EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (SURPLUSES AND SELF-EMPLOYED LOSSES) (CHANGE OF COMING INTO FORCE) REGULATIONS 2016

2016 No. 215

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 Her Majesty.

2. Purpose of the instrument

2.1 The instrument amends the coming into force date of a previous instrument – The Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015 (S.I. 2015/345) (the "UC Surpluses and Self-employed Losses Regulations") that were due to come into force on the 6th April 2016, to the new date of 3rd April 2017.

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 the 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 UC Surpluses and Self-employed Losses Regulations (S.I. 2015/345), laid on 26th February 2015, inserted new provisions into the Universal Credit Regulations 2013 (S.I. 2013/376). The intention at the time was to implement the surpluses and self-employed losses policy in the Universal Credit Digital Service, from the 6th April 2016. These new regulations provide for a new coming into force date of 3rd April 2017.

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 Northern Ireland will make their own reciprocal arrangements to introduce these regulations.

6. European Convention on Human Rights

6.1 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

7.1 The Explanatory Memorandum to the UC Surpluses and Self-employed Losses Regulations gives full details of the background to the original instrument.

7.2 In short, those regulations – which apply to the Universal Credit Digital Service only – make provision for past earnings to be taken into account in the income calculation for an award of Universal Credit, where the claimant returns to Universal Credit within six months of a previous award ending. Additionally, they allow self-employed claimants to carry forward a loss from one assessment period into the next, for up to eleven assessment periods. This is to ensure we treat claimants fairly regardless of their earnings pattern.

7.3 The Department is rolling out Universal Credit in a safe and controlled way, testing each aspect of the service in order to learn and improve as the service is gradually scaled across Great Britain. This has led us to decide that other essential features of the service are required more urgently and will improve the service more rapidly than implementing the platform for administrating the policy specified in the UC Surpluses and Self-employed Losses Regulations. This change does not affect the overall delivery timetable for Universal Credit.

7.4 The new date ensures the Department has sufficient time to test and build the platform for administrating the surpluses and self-employed losses policy - including putting in place detailed communications and guidance for staff and claimants.

7.5 The number of claimants impacted by the change in the coming into force date of the policy will be relatively small, and no claimant will be made worse off in cash terms. Most of the affected claimants would have had more earnings taken into account in their Universal Credit assessment as a result of the regulations and will therefore benefit from the changed date. A small number of self-employed claimants will be notionally disadvantaged as they will not have their financial losses offset against future earnings, although some self-employed claimants with irregular earnings will benefit from not having the surplus from a large profit in a particular month carried forward. The Department intends to use the opportunity provided by the new coming into force date to monitor closely and learn from the claims of Universal Credit claimants who are self-employed or have fluctuating earnings and use that insight to improve our delivery plans.

7.6 This instrument therefore amends the coming into force date of the UC Surpluses and Self-employed Losses Regulations that were due to come into force on the 6th April 2016, to the new date of 3rd April 2017.

Consolidation

7.7 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://lawvolumes.dwp.gov.uk/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 from http://www.dwp.gov.uk/docs/lawvolnews.pdf.

8. Consultation outcome

8.1 The Social Security Advisory Committee held a public consultation on the original UC Surpluses and Self-employed Losses Regulations, open to organisations and individuals, between the 17th October and 7th November 2014.

8.2 The Department for Work and Pensions full response to the SSAC consultation response can be found here: https://www.gov.uk/government/consultations/universal-credit-government-proposal-to-take-account-of-past-earnings-in-repeat-claims. In summary, in response to the recommendations made by the Committee, the Department confirmed it would increase the level of the de minimis from £100 to £300, continue to run the Self-Employed Stakeholder Advisory Group, and would introduce an exemption from the surplus earnings policy for victims of domestic abuse.

8.3 The Department consulted SSAC on this amendment to the coming into force date of the original regulations. On 12 February SSAC wrote to the Department to confirm that they were content for the amendment to proceed.

9. Guidance

9.1 As a result of the amendment made by this instrument, the UC Surpluses and Self-employed Losses Regulations will not come into effect until 3rd April 2017. Guidance will be produced for staff ahead of this date to ensure they are suitably trained to advise claimants as to the impact of those regulations. The Department has made a clear commitment to providing claimants with advice and guidance so that they understand the policy and how it may affect them well in advance of the changes taking place. This will enable claimants to discuss the implications with service agents or work coaches and factor this knowledge into their spending decisions in the period after their Universal Credit award ceases.

10. Impact

10.1 The Universal Credit Impact Assessment published in December 2012 can be found here: https://www.gov.uk/government/publications/universal-credit-impactassessment. This includes analysis of the impact of Universal Credit on claimants with characteristics protected under the Equality Act 2010. A separate impact assessment has not been produced for the UC Surpluses and Self-employed Losses Regulations or for this instrument since they do not impact business or civil society organisations.

10.2 The Department has undertaken an Equality Analysis for the UC Surpluses and Self-employed Losses Regulations, in line with the Equality Duty which can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364576/uc-earnings-Equality-Analysis.pdf, and concluded that these regulations will not result in any particular advantage or disadvantage for protected groups. An Equality Analysis is not needed for this instrument as there is no further advantage or disadvantage for protected groups caused by the change of the coming into force date.

10.3 The new date for implementation of those regulations by way of this instrument will have an impact on Universal Credit claimants as follows:

- **Self-employed** – financial losses from self-employment will not be set against future earnings, notionally disadvantaging some self-employed claimants. On the other hand, self-employed claimants with irregular earnings will benefit from not having the surplus from a large profit in a particular month carried forward. We estimate there will be around 17,000 self-employed claimants on the Universal Credit digital service by April 2017. Of these 17000 claimants we expect only a minority would be affected by the change of the coming into force date.
- **Claimants in paid employment** – some workers have irregular earnings and a pure monthly assessment and we therefore may be advantaging them over other claimants who earn the same amount but are paid monthly. The number of claimants who might gain from the new coming into force date for these regulations is low, with the total AME impact estimated to be a cost of £1 million for the financial year 2016/17.

11. Regulating small business

11.1 The UC Surpluses and Self-employed Losses Regulations impact on the amount of Universal Credit paid to certain self-employed individuals who may be running small businesses. However the policy has no direct impact on small businesses themselves.

11.2 The Department established The Universal Credit Self-Employed Stakeholder Advisory Group in December 2014 to help review and monitor this policy, amongst its other work, as part of the Department's 'Test and Learn' approach. This will help the Government to provide support as required to self-employed claimants impacted by this policy who may be running small businesses.

12. Monitoring & review

12.1 Universal Credit operates under the 'Test and Learn' approach. This means that policy is constantly under review and evaluated taking account of evidence from operational staff, claimants and stakeholders.

13. Contact

13.1 Sharon Blackburn at The Department for Work and Pensions (Telephone: 02074495754 or email: sharon.blackburn@dwp.gsi.gov.uk) can answer any queries regarding the instrument.