November 2010. This also outlined the plan for the introduction of a civil penalty for claimant error and that the intention was to set that penalty at £50 to tackle the high cost of claimant error within the benefit system and to make it clear that DWP expects recipients to take their claim seriously.

8.5 The proposed amount of the penalty of £50 was also referred to by Ministers during the passage of the Welfare Reform Act 2012 Act. http://www.publications.parliament.uk/pa/cm201011/cmpublic/welfare/110519/am/110519s01.htm http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111128-gc0001.htm#1111285000130

8.6 In view of the above, there was no formal consultation on these Regulations. They were however referred on an informal basis to the Social Security Advisory Committee on 4 April 2012.

8.7 The Department also consulted the four local authority associations about the draft regulations and informed local authority IT suppliers of the draft regulations. One formal response to the draft regulations was received; no objection was raised to the matter of the intention to set the penalty amount at £50.

9. Guidance

9.1 Decision makers will be fully trained in how and when to apply the new provisions. Decision makers already have to take individual circumstances into account in doing their work on a day to day basis. Consideration around what constitutes negligence and what would count as a reasonable excuse will be subject to guidance and explored in preparing that material through training with decision makers. Each case will be considered individually by the decision maker in accordance with the statutory

criteria. DWP also has a well established debt recovery process and in future this will include recovery of the civil penalty.

9.2 DWP will draw on the expertise of interested outside stakeholders to ensure that guidance, communication products and decision making processes are suitably tailored to meet the needs of the range of claimants

9.3 Information relating to the new penalty will also be incorporated into leaflets and forms on an ongoing basis and, for example their introduction will be highlighted when DWP communicates with claimants about their benefit where appropriate. It will also be included in, for example relevant press releases, updates on Directgov or through the DWP's website.

9.4 DWP will also promote and raise awareness of the penalty using established communication networks with a range of external and internal stakeholders and organisations for example the Social Security Advisory Committee, DWP External Stakeholders Group and local authority associations.

9.5 DWP will support local authorities in taking forward the work to implement the new penalty. This will include providing clear instruction and guidance on how to operate the new scheme.

10. Impact

10.1This instrument has no impact on business or civil society organisations.

10.2 The impact on the public sector is negligible. Local authorities are under no legal obligation to impose civil penalties in appropriate cases so the possible impact of these measures on this area of the public sector is unknown.

10.3 A full impact assessment has not been published for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The use and the approach to the roll out of the civil penalty across all benefits will be open to review. The penalty will be monitored to ensure both the effectiveness of the measure and equality of treatment. The effect of this change will be evaluated as part of the overall fraud and error strategy.

12.2 The number of penalties imposed by benefit type will be collected as management information. DWP would expect to see a gradual reduction

in the number of penalties being imposed over time. This would indicate that the change is acting to deter claimant error.

12.3 No targets will be set in relation to the number, or value, of civil penalties imposed.

13. **Contact:** Judith Hicks at the Department for Work and Pensions Tel: 020 7449 5311 or email: Judith.hicks@dwp.gsi.gov.uk who can answer any queries regarding the instrument.