EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) REGULATIONS 2013

2013 No. 443

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:

- correct an omission in regulations dealing with third party payments by 'liable relatives' by disregarding third party payments for housing costs not met by benefit
- require claimants on Jobseeker's Allowance (JSA) to participate in interviews, not just attend on time
- clarify the definition of 'employment' for the purposes of ending a sanction after a claimant has left JSA and been in employment for 26 weeks
- correct all references in the new JSA sanction regulations so that they refer to the appropriate sections of the Jobseekers Act 1995
- allow a sanction to be applied after disentitlement for failing to meet the jobseeking conditions of actively seeking or being available for work regardless of whether a new claim is required to reinstate JSA
- amend the JSA Regulations which prescribe the factors for determining whether someone is in hardship, as they currently do not take account of the fact that JSA is no longer payable for children
- disregard for the purposes of the income-related benefits the two new payments that will be made by local authorities to replace Council Tax Benefit and certain Social Fund payments; also correct an omission to ensure arrears of Social Fund payments are disregarded in the pension age Housing Benefit (HB) regulations
- ensure that people who are unable to move into a new home while waiting for help from the local authority with costs arising from the move or with setting up the new home, can receive payments for housing costs for which they are liable for up to four weeks
- align Income Support/JSA/State Pension Credit (SPC) with HB and Employment and Support Allowance (ESA), so that a non-dependant deduction is not taken from the housing costs allowed to a claimant, where the non-dependant is aged under 25 and in receipt of income-related ESA at the assessment phase rate
- make amendments to maintain the policy for the payment of HB to prisoners for a maximum of 13 weeks
- make an amendment to ensure that people with limited capability for work and who are entitled to national insurance credits (but not ESA) on this basis, can be entitled to the appropriate component within the calculation of their HB applicable amounts
- make an amendment so that where payment of Attendance Allowance or Disability Living Allowance is reinstated to the claimant or their partner during a benefit week after a period in hospital, the additional amount for severe disability in SPC is awarded from the first day of that benefit week
- amend regulations relating to third party deductions for mains electricity debt to allow for the Green Deal element to be included so that claimants in receipt of a specified

benefit (which will include Universal Credit) are not disadvantaged and put at risk of enforcement action.

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

None

4. Legislative Context

This instrument makes minor changes to the regulations relating to income-related benefits and other relevant social security regulations. The amendments have been combined into one package to avoid making numerous statutory instruments. The changes in this package are being introduced to correct, clarify and update regulations without changing the policy.

The income-related benefits regulations

i) The Income Support (General) Regulations 1987 (*SI 1987/1967*)
http://www.dwp.gov.uk/docs/a6-2501.pdf

ii) The Jobseeker's Allowance Regulations 1996 (*SI 1996/207*)
http://www.dwp.gov.uk/docs/a11-4001.pdf

iii) The State Pension Credit Regulations 2002 (*SI 2002/1792*)
http://www.dwp.gov.uk/docs/a12-5001.pdf

iv) The Housing Benefit Regulations 2006 (*SI 2006/213*)
http://www.dwp.gov.uk/docs/a8-2501.pdf

v) The Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006 (*SI 2006/214*)
http://www.dwp.gov.uk/docs/a8-2901.pdf

vi) The Employment and Support Allowance Regulations 2008 (*SI 2008/794*)
http://www.dwp.gov.uk/docs/a13-5101.pdf

Other relevant social security regulations

vii) The Social Security (Claims and Payments) Regulations 1987 (*SI 1987/1968*)
http://www.dwp.gov.uk/docs/a1-5501.pdf

viii) The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (*SI 1999/991*)
http://www.dwp.gov.uk/docs/a1-6011.pdf

ix) The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (*SI 2013/380*)

5. Territorial Extent and Application

This instrument applies to Great Britain. Equivalent provisions will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

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

Liable relative payments

7.1 There is an inconsistency in the income-related benefits which penalises claimants who are in receipt of a liable relative payment which is paid to, or in respect of, a third party for housing costs not met by benefit.

7.2 Where the third party payment is in respect of things covered by benefit, the intention is that it should fall within the meaning of a liable relative payment and be taken into account.

7.3 The problem arises where the claimant's ex-partner is making payments in respect of the claimant's housing costs for items *not* covered by benefit. Such payments are currently taken into account in full as income. The effect is that the claimant may have insufficient income remaining for essential living costs.

7.4 To ensure consistency with the other parts of the regulations dealing with the treatment of income and third party payments, the amending regulations clarify that third party payments made by liable relatives for housing costs should only be taken into account where these are costs for which benefit is payable.

Participating in an interview

7.5 Section 45 of the Welfare Reform Act 2012 made amendments to require a claimant on Jobseeker's Allowance (JSA) to 'participate in an interview' as opposed to 'attend'. Various JSA regulations have been amended to reflect this change but some were overlooked.

7.6 These Regulations make consequential changes to regulations to refer to participation rather than attendance. The consequences of failure to participate, which may be disentitlement or sanction depending on the circumstances, are the same as the current consequences where a claimant fails to attend.

Jobseeker's Allowance - hardship

7.7 In deciding whether someone is in hardship the total resources available to the family are compared with the amount of hardship payment that would be payable. Since the introduction of tax credits in 2003, the JSA hardship rate is set by reference to the benefit entitlement of the adult members of the household. However, benefits for

dependants such as Child Benefit and Child Tax Credit are included in the calculation of total resources available.

7.8 The unintended effect is that claimants with children may be excluded from hardship payments where the amount of Jobseeker's Allowance (JSA) payable for a claimant or a claimant and partner is lower than that of the total weekly amount of benefit paid for children.

7.9 The JSA Regulations are therefore amended so that Child Benefit and Child Tax Credits payments are excluded when the comparison with the JSA hardship rate is made.

'Employment' definition in Jobseeker's Allowance

7.10 A JSA claimant whose benefit is sanctioned for a certain period normally has their benefit sanctioned for the whole period. If they cease to claim JSA part way through the sanction period they must serve the outstanding balance of the period when they reclaim. The policy is that this does not apply if they have been in employment (including self-employment) for at least 26 weeks since the date of their most recent sanctionable failure.

7.11 The current definition of employment refers only to employed earner's employment which could include part-time work undertaken whilst the claimant was receiving JSA, Income Support or Employment and Support Allowance.

7.12 The regulations are amended to clarify that, in this context, 'employment' refers to employment or self-employment which, because of the weekly hours involved or the level of remuneration, would make the claimant ineligible for any employment-replacement benefits such as those mentioned in the preceding paragraph.

New JSA sanctions

7.13 Section 46 of the Welfare Reform Act 2012 made changes to the JSA sanctions regime in order to align it as closely as possible with the sanctions regime to be introduced with Universal Credit.

7.14 Amendments were made to the JSA Regulations from 22nd October 2012 to give effect to these changes. However, a typographical error in one of the new regulations means it refers to an incorrect section of the Jobseekers Act. The amending regulations correct this error.

Sanction for failing the jobseeking conditions

7.15 From 22nd October 2012 a new sanction was introduced for JSA claimants who are disentitled for failing to meet the job seeking conditions of actively seeking work or being available for work. In such cases a fixed period sanction is applied to a subsequent award of JSA from the date of reclaim.

7.16 However, in a small number of cases a new claim is not required for JSA payments to resume after disentitlement. This is because regulations allow JSA to resume without a claim when benefit was suspended because a doubt has arisen over compliance with the job seeking conditions and the claimant complies before the suspension ends.

7.17 Regulations are amended to ensure that a sanction can be applied after disentitlement, regardless of whether a new claim is required to reinstate Jobseeker's Allowance (JSA).

New Local Authority schemes

7.18 From 1 April 2013 Council Tax Benefit (CTB) will be abolished and local authorities will instead be able to provide local support with council tax through a new system of reductions in liability.

7.19 Under current rules, where a person receives an income-related benefit (IRB) - Income Support, JSA, Employment and Support Allowance, Housing Benefit (HB) or State Pension Credit, any CTB that is awarded is disregarded in the calculation of entitlement to these other benefits. When CTB is replaced by local schemes it is intended that the same principle should apply, and that any reduction made to council tax under these new schemes should be completely disregarded for the purposes of calculating entitlement to any of these IRBs.

7.20 Also from 1 April 2013, elements of the Discretionary Social Fund (crisis loans and community care grants) will be abolished. Local authorities and the Scottish and Welsh Governments will instead be able to develop their own local welfare provision schemes to help those in a crisis or facing short term unavoidable need or in need of assistance to live within the community.

7.21 Currently, any social fund payments (including arrears payments or payments in lieu of late payments) are disregarded as income or capital where a person receives any of the benefits referred to above. As with council tax, the policy intention is that support provided by local authorities under their new local schemes should be disregarded for the purposes of calculating entitlement to any of these IRBs. The amendments made achieve this.

7.22 Additionally, an omission is corrected in the HB Regulations for people of pension age, to ensure that arrears of any Social Fund award can be treated as capital and fully disregarded, in line with current policy for all of the IRBs.

Delay in local welfare provision payment

7.23 Where a person is waiting to move into a new tenancy and there is a delay following an application for a Social Fund payment, they can receive payments for any housing costs for which they would be entitled to at the new address, for up to four weeks prior to moving in. Social Fund payments can help with the cost of moving including rent in advance and deposits, as well as grants for items that are required in order to set up the new home. From April 2013 elements of the social fund will be abolished and people can instead apply for this kind of help from their local authority under new local schemes. The policy intent is that people who receive support from the local authority should not be disadvantaged, therefore regulations are updated to include references to the new local schemes.

Non-dependant deduction

7.24 Where a claimant has housing costs, any non-dependant in the household is normally expected to contribute towards those costs, and the amount of housing costs allowed to the claimant is reduced by virtue of 'non-dependant deductions'.

7.25 There are inconsistencies in the drafting of the provisions in Income Support (IS), Jobseeker's Allowance (JSA) and State Pension Credit (SPC) compared with their equivalents in Housing Benefit (HB) and Employment and Support Allowance (ESA) which means that the former does not fully reflect the policy intention. The effect of this inconsistency is that in IS, JSA and SPC no deduction would be made in respect of non-dependants aged under 25 who get either income-related ESA *or contributory ESA* in the assessment phase.

7.26 The policy intention is that no deduction should be made in respect of a non-dependant aged under 25 who is receiving income-related ESA at the assessment phase rate. However, a deduction should be made where the under 25 non-dependant is receiving contributory ESA or National Insurance credits if they are not otherwise entitled to ESA. In order to ensure consistency of treatment in relation to non-dependants that are under 25 the relevant regulations are amended to refer to income-related ESA rather than ESA.

Housing benefit for prisoners

7.27 Regulations permit the continued payment of HB for temporary absence from the home in certain circumstances. For claimants serving a prison sentence, HB is payable for a maximum of 13 weeks, provided that the absence is unlikely to exceed 13 weeks, the claimant intends to return to their home, and the property is not sub-let. There is similar provision for remand prisoners, but with a more generous maximum of 52 weeks.

7.28 The Upper Tribunal has considered how these temporary absence rules should operate in a case where a HB claimant was simultaneously remanded while serving a sentence for another offence. The Tribunal interpreted the regulations as meaning that a claimant in this situation would be entitled to the more generous 52 week provision for remand prisoners, even though they are also serving a prison sentence.

7.29 Regulations are amended to provide that, in such cases, a claimant should only receive HB for a maximum of 13 weeks, as with sentenced prisoners who are not remanded for another offence. Otherwise claimants who are more prolific offenders, and therefore more likely to be sentenced and remanded for different offences, would be treated more generously than sentenced prisoners who are not being prosecuted for any other crime.

Housing Benefit - Employment and Support Allowance credits only

7.30 Claimants who have limited capability for work are entitled to a class 1 national insurance credit even where they are not entitled to an award of ESA. These claimants are referred to as 'credits-only cases.' This helps maintain their National Insurance contribution record and allows them to access back-to-work support through the Work Programme. Credits-only claimants still have to complete a 'limited capability for work' questionnaire, participate in the Work Capability Assessment and, when required, attend medical assessments.

7.31 Where a credits-only claimant is entitled to Housing Benefit (HB), the intention is that those who are placed in the work-related activity group or the support group should be entitled to the corresponding component within the calculation of their HB applicable amounts. However, the HB Regulations do not currently provide for this and these regulations correct the position.

State Pension Credit - re-instatement week for severe disability

7.32 Where Attendance Allowance (AA) or Disability Living Allowance (DLA) payable to a claimant on State Pension Credit (SPC) is suspended due to hospitalisation, the additional amount within their SPC is also suspended. The AA or DLA is re-instated once they are discharged. However, the additional amount for severe disability is only reinstated from the first day of the *following* benefit week in advance pay cases. This is unintended.

7.33 The regulations are amended to provide that, where payment of AA or DLA is reinstated, the additional amount for severe disability is awarded from the first day of *that* benefit week. The regulations are further amended to ensure that this applies equally where the claimant's partner, if any, is awarded AA or DLA.

7.34 The regulations are also amended to include Personal Independence Payment standard or enhanced rate daily living component so the same approach will apply once it is introduced from April 2013.

Fuel Direct & the Green Deal

7.35 The Department of Energy and Climate Change has made provision in the Energy Act 2011 for the Green Deal. The Green Deal provides finance for energy efficiency improvements to property at no up-front cost. The cost of the improvements will be repayable in instalments through a charge on electricity bills attached to that property. This charge should not exceed the amount saved on the property's energy consumption costs, although the actual amount saved will depend on a number of factors such as the amount of energy used and the cost of energy. A Green Deal Plan is essentially a new kind of credit arrangement, offered to customers by private bodies (which must be authorised as a Green Deal Provider).

7.36 A key principle of the Government's Green Deal policy is that instalments payable under a Green Deal Plan are part of the electricity bill and cannot be divided from it. For example, a customer *cannot* choose to only pay the electricity usage part of their bill and default on the Green Deal element. Instead if a customer fell into arrears, the electricity arrears and the Green Deal arrears would be paid off on a proportional basis.

7.37 In a small number of cases this could have a negative impact on customers in receipt of 'specified' benefits[1] (which will include Universal Credit - UC) who fall into electricity arrears. Currently the regulations relating to deductions from benefit and direct payment to third parties only allow direct payment of a debt for mains gas or electricity

[1] Specified benefits are the income-related benefits (including in due course UC) - currently Income Support (IS), income-based Jobseeker's Allowance (JSA), income-related Employment and Support Allowance (ESA) and SPC. This also includes any Incapacity Benefit or Severe Disablement Allowance paid together with IS and SPC and any Retirement Pension paid with SPC. Fuel Direct can also be taken from contributory JSA and ESA where, if this was not in payment, the customer would be entitled to the same amount of income-based JSA or income-related ESA.

(including reconnection and disconnection charges) and a Green Deal charge cannot be interpreted as such.

7.38 Fuel Direct is part of the Third Party Deductions scheme which acts as a last-resort protection for vulnerable claimants in debt for essential household items who have failed to reduce the debt through the usual arrears agreements. It is only used to intervene when there is no other suitable course of action to protect vulnerable claimants in receipt of specified benefits from eviction, disconnection of supply, or court action.

7.39 Under this scheme, where someone receives a specified benefit and has run up arrears a payment can be made direct to the creditor for a fixed amount recoverable from the claimant's benefits. In addition, variable amounts can also be deducted for charges arising from normal consumption, so the debt does not continue to increase.

7.40 The regulations are amended in respect of mains electricity debt to allow for the Green Deal Charge to be included so that claimants in receipt of a specified benefit (which will include Universal Credit) are not disadvantaged and put at risk of enforcement action.

- ***Consolidation***

7.41 Informal consolidation of this instrument will be provided in due course in the 'Law Relating to Social Security' (referred to as "The Blue Books") which are regularly updated and are available to the public at no cost via the internet at: http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-tosocial-security/

8. Consultation outcome

8.1 A formal consultation has not been carried out by the Department for Work and Pensions (DWP) on these Regulations. Consultation was not considered necessary for these changes as they are designed to align existing legislation and where they are not they are required to correct errors and/or omissions.

8.2 DWP has not undertaken any consultation in relation to including Green Deal charges and arrears in the Fuel Direct Scheme but the Department of Energy and Climate Change specifically referred to the Government's intention to include the Green Deal Charge in the Fuel Direct Scheme as follows in its consultation paper *The Green Deal and Energy Company Obligation Consultation*[2] published on 23 November 2011 as follows:

> "The Government intends for the existing obligations on energy suppliers outlined in licence conditions for debt and disconnection to be extended to cover the charge for the Green Deal. We are also working with the DWP to see how the Green Deal charge and any Green Deal arrears can be included as part of the Fuel Direct scheme. "Fuel Direct" is one of the items provided for in DWPs Third Party Deductions scheme. The scheme works by deducting a prescribed amount at the source from a customer's weekly benefit (currently £3.40) and paying it direct to the creditor until the debt is cleared and a further amount to cover ongoing consumption. It provides a backstop safeguard for customers who are experiencing difficulty in paying for their energy consumption."

[2] http://www.decc.gov.uk/en/content/cms/consultations/green_deal/green_deal.aspx

8.3 An 8-week public consultation period followed, which ended on 18 January 2012. Responses to the consultation were evaluated by the Department of Energy and Climate Change (DECC) which was published on 11 June 2012. A summary of responses is included at: www.decc.gov.uk/assets/decc/11/consultation/green-deal/5521-the-green-deal-and-energy-company-obligation-cons.pdf

8.4 Whilst the need for robust consumer protection, especially for vulnerable consumers, was a recurring theme there was only one specific reference to Fuel Direct amongst the consultation responses (from Citizens Advice, an operating name of the National Association of Citizens Advice Bureaux). The response from Citizens Advice was a positive endorsement of DECCs proposed approach: "We agree that Fuel Direct should be available for Green Deal arrears and repayments. This scheme is very valuable to some people who can find it hard to manage their budgets. Given that the Green Deal repayment is being regarded as just a part of the overall energy bill for the purposes of payment and arrears collection, there would be no justification in excluding it from Fuel Direct".

8.5 The proposed Regulations were scrutinised by the Social Security Advisory Committee at its meeting on 6 February. The Committee decided that it did not require the Regulations to be formally referred to it.

9. Guidance

9.1 Guidance is being developed for staff in the Jobcentre Plus offices who advise customers, and for staff in benefit centres who determine income-related benefit claims and administer awards, including decision makers. Memos for the decision maker's guidance will be published ahead of when the changes take place to ensure all staff involved in relevant processes are aware of the changes. Once published, an alert appears on the Jobcentre Plus intranet to ensure staff are aware that a new memo is available.

9.2 Claimants will be informed about the changes, where relevant, at their interviews with their advisers. Leaflets and GOV.UK pages will be updated as necessary.

9.3 Information on those changes that affect Housing Benefit will be sent to local authorities as they administer that benefit.

10. Impact

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

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been produced for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The operation of the Regulations will continue to be reviewed through the normal avenues of guidance enquiries received from Department for Work and Pensions offices and correspondence from members of the public.

13. Contact

Anila Naseem at the Department for Work and Pensions (Tel: 0113 2324899 or e-mail: Anila.naseem@dwp.gsi.gov.uk) can answer any queries regarding this instrument.