EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (ADMINISTRATIVE EARNINGS THRESHOLD) (AMENDMENT) REGULATIONS 2023

2023 No. 7

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 His Majesty.

2. Purpose of the instrument

2.1 This instrument increases the Administrative Earnings Threshold (AET) from the current level, which is £494 per calendar month (PCM) for an individual and £782 PCM for a couple. This instrument amends Regulation 99 (6) of the Universal Credit Regulations 2013 to raise the AET to £617 PCM for an individual and £988 PCM for a couple from 30 January 2023.

3. Matters of special interest to Parliament

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

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

5. European Convention on Human Rights

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

6. Legislative context

6.1 Regulation 99 of the Universal Credit Regulations 2013 (S.I. 2013/376) sets out the circumstances in which work search and work availability requirements may not be imposed on Universal Credit claimants. Paragraph (6) of Regulation 99 provides that Universal Credit requirements may not be imposed when a person has a certain level of earnings, this is known as the Administrative Earnings Threshold (AET).

7. Policy background

What is being done and why?

7.1 Universal Credit provides a single system of means-tested support for working-age people who are in or out of work and is usually paid in a single monthly sum to households. Support for housing costs, children and childcare costs may be included in the payment. It also provides support for disabled people and carers. All elements are applied for through a single claims process.

7.2 Universal Credit supports people who are on a low income or out of work and helps to ensure that they are better off in-work and are better off when they earn more. It provides claimants with the support they need to prepare for work, move into work, or to earn more if already in work. In return claimants need to accept a Claimant Commitment following a conversation with their work coach. The Claimant Commitment sets out what the claimant has agreed to do to prepare for and look for work, or to increase their earnings based on their personal circumstances.

7.3 Universal Credit improves work incentives by introducing a smoother, more transparent reduction of benefits at a consistent and predictable rate when people move into work and increase their earnings. A single taper is applied as earnings rise and some claimants will also receive a work allowance depending on their circumstances. The intention behind the taper and work allowance is to ensure that claimants are always better off in work.

7.4 This reduces the complexity of the legacy benefit system and removes the distinction between in work and out-of-work support, making clear the gains of paid work and reducing the risks when moving into employment.

7.5 Monthly payments of Universal Credit are made into a claimant's bank account. A monthly payment matches the way salaries are paid and helps claimants prepare for the world of work and monthly budgeting.

Migration to Universal Credit and Transitional Protection

7.6 Managed Migration are moves that occur where the Department initiates the move from legacy benefit(s) to Universal Credit. When eligible claimants are migrated to Universal Credit as part of the managed migration process, and if their total Universal Credit entitlement is assessed as lower than their total existing award of legacy benefits and Tax Credits, they will be awarded Transitional Protection (TP) in the form of a Transitional Element to make up the difference. TP will be provided to eligible Universal Credit recipients who have made their claim to Universal Credit as part of the Department's managed migration of legacy claimants. This will ensure that these claimants will not be entitled to less benefit because of their 'managed' move to Universal Credit where their circumstances have remained the same.

7.7 TP is not a permanent feature of Universal Credit - TP will not be uprated and TP will erode if another element of the Universal Credit award (other than the childcare costs element) increases, or a new element (other than the childcare costs) is awarded. TP will cease if there is a significant change in the claimant's (or benefit unit's) circumstances.

Conditionality

7.8 Universal Credit claimants are required to agree certain activities which increase their chances of obtaining paid work (or more or better paid work). Claimants who are able to work are required to undertake all work-related requirements. This means they have to look for work and be available to take up a job when offered. They may have to look for more work or a better paid job. They may also have to undertake work preparation activity such as training and meet regularly with their work coach. The Universal Credit Regulations 2013 provide that work search and work availability requirements must be suspended in certain circumstances, this includes an exemption at regulation 99(6) of the Universal Credit Regulations 2013 where a claimant is working and earning over a specified amount. This amount is known at the

Administrative Earnings Threshold (AET). Where a claimant has earnings equal to or above the AET, work search and work availability requirements must not be imposed. This means such claimants are not required to look for or take up more work, nor do they have to look for or take up better-paid jobs.

7.9 The number of hours a claimant is expected to undertake work-related activities is flexible and affected by individual circumstances, for example due to health conditions and caring responsibilities which affect a claimant's ability to work and what they can do. Depending on individual circumstances a claimant could be required to spend anything from 0 to 35 hours on work-related activities.

7.10 The AET is a fixed earnings threshold, based on National Living Wage (NLW) rates. When NLW increases (i.e., as part of annual uprating), the AET also rises.

7.11 The AET is not the only threshold that determines the level of activity a claimant must undertake as a condition for receiving Universal Credit.

7.12 Unlike the AET, the Conditionality Earnings Threshold (CET) is a flexible threshold and is calculated by multiplying the number of hours a claimant is expected to undertake work-related activities by the National Minimum Wage (NMW) or NLW rate that applies to them.

7.13 Both the CET and AET are used to determine how much activity a claimant must undertake as a condition of receiving Universal Credit. For administrative purposes these levels of activity are set out in regimes. For claimants expected to work, the regimes range vary the level of activity a claimant must agree to undertake depending on whether earnings are above or below the relevant thresholds. Where earnings are below the AET, claimants are allocated to the Intensive Work Search regime. Those who have earnings above the AET level will be placed in the Light Touch regime. Light Touch claimants do not have to look for or take up more or better paid work but may be required to meet with a work coach or undertake work preparation activity. Claimants who have earnings above the CET have no requirements placed on them and are placed in the Working Enough regime.

7.14 The Intensive Work Search regime requires claimants to look for and take up work. For claimants in work, this regime requires them to look for more or better paid work. This regime may also require claimants to undertake activity to prepare for better paid work such as attending a training course. Claimants in this regime are required to attend regular interviews with a work coach.

7.15 For couples, there are Household and Individual earnings thresholds. For both the CET and AET, the earnings of both partners will be combined, and the thresholds will be used to assess regime allocation. This means that the earnings of one partner can affect the regime allocation of the other.

7.16 Where an individual's earnings meet the individual threshold, or where in a couple, their combined earnings meet the household threshold – the claimant/s will be allocated to the Light Touch regime.

7.17 Before this Statutory Instrument came into force the AET was £494 Per Calendar Month (PCM) for individual claimants and £782 PCM for couples. This was equivalent to an individual working 12 hours per week at the NLW or a couple working for 19 hours per week at the NLW.

What is changing?

7.18 This Statutory Instrument amends regulation 99 (6) of the Universal Credit Regulations 2013 to raise the Administrative Earnings Threshold (AET) to £617 PCM for single claimants and £988 PCM for couples from 30 January 2023. For context these monthly amounts are equivalent to an individual working 15 hours per week at the National Living Wage (NLW) or a couple working for 24 hours per week at the NLW, converted to a monthly amount.

7.19 Departmental analysts have estimated that this change to the AET will mean approximately 130,000 claimants are subject to work search and work availability requirements.

Why is this change being made?

7.20 The policy rationale for increasing the AET is to help low paid Universal Credit claimants to increase their income by extending intensive work coach support to more Universal Credit claimants on low incomes. This policy contributes to the Department for Work & Pension's priority outcome to "maximise employment and in-work progression"[1]. The AET rise complements our new In-Work Progression support offer announced in the 2021 Spending Review and changes to the work allowance and taper made in 2022 designed to incentivise and support claimants into work and to increase their earnings, fulfilling the policy intent of Universal Credit.

7.21 The decision to increase the AET for a second time was made in autumn 2022 and. was included in the Growth Plan. The Department for Work and Pensions has robust evidence (which it plans to publish) that engaging in work related activity can support the lowest earning Universal Credit claimants to increase their earnings. When the evidence is published it will be available via gov.uk.

7.22 This increase to the AET builds on the increase in September 2022 and is intended to increase the number of claimants who receive intensive work coach support to help them earn more. This support is in response to the increased cost of living and to help fill the high volume of vacancies in the UK job market.

7.23 The AET level was agreed based on deliverability within the desired timeframe. The decision to proceed with a further AET rise before evaluating the September rise was made based on the strength of the evidence and the fact that we could learn from the process of delivering and embedding the September rise ahead of implementing further changes. The Department expects that earnings increases will take around 6-9 months to materialise given claimants need time to discuss their goals with their work coach, talk to their employers and families and take the necessarily steps to grow their income

7.24 The design of the AET reflects the fact that Universal Credit is designed around earnings rather than hours worked, which aligns with the policy intent of providing all claimants earning less than the AET (regardless of the National Minimum Wage (NMW)/NLW status) with regular work coach appointments providing tailored support. As young people under 25 are not entitled to the adult NLW, these workers may have to work more hours at NMW to reach the AET.

[1] Department for Work & Pensions Outcome Delivery Plan 2021 to 2022 https://www.gov.uk/government/publications/department-for-work-and-pensions-outcome-delivery-plan/department-for-work-and-pensions-outcome-delivery-plan-2021-to-2022

7.25 Whilst the AET is derived by multiplying the NLW rate by a number of hours, it does not necessarily require claimants to work more hours. Claimants (either as an individual or as part of a couple) may meet or exceed the Administrative Earnings Threshold (AET) by increasing their hourly rate of pay, for example by taking on additional responsibilities or switching to a better paid job. This is important as the Department's approach to in-work progression is not necessarily about asking claimants to increase their hours; it is about finding ways for them to increase their earnings. The Department has expressed the AET by reference to the number of hours worked at National Living Wage (NLW) to allow for uprating of the AET in line with increases to NLW and to help claimants understand the amount of work they may need to do to reduce their work-related requirements.

7.26 The Department plans to evaluate the effects of this increase to the AET and the increase which came into force on 26 September 2022 by operation of The Universal Credit (Administrative Earnings Threshold) (Amendment) Regulations 2022 together with the in-work conditionality initiative announced in the Autumn Statement using a range of quantitative and qualitative methods. This evaluation will help to further build the Department's understanding of how work coach support may help claimants to find more or better-paid work

Impact on Universal Credit claimants

7.27 Claimants who are affected by this change will be contacted by their work coach through their Universal Credit online account's journal feature. They will also receive email or text notification. A claimant commitment review interview will be booked which they must attend. If a claimant fails to attend this interview without a good reason, their claim may be subject to a sanction. A sanction will not be applied where a claimant has a good reason for failing to attend the interview, for example if they do not attend because they are at work. At the claimant commitment review claimants must agree the steps they will undertake to seek more, or better paid work.

7.28 The types of activities a claimant is required to agree in their claimant commitment will be based on their capability and personal circumstances, making them realistic and achievable. Claimants will be required to meet routinely with their work coach to show they have taken the agreed steps. While the routine will depend on individual circumstances, in the majority of cases this will be on a fortnightly basis. Furthermore, work search expectations will differ for each claimant depending on their individual circumstances to a maximum of 35 hours. Work coaches may limit the number of hours a claimant is available for work and / or is expected to be engaged in work related activity to reflect caring responsibilities or health conditions, for example, a parent of a child at primary school might may be expected to look for and take up work for up to 25 hours a week allowing them to fit their activity around the school day.

7.29 Work coaches will provide regular on-going tailored support to these claimants, who will be able to access a comprehensive range of training and skills provision based on their needs. Work coaches will be aiming to support claimants to access opportunities to increase their earnings. This might be by increasing their hours, progressing in their current role/sector, or switching careers. Work coaches will have discretion to tailor support to the circumstances of each claimant.

Consequential amendment: Transitional Protection

7.30 Transitional Protection is provided for those who have moved to Universal Credit as a part of the managed migration process. The policy intent is that Transitional Protection should not end where there has been no change in a claimant's earnings. Including where earnings fall below the Administrative Earnings Threshold (AET) purely because of an increase to the level of the AET itself.

7.31 This amendment makes it clear that the monitoring of any earnings for the purpose of Transitional Protection will be made against the level of the AET that was in effect on the date of the claimant's first Universal Credit award, irrespective of any subsequent AET increases. Transitional Protection will only end where a claimant has a significant change in their circumstances relative to when they first claimed Universal Credit.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

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

10. Consultation outcome

10.1 The Department presented the draft Regulations to the Social Security Advisory Committee on 09/11/2022

11. Guidance

11.1 No new guidance will be published externally as this is an extension of an existing regime on the Universal Credit. Guidance for work coaches on how to implement the rise in the AET will be issued internally.

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 The measure has an impact on the Department, with an estimated cost of over £40 million per year. There is no significant impact on the wider public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because this SI (Statutory Instrument) relates to an existing threshold within Universal Credit, and the change has limited or no significant impact on businesses, charities, or voluntary bodies.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause.

15. Contact

15.1 Francesca Galli at the Department for Work and Pensions Telephone: 0300 0867998 or email: francesca.galli@DWP.GOV.UK can be contacted with any queries regarding the instrument.

15.2 Victoria Hogan, Deputy Director for Employment Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mel Stride Secretary of State at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.