EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (LOSS OF BENEFIT) (AMENDMENT) REGULATIONS 2013

2013 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

These Regulations amend the Social Security (Loss of benefit) Regulations 2001 (S.I.2001/4022) ("the Loss of Benefit Regulations") http://www.legislation.gov.uk/uksi/2001/4022/contents/made. They mainly support changes introduced by the Welfare Reform Act 2012 ("the 2012 Act"), http://www.legislation.gov.uk/ukpga/2012/5/contents/enacted/data.htm firstly the introduction of Universal Credit and secondly the toughening of punishments that may be imposed following a benefit fraud offence. In this regard, they set out the offences which will be considered a "relevant offence" for the purposes of the new 3 year loss of benefit penalty, on first offence, following a benefit fraud conviction involving a serious case of organised or identity related fraud. They also make changes to the reduction amounts and hardship payment arrangements for Employment and Support Allowance and make other minor technical changes to those Regulations.

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

None.

4. Legislative Context

4.1 The Social Security Fraud Act 2001 ("the 2001 Act") http://www.legislation.gov.uk/ukpga/2001/11/contents as originally enacted allowed the Secretary of State to reduce or withdraw benefit payments for those convicted of repeat benefit fraud for a fixed 13 week period if convicted in two separate sets of proceedings within a fixed period (2 Strikes). These measures were extended in the Welfare Reform Act 2009 http://www.legislation.gov.uk/ukpga/2009/24/contents to a 4 week loss of benefit on for those convicted of one benefit fraud offence and also covered those who commit an offence but who receive cautions or administrative penalties.

4.2 Powers were taken in the 2001 Act to mitigate the effect of those provisions in regulations. These measures allowed for a reduced rate of means-tested benefits to be payable or for hardship payments to be payable in certain circumstances during the period of a loss of benefit. The 2012 Act

both introduces Universal Credit and amends the 2001 Act to include Universal Credit as both a disqualifying benefit and a sanctionable benefit for the purpose of the loss of benefit provisions. Other powers contained in the 2001 Act allow regulations to set the start date for a loss of benefit. It is these Regulations that are being amended.

4.3 The 2012 Act also increases and extends the periods for which loss of benefit may be imposed following a benefit fraud offence. In addition, it allows regulations to prescribe offences which are considered to be "relevant offences" for the purposes of the new immediate 3 year loss of benefit payment penalty where the offence involves serious organised or identity fraud and certain conditions apply.

5. Territorial Extent and Application

This instrument applies to Great Britain. Similar Statutory Rules are to be introduced in respect of Northern Ireland for benefits other than war pension.

6. European Convention on Human Rights

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

In my view the provisions of the Social Security (Loss of Benefit) (Amendment) Regulations 2013 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The Exchequer loses £1.1 billion of social security benefits each year due to fraud committed by claimants.
http://statistics.dwp.gov.uk/asd/asd2/index.php?page=fraud_error
The change to the loss of benefit provisions is intended to help tackle the financial loss which arises from claimant fraud by imposing tougher penalties on those who commit fraud, particularly repeat offenders and act as a deterrent.

7.2 The strategy to tackle fraud and error and protect the integrity of the benefit system was announced by the Government on 18th October 2010 http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf. The strategy was that fraudsters should lose benefit for an increased period which reflects the seriousness of welfare fraud with the most serious and aggravated cases of benefit fraud having a 3 year loss of benefit applied after a single offence.

7.3 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 11th November 2010. Chapter 5 confirmed that the Government planed to introduce a tougher loss of benefit regime.

7.4 Research commissioned by DWP and published on the DWP internet under 'Targeting Benefit Fraud: tracking research February 2011' was designed to provide a picture of attitudes and behaviour in relation to benefit fraud. The fieldwork for this research was conducted by Ipsos MORI. The research found:

- 41% of claimants perceive benefit fraud as being 'easy to get away with';
- A third of claimants agreed that the penalties of getting caught committing benefit fraud are 'not that bad';

These Regulations are intended to strengthen the penalties for benefit fraud.

7.5 The amendments to the 2001 Act made by sections 117 to 119 of the 2012 Act strengthen and toughen the existing loss of benefit provisions by introducing a 13 week loss of benefit penalty for a first conviction. Longer loss of benefit periods of 26 weeks and 3 years will apply, where an offender is convicted of a benefit fraud offence, and had committed one or more previous benefit offences within a 5 year period. A new 3 year loss of benefit penalty will apply after a single offence where an offender is convicted of a serious case of organised benefit fraud or identity fraud. The 2012 Act both introduces Universal Credit and amends the 2001 Act to include Universal Credit as both a disqualifying and a sanctionable benefit for the purpose of both the 2001 Act and the Loss of Benefit Regulations.

7.6 These Regulations set out how Universal Credit payments will be reduced in the event of a loss of benefit. The amount of the reduction will be an amount equal to 100% (or 50% if the offender is a joint claimant) of an amount equal to the Universal Credit standard monthly allowance for claimants who are subject to full work-related requirements. This reduction will be capped to the amount of the Universal Credit standard allowance which the claimant actually receives in the assessment period to ensure that amounts paid, for example in respect of children and housing are retained. A lower reduction amount will be applied of 40% (or 20% if a joint claimant) of an amount equal to the Universal Credit standard monthly allowance for claimants who are not subject to full work-related requirements.

7.7 The Universal Credit reduction provisions align broadly with the reductions applicable for a work related sanction failure which are contained in the Universal Credit Regulations 2012.

7.8 These Regulations allow for hardship payments to be available to those Universal Credit claimants who meet the conditions of entitlement for Universal Credit and show that their household is unable to meet their needs as to immediate basic and essential accommodation, food, heating or hygiene. The claimant (or both joint claimants) must accept the conditions for these payments and that they are recoverable from future non-sanctioned benefit payments.

7.9 These hardship payments are paid at a set daily rate based upon 60% of the single person's standard monthly amount in Universal Credit. It is paid for the number of days from the date the claimant meets the conditions to be in hardship to the day before their next Universal Credit payment is due. A claimant must re-apply for a hardship payment each assessment period to demonstrate their continuing need for support, that they are making reasonable efforts to reduce non-essential costs and seeking any alternative sources of support.

7.10 Such hardship payments are to be recoverable but rates of recovery will be set to avoid undue financial hardship and take account of the financial and personal circumstances of the claimant or joint claimants.

7.11 These Regulations also specify what is to be start date for the disqualification period where the offender or the offender's family member is in receipt of Universal Credit.

7.12 Regulation 6 prescribes the offences, in addition to common law conspiracy to defraud, conviction for which will trigger a 3 year loss of benefit. This prescribed list of offences has been developed in consultation with both the Crown Prosecution Service and the Devolved Administrations. Those offences necessarily involve cases of serious organised fraud or identity fraud. The conviction will need to be accompanied by at least one of the additional requirements set out in a) to c) below. This is to ensure that only the most serious frauds are targeted for toughest immediate punishment. Those requirements are:-

a) the criminal court finds that there is overpayment of £50,000 or more;
b) the person receives a sentence of at least one year's imprisonment (including a suspended sentence); or
c) the criminal court finds the benefit fraud has occurred over a period of two years or more.

(see section 118(5) of the 2012 Act).

7.13 These Regulations also change the method of reducing income-related Employment and Support Allowance where there is a loss of benefit. In future, where a claimant or family member is not pregnant or seriously ill, and have work related requirements as part of their conditions for receiving Employment and Support Allowance then their payment will be reduced completely, but with access to hardship payments where conditions are met. This aligns with wider changes introduced to the Employment and Support Allowance sanction regime from 3rd December 2012. Lesser reductions of 20% will continue to apply to offenders where they or a member of their family is pregnant or seriously ill as will the 40% reduction rate for offenders where they or a member of their family is subject to no work related requirements.

7.14 Hardship payments will be available to those offenders who no longer receive income-related Employment and Support Allowance due to a loss of

benefit penalty. They may be claimed from the beginning of a penalty period providing the claimant meets the conditions for entitlement to income-related Employment and Support Allowance. Entitlement to hardship payments begins on the day from which the claimant meets the conditions for an award of hardship payment as detailed in the Regulations.

7.15 These hardship payments are paid at a set daily rate based upon 60% of the single person's applicable amount in Employment and Support Allowance. Once awarded, the hardship payment will continue until the period of the penalty ends. If, during this period the claimant's circumstances change, the award of hardship payments will be reviewed.

7.16 These Regulations also make some other minor technical changes to the Loss of Benefit Regulations-

-they specify what is to be start date for the disqualification period where the offender is in receipt of a benefit paid partly in advance and in arrears;

-they update a reference to persons over the age of 16 in respect of whom child benefit is payable;

-they update the list of benefits which are not subject to the loss of benefit sanction to reflect new references in Armed Forces pensions' legislation;

-they make changes to the hardship provisions relating to jobseeker's allowance to reflect the introduction of personal independence payment.

Consolidation

7.17 There are no immediate plans to consolidate the regulations as amended by this instrument. Informal consolidation will be provided by way of "The Law Relating to Social Security" (Blue Volumes), available on line free of charge to the public. http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/

8. Consultation outcome

8.1 The Regulations are in part related to changes made by the 2012 Act. Since then there has been no change to or any intention to amend the stated toughening of the loss of benefit regime.

8.2 The strategy announced by the Government on 18th 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 stated that DWP would introduce tougher loss of benefit provisions. The strategy document invited comments; about ten comments were received on the matter of tougher penalties against fraudsters and those were asking for clarification.

8.3 The Government's policy intention to extended loss of benefit periods for offences which result in a conviction was also re-affirmed in the strategy refresh document published in 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 11th November 2010.

8.5 These Regulations were considered by the Social Security Advisory Committee on 7th November 2012 and they decided not to refer them for broader consultation. They were also shared and discussed with the four Local Authority Associations and we informed the local authority IT suppliers. No policy concerns or issues were raised.

9. Guidance

9.1 Implementation of the loss of benefit provisions contained in these amendments will build on well established operational processes developed to support the existing 4 and 13 week loss of benefit regime. DWP also has a well established debt recovery process and in future this will include recovery of Universal Credit hardship payments.

9.2 Information relating to the tougher loss of benefit regime will be included in for example relevant press releases, updates on www.gov.uk or through the DWP's website www.dwp.gov.uk

9.3 Information relating to the tougher loss of benefit regime will also be incorporated into leaflets and forms where appropriate on an ongoing basis.

9.4 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.

9.5 DWP will support local authorities in taking forward the work to implement the loss of benefit provisions; this will include providing clear instruction and guidance.

10. Impact

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

10.2 A new burdens assessment is being completed to determine the impact on local authorities of the tougher loss of benefit provisions. The outcome of the assessment will be discussed with the Department for Communities and Local Government.

10.3 A full impact assessment has not been published for this instrument. A full impact assessment on fraud penalties and sanctions was published as part of the suite of assessments completed for the 2012 Act: www.dwp.gov.uk/docs/fraud-penalties-and-sanctions-wr2011-ia.pdf.

11. Regulating small business

The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The tougher loss of benefit regime 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.

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.