EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (CARE LEAVERS AND LOOKED AFTER CHILDREN) AMENDMENT REGULATIONS 2016

2016 No. 543

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Universal Credit Regulations 2013 (SI 2013/376) in order to:

- Amend the definition of looked after by a local authority to capture the new Welsh definition of a looked after child.
- Establish a standard definition of care leaver across Universal Credit which also factors in recent changes in legislation in Scotland and Wales that deal with Local Authority duties to children and young people.
- Amend the exemption for 18-21 year old care leavers from being subject to the shared accommodation rate of the housing cost element in Universal Credit, in order to exempt a wider group of care leavers.

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 provided for the introduction in Great Britain of a new working age income-related social security benefit, Universal Credit, and the abolition of income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, and Child and Working Tax Credits. The detailed rules for calculating Universal Credit are set out in the Universal Credit Regulations 2013 (SI 2013/376).

4.2 The legislation for Universal Credit is currently in force only for certain categories of claimant in some specified postcode areas ("Live Service") and for the full range of claimants in other specified postcode areas ("Full Service").This instrument makes changes to three regulations concerning young people in the Universal Credit Regulations 2013 and will apply to all Universal Credit claimants, whether under the Live Service or in the Full Service arrangements.

4.3 They are technical in nature to take account of changes in legislation in the devolved administrations concerning children and young people in their care and to apply the exemption from the Shared Accommodation Rate to all care leavers.

4.4 ***The Social Services and Well-being (Wales) Act 2014*** comes into force in April 2016. It gives a new definition of looked after child and new categories of "eligible child" and "relevant child". The definition of "looked after by a local authority" in the introduction to the Universal Credit Regulations 2013 is amended to refer to the new Welsh definition and the definition of care leaver in Regulation 8 of the Universal Credit Regulations 2013 is amended to capture the new Welsh categories of "eligible child" and "relevant child".

4.5 ***The Children and Young People (Scotland) Act 2014*** came into force in April 2015 but is being rolled out from April 2016. Section 66 of the Act (Provision of aftercare to young people) introduced new continuing care arrangements. The definition of care leaver in Regulation 8 of the Universal Credit Regulations 2013 is amended to include the Scottish Continuing Care Arrangements and also to add "looked after children" to the Scottish definition to make it consistent with the English and Welsh so that there will be a standard definition of care leaver in the Universal Credit Regulations.

4.6 ***Schedule 4 of The Universal Credit Regulations 2013*** sets out the calculation of the housing cost element within Universal Credit. This includes how to calculate the housing element for claimants who are single, aged 34 and younger and living within the private rented sector, to which it applies a lower level of entitlement, this is called the shared accommodation rate. The regulation exempts from the shared accommodation rate rule, certain claimants who were in care on their 16th birthday and are between the ages of 18-21, but does not cover all categories of young people who have been looked after by a local authority.

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.

5.3 The Department for Social Development in Northern Ireland will be producing its own legislation for Northern Ireland.

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

What is being done and why

7.1 This instrument resolves a number of issues affecting care leavers' entitlement to Universal Credit that have arisen from the interaction of social security legislation, which is Great Britain wide, with the Local Authorities' duties for which responsibility lies with the devolved administrations in Wales and Scotland.

Universal Credit – Basic Conditions of Entitlement/Age criteria

Cases where the minimum age is 16

Looked After children and Young People and the Care Leaver exemption

7.2 The instrument also provides a standard definition of care leaver for Universal Credit based on the concept of "looked after" widely used by Local Authorities and other agencies. It is a basic condition of Universal Credit that claimants must be at least 18 years old. Regulation 8 of the ***Universal Credit Regulations 2013*** (SI 2013/376) is concerned with exemptions from this basic condition for 16 and 17 year olds. In certain circumstances, including limited capability for work, care of a child or a severely disabled person, prior and after a confinement and due to a lack of parental support, a 16 or 17 year old can claim Universal Credit. However regulation 8(4) excludes 16 and 17 year old care leavers from some but not all of these provisions because they remain the responsibility of the Local Authority. The changes set out in these regulations are aimed solely at ensuring that the legislation continues to reflect policy intent following changes to the provisions relating to looked after children in Scotland and Wales so that 16 and 17 years olds who remain the responsibility of the Local Authority in Scotland and Wales cannot claim Universal Credit.

Looked After children and Young People and Care Leavers in Wales

7.3 The ***The Social Services and Well-being (Wales) Act 2014*** replaces in Wales those parts of the Children Act 1989 which deal with Local Authority duties to children and young people. The changes in these regulations are intended to ensure that the correct definitions are used and correct references are made in respect of the Social Services and Well-being (Wales) Act 2014 so that the Department for Work and Pensions (DWP) can continue to correctly process Universal Credit claims in respect of children and young people who are "looked after" in Wales and to ensure the continued exemption of claims from 16 and 17 year old care leavers in Wales so that they cannot claim Universal Credit.

Looked After Children and Young People and Care Leavers in Scotland

7.4 ***The Children and Young People (Scotland) Act 2014*** will enable young people to continue to stay in their care placement including foster, residential or looked after kinship care after they cease to be looked after by the local authority. These arrangements fall outside the Scottish definition of care leaver, whereas equivalent arrangements are covered in the English and Welsh definitions. Therefore, to prevent the dual provision of benefit, we have amended the care leaver definition to exclude young people under the age of 18 in continuing care arrangements from claiming Universal Credit.

7.5 The new regulations also extend ***the Universal Credit Regulations 2013*** (SI 2013/376) definition of "looked after children" to include the definition used in Scottish legislation. This ensures a consistent definition of care leaver in Regulation 8 to determine young people excluded from Universal Credit at age 16 and 17 because they are still in the care of the Local Authority or in a continuing care arrangement in Scotland but it can also be used to ensure that those young people will receive favourable treatment (such as exemption from waiting days regulations or the shared accommodation rate) once they qualify for Universal Credit at 18 or later. The care

leaver definition aligns with concepts used by the Local Authority Social Services and will make it easier to determine care leavers' claims.

7.6 Currently Regulation 8 of the Universal Credit Regulations 2013 would allow a 16 and 17 year old in Scotland who is the carer of a severely disabled person or just prior or following a confinement to claim Universal Credit whilst being looked after by the Local Authority. The amendments in these regulations will remove that possibility. As no 16 or 17 year olds in Scotland are currently able to claim Universal Credit there will not be any claimants actually losing entitlement as a result of this change. Instead the change will not only ensure consistency in the treatment of young people by Universal Credit across Great Britain but also ensure that young people whether they are looked after or in continuing care arrangements will be able to rely upon their care leaver status for advantageous rules such as exemptions from waiting days and the shared accommodation rate.

Housing element in Universal Credit

7.7 Universal Credit can include an amount towards support with housing costs incurred by the benefit unit. The amount renters are entitled to will be based upon their actual rental liability subject, where applicable, to certain restrictions and exemptions.

7.8 As a method of restricting housing costs in the private rented sector the Universal Credit Regulations 2013 uses local housing allowance rates, set using the 30th percentile in the broad rental market area for a range of sized properties, to limit the potential housing cost element award within Universal Credit. These regulations set out the method to calculate the relevant rate for each Universal Credit housing claim, determined by the number of bedrooms required.

7.9 Within this range of rates is the shared accommodation rate, which single claimants under 35 qualify for; rather than the higher one bedroom rate. A number of exemptions from the shared accommodation rate are built into Universal Credit to protect certain vulnerable groups which allows them to claim the one bedroom local housing allowance rate; this includes an exemption for care leavers. The policy intention behind the exemption to protect care leavers from the shared accommodation rate between the ages of 18-21, is because young care leavers are often a vulnerable claimant group and may struggle to sustain shared accommodation.

7.10 The current shared accommodation rate exemption for care leavers between the ages 18-21 in Universal Credit (The Universal Credit Regulations 2013 Schedule 4, paragraph 29) only covers young people in certain forms of care (defined by the Children's Act 1989 and the Children's Act Scotland 1995) on their sixteenth birthday. This definition is narrower than the care leaver definition used in Universal Credit (Regulation 8, Universal Credit Regulations 2013) for waiting days and basic entitlement for Universal Credit.

7.11 This instrument (Regulation 3 of the Universal Credit (Care Leavers and Looked After Children) Amendment Regulations 2016) removes the requirement for care leavers to be in care on their sixteenth birthday, and the need to meet certain tight requirements of the Children Acts as currently drafted. It instead links the exemption for care leavers to the new definition in this instrument (i.e. amendments to Regulation 8 of the Universal Credit Regulations 2013 through Regulation 2 of the Care Leavers and Looked After Children Amendment Regulations 2016). This means in practice any claimant between the ages of 18-21, who after the age of 14 have spent at least 3

months in care, would be classed as "looked after" and would qualify for the exemption.

7.12 It has not been possible to include an estimate on the number of people affected by changing the care leaver definition within the shared accommodation rate exemption. We do not have a breakdown of which forms of care Universal Credit claimants have been under, so we are unable to know how many more claimants will gain the exemption as a result of this change. However it can be established that this provision will have the effect of widening the number of care leavers who will gain the exemption, which will broaden those who qualify for this. This is due to the fact the new definition includes a wider group of care leavers, and removes the need for the care leaver to have been in care on their sixteenth birthday.

Consolidation

7.13 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website legislation.gov.uk . An explanation as to which instruments are maintained on each site is available here.

8. Consultation outcome

8.1 As these changes are largely technical and are likely to be generally beneficial to care leavers, no general consultation was undertaken but consultation was undertaken with the Local Authorities.

8.2 The Department presented the draft Regulations to the Social Security Advisory Committee on 9 March. The Committee decided not to consult on the Regulations.

8.3 The Scottish and Welsh administrations confirmed that the changes meet the legislative intent and we are working with DSD colleagues to make equivalent changes in Northern Ireland.

8.4 Officials discussed the broadening of the shared accommodation rate exemption care leaver definition with external stakeholders during on-going discussions on other policies. A broad range of stakeholders were supportive of the change to the definition and raised no concerns.

9. Guidance

9.1 Guidance is under development to support advisers and decision makers. In line with standard practice, the Advice for Decision Making (which has replaced the Decision Makers Guide) has now been published on the Departmental website and will be updated ready for the coming into force of the Regulations. Guidance on gov.uk will be updated as appropriate.

10. Impact

10.1 There is no impact on business. Charities and voluntary bodies who support care leavers will need to be aware of these changes.

10.2 The impact on the public sector will involve changes in guidance to DWP staff.

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

11. Regulating small business

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

12. Monitoring & review

12.1 The Department is firmly committed to evaluating and monitoring the impact and effects of Universal Credit and continue to do so using test and learn.

13. Contact

13.1 Lynne Paske at the Department of Work and Pensions Telephone: 0207-449-5389 or email: Lynne.Paske@dwp.gsi.gov.uk can answer any queries regarding the instrument.