

## 2013 No. 383

# SOCIAL SECURITY

## The Social Security (Payments on Account of Benefit) Regulations 2013

Made - - - - 25th February 2013

Coming into force in accordance with regulation 1(2)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 5(1)(r), 189(1), (4) to (6) and 191 of the Social Security Administration Act 1992(a) and section 84 of, and paragraph 9 of Schedule 2 to, the Social Security Act 1998(b).

In accordance with section 80(1)(b) of the Social Security Act 1998, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

This instrument contains only regulations made by virtue of, or consequential upon, sections 101(1) and 104(1) of the Welfare Reform Act 2012(c) and is made before the end of the period of 6 months beginning with the coming into force of those sections(d).

## PART 1

### General

#### Citation and commencement

1.—(1) These Regulations may be cited as the Social Security (Payments on Account of Benefit) Regulations 2013.

(2) They come into force—

- (a) for the purposes of this Part and Part 2 (except the provisions specified in paragraph (3)) and Part 4, on 1st April 2013;
- (b) for all other purposes, on 29th April 2013.

(3) The specified provisions are—

- (a) in regulation 2(1)
  - (i) the definitions of “the UC etc. Claims and Payments Regulations”, “the Universal Credit Regulations” and “universal credit”;
  - (ii) paragraph (a) of the definition of “couple”;

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(a) 1992 c. 5. Section 5(1)(r) is substituted by section 101 of the Welfare Reform Act 2012 (c. 5) (“the 2012 Act”). Section 189(1), (4), (5) and (6) are amended by paragraph 109(a) and (c) to (e) of Schedule 7, and Schedule 8, to the Social Security Act 1998 (c. 14), paragraph 57(1) and (2) of Schedule 3 to the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2) and Schedule 6 to the Tax Credits Act 2002 (c. 21). Section 189(5A) and (5B) is inserted by section 104(1) of the 2012 Act. Section 191 is cited for the definition of “prescribe”.

(b) 1998 c. 14. Section 84 is cited for the definition of “prescribe”.

(c) 2012 c. 5.

(d) See section 173(5)(b) of the Social Security Administration Act 1992.

- (b) regulation 2(2) and (3)(a);
- (c) regulation 3(1)(a) and (2)(a)(i) and (b)(i);
- (d) regulation 5(3)(a);
- (e) regulation 7(2); and
- (f) regulation 8(2).

### Interpretation

#### 2.—(1) In these Regulations-

“the 1995 Act” means the Jobseekers Act 1995(a);

“the 2007 Act” means the Welfare Reform Act 2007(b);

“the 2012 Act” means the Welfare Reform Act 2012;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(c);

“the 1988 Regulations” means the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988(d);

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987(e);

“the UC etc. Claims and Payments Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(f);

“the Universal Credit Regulations” means the Universal Credit Regulations 2013(g);

“couple”-

(a) where these Regulations apply in relation to universal credit, has the same meaning as in Part 1 of the 2012 Act(h);

(b) where these Regulations apply in relation to the benefits specified in regulation 3(1)(b) to (f), has the same meaning as in section 137(1) of the Contributions and Benefits Act(i);

“partner” means, where the person being referred to is a member of a couple, the other member of the couple;

“universal credit” means the benefit under Part 1 of the 2012 Act.

(2) Where these Regulations apply in relation to universal credit, “child” and “qualifying young person” have the same meaning as in Part 1 of the 2012 Act(j) and whether or not a person is responsible for a child or qualifying young person is to be determined in accordance with regulation 4 of the Universal Credit Regulations.

(3) In these Regulations, “writing” includes writing produced by means of electronic communications and, where such communications are used by the Secretary of State-

(a) Schedule 2 to the UC etc. Claims and Payments Regulations; or, as the case may be,

(b) Schedule 9ZC to the Claims and Payments Regulations(k),

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(a) 1995 c. 18.

(b) 2007 c. 5.

(c) 1992 c. 4.

(d) S.I.1988/664.

(e) S.I.1987/1968.

(f) S.I.2013/380.

(g) S.I.2013/376.

(h) See section 39 of that Act.

(i) The definition is inserted by paragraph 46 of Schedule 24 to the Civil Partnership Act 2004 (c. 33).

(j) See section 40 of that Act.

(k) Schedule 9ZC is inserted by S.I.2003/2800 and amended by S.I.2005/3321 and 2011/1498 and 2943.

has effect in connection with notices required to be given or sent under regulations 8 and 17 as it has effect in connection with claims for, and awards of, any benefit to which those Regulations apply.

## PART 2

### Payments on account of benefit

#### Definition of “benefit”

3.—(1) In this Part, “benefit” means any of the following—

- (a) universal credit;
- (b) employment and support allowance;
- (c) income support;
- (d) jobseeker’s allowance;
- (e) state pension credit;
- (f) benefit under Parts 2 to 5 of the Contributions and Benefits Act except attendance allowance and ►<sup>1</sup>, disability living allowance and guardian’s allowance◄.

<sup>1</sup>Words substituted in reg. 3(1)(f) by reg. 7(2) of S.I. 2013/1508 as from 29.7.13.

(2) For the purpose of paragraph (1)—

- (a) “employment and support allowance” means an allowance under—
  - (i) Part 1 of the 2007 Act as amended by Schedule 3, and Part 1 of Schedule 14, to the 2012 Act (to remove references to an income-related allowance); and
  - (ii) Part 1 of the 2007 Act as it has effect apart from the amendments made by Schedule 3, and Part 1 of Schedule 14, to the 2012 Act;
- (b) “jobseeker’s allowance” means an allowance under—
  - (i) the 1995 Act as amended by Part 1 of Schedule 14 to the 2012 Act (to remove references to an income-based allowance); and
  - (ii) the 1995 Act as it has effect apart from the amendments made by Part 1 of Schedule 14 to the 2012 Act.

#### Payments on account of benefit

4.—(1) The Secretary of State may, subject to paragraph (2), make a payment on account of benefit to a person (“A”) in accordance with this Part.

(2) Paragraph (1) does not apply pending the determination of an appeal relating to the benefit on account of which the payment would otherwise have been made.

#### Payment on account of benefit where there is no award of benefit

5.—(1) The Secretary of State may make a payment on account of benefit to A if—

- (a) either of paragraphs (2) or (3) applies;
- (b) it appears to the Secretary of State likely that the conditions of entitlement for benefit are satisfied; and
- (c) the Secretary of State is satisfied that A is in financial need.

(2) This paragraph applies where A has made a claim for benefit but the claim has not yet been determined.

(3) This paragraph applies where A is not required to make a claim for benefit by virtue of—

- (a) regulation 6 or 7 of the UC etc. Claims and Payments Regulations (claims not required for entitlement to universal credit or an employment and support allowance in certain cases); or, as the case may be,

- (b) regulation 3 of the Claims and Payments Regulations (claims not required for entitlement to benefit in certain cases)(a),

but an award of benefit has not yet been made.

#### **Payment on account of benefit where there is an award of benefit**

- 6.**—(1) The Secretary of State may make a payment on account of benefit to A if—
- (a) an award of benefit has been made to A;
  - (b) any of paragraphs (2) to (5) applies; and
  - (c) the Secretary of State is satisfied that A is in financial need.
- (2) This paragraph applies where—
- (a) A currently satisfies the conditions of entitlement to that benefit; and
  - (b) the date on which the first payment of that benefit to A is due to be made in accordance with the award has not yet been reached.
- (3) This paragraph applies where—
- (a) the first payment of that benefit has been made to A in accordance with the award;
  - (b) the period in respect of which that payment was made is shorter than the period in respect of which subsequent payments of that benefit are to be made in accordance with that award should entitlement continue; and
  - (c) the date on which a subsequent payment of that benefit is due to be made to A has not yet been reached.
- (4) This paragraph applies where there has been a change of circumstances which would increase the amount of benefit payable under the award and—
- (a) the award has not yet been revised or superseded to reflect that change; or
  - (b) the award has been revised or superseded to reflect that change but the date on which the payment of benefit is due to be made in accordance with the revised or superseded award has not yet been reached.
- (5) This paragraph applies where—
- (a) A is entitled to a payment of that benefit pursuant to the award; and
  - (b) it is impracticable to make some or all of that payment on the day on which it is due.

#### **Definition of financial need**

**7.**—(1) A is in financial need for the purposes of regulation 5(1)(c) or 6(1)(c) where the circumstances in regulation 5(2) or (3) or, as the case may be, 6(2), (3), (4) or (5) result in a serious risk of damage to the health or safety of A or any member of their family.

(2) Where the payment on account of benefit is to be on account of universal credit, the following are members of A's family for the purpose of paragraph (1)—

- (a) any child or qualifying young person for whom A is responsible; and
- (b) where A is a member of a couple, their partner.

(3) Where the payment on account of benefit is to be on account of a benefit specified in regulation 3(1)(b) to (f), for the purpose of paragraph (1), "family" has the meaning given in section 137(1) of the Contributions and Benefits Act(b).

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(a) Regulation 3 has been amended by S.I. 1989/136, 1994/2943, 1999/2556, 1999/3178, 2000/1483, 2001/488, 2003/1589, 2005/1551, 2007/2470, 2008/441, 2008/1554, 2008/2667, 2009/1490 and 2010/840 and 1794.

(b) The definition is amended by paragraph 46 of Schedule 24 to the Civil Partnership Act 2004 (c. 33).

**Requirement for notice**

8.—(1) The Secretary of State must, on or before making a payment on account of benefit to A, give or send notice in writing to A of their liability—

- (a) to have the amount of the payment on account of benefit deducted from subsequent payments of benefit; and
- (b) to repay the amount of any payment on account of benefit to the extent that it is not deducted from subsequent payments of benefit.

(2) Where A is a member of a couple and the payment on account of benefit is on account of universal credit, notice in writing must also be given or sent to their partner containing the information referred to in paragraph (1)(a) and (b).

**Payment by direct credit transfer**

9. A payment on account of benefit may be paid by way of direct credit transfer into a bank account or other account—

- (a) in the name of A or their partner or a person acting on A's behalf; or
- (b) in the joint names of A and their partner, or A and a person acting on A's behalf.

**Bringing payments on account of benefit into account**

10. Where it is practicable to do so, a payment on account of benefit—

- (a) which was made in anticipation of an award of benefit, is to be offset by the Secretary of State against the sum payable to A under the award of benefit on account of which it was made;
- (b) whether or not made in anticipation of an award, which is not offset under paragraph (a), is to be deducted by the Secretary of State from—
  - (i) the sum payable to A under the award of benefit on account of which it was made; or
  - (ii) any sum payable under any subsequent award of that benefit to A.

## PART 3

### Budgeting advances

**Payment of budgeting advances**

11.—(1) The Secretary of State may make a payment on account of universal credit to a person ("B") in accordance with this Part.

(2) A payment under this Part is to be known as a budgeting advance.

**Conditions for payment of budgeting advances**

12.—(1) The Secretary of State may make a budgeting advance to B for the purpose of defraying an intermittent expense of B if—

- (a) B makes an application to the Secretary of State for a budgeting advance;
- (b) B, or in a case where B is a member of a couple, B or their partner, is in receipt of universal credit;
- (c) except where paragraph (2) applies, B or, in a case where B is a member of a couple, B or their partner, has been in receipt of benefit for a continuous period of at least 6 months on the date of the application for a budgeting advance;
- (d) the earnings condition in regulation 13 is satisfied; and
- (e) the recovery condition in regulation 14 is satisfied.

(2) This paragraph applies where the intermittent expense to be defrayed is necessarily related to B or, in a case where B is a member of a couple, their partner, obtaining or retaining employment.

(3) For the purposes of paragraph (1)(c), “benefit” means—

- (a) universal credit;
- (b) employment and support allowance;
- (c) income support;
- (d) jobseeker’s allowance; or
- (e) state pension credit.

(4) For the purposes of paragraph (3)—

- (a) “employment and support allowance” means an income-related allowance under Part 1 of the 2007 Act as it has effect apart from the amendments made by Schedule 3, and Part 1 of Schedule 14, to the 2012 Act (to remove references to an income-related allowance);
- (b) “jobseeker’s allowance” means an income-based jobseeker’s allowance under the 1995 Act as it has effect apart from the amendments made by Part 1 of Schedule 14 to the 2012 Act (to remove references to an income-based allowance).

### Earnings condition

**13.—**(1) The earnings condition is satisfied where—

- (a) if B is not a member of a couple, B does not have earned income exceeding £2,600 over the relevant period;
- (b) if B is a member of a couple, B and their partner jointly do not have earned income exceeding £3,600 over the relevant period.

(2) In paragraph (1), “the relevant period” is the period ►<sup>1</sup>covered by the previous six complete assessment periods◄ preceding the date of the application for the budgeting advance ►<sup>1</sup>and for this purpose “assessment period” has the meaning given in regulation 21 of the Universal Credit Regulations◄.

►<sup>1</sup>(3) Earned income for each complete assessment period in the relevant period is to be calculated for the purpose of paragraph (1) in accordance with Chapter 2 of Part 6 of the Universal Credit Regulations save that in relation to the earned income of a person who is in gainful self-employment for the purpose of regulation 64 of those Regulations, regulation 62 of those Regulations (minimum income floor) is to be disregarded.◄

### Recovery condition

**14.** The recovery condition is satisfied where—

- (a) no amount in respect of any budgeting advance previously paid to B or, if B is a member of a couple, B or their partner, remains to be recovered by the Secretary of State; and
- (b) taking into account all debts and other liabilities of B or, if B is a member of a couple, of B and their partner, the Secretary of State is satisfied that the budgeting advance can reasonably be expected to be recovered.

### Minimum and maximum amounts payable by way of budgeting advance

**15.—**(1) The minimum amount payable by way of budgeting advance is £100.

(2) Subject to regulation 16(2), the maximum amount payable by way of budgeting advance is—

- (a) where B is neither a member of a couple nor responsible for any child or qualifying young person, £348;
- (b) where B is a member of a couple but is not responsible for any child or qualifying young person, £464;
- (c) where B is responsible for any child or qualifying young person, £812.

<sup>1</sup>Words in reg. 13(2) substituted & added & reg. 13(3) substituted by reg. 7(3) of S.I. 2013/1508 as from 29.7.13.

### **Treatment of capital**

**16.—(1)** Where the total of B's capital or, in a case where B is a member of a couple, the total of B's and their partner's capital, exceeds £1,000, the amount of any budgeting advance which may otherwise be paid must be reduced by the amount by which that capital exceeds £1,000.

(2) No budgeting advance is payable where, as a result of paragraph (1), the amount of any budgeting advance which would otherwise be payable is reduced to less than £100.

(3) Capital is to be calculated for the purposes of paragraph (1) in accordance with Chapter 1 of Part 6 of the Universal Credit Regulations.

### **Requirement for notice**

**17.—(1)** The Secretary of State must, on or before making a budgeting advance to B, give or send notice in writing to B of their liability—

- (a) to have the amount of the budgeting advance deducted from subsequent payments of universal credit; and
- (b) to repay the amount of the budgeting advance to the extent that it is not deducted from subsequent payments of universal credit.

(2) Where B is a member of a couple, notice in writing must also be given or sent to their partner containing the information referred to in paragraph (1)(a) and (b).

### **Payment by direct credit transfer**

**18.** A budgeting advance may be paid by way of direct credit transfer into a bank account or other account—

- (a) in the name of B or their partner or a person acting on B's behalf; or
- (b) in the joint names of B and their partner, or B and a person acting on B's behalf.

## **PART 4**

### **Consequential amendments, revocations and savings**

#### **Consequential revocation to the 1988 Regulations and savings**

**19.—(1)** Subject to paragraph (2), Part 2 of the 1988 Regulations is revoked.

(2) Notwithstanding paragraph (1), Part 2 of the 1988 Regulations is to continue to apply in respect of—

- (a) applications for interim payments made before this regulation comes into force; and
- (b) interim payments made pursuant to applications referred to in sub-paragraph (a).

#### **Amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 and saving**

**20.—(1)** In Schedule 2 to the Social Security and Child Support (Decisions and Appeals) Regulations 1999(a) ("the 1999 Regulations") (decisions against which no appeal lies)—

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(a) S.I. 1999/991. Schedule 2 has been amended but the amendments are not relevant to this instrument.

- (a) in paragraph 20, subject to paragraph (2), omit sub-paragraphs (a) and (b);  
 (b) after paragraph 20 insert—

“**20A.** A decision of the Secretary of State under the Social Security (Payments on Account of Benefit) Regulations 2013 except a decision under regulation 10 of those Regulations.”.

(2) Notwithstanding paragraph (1)(a), paragraph 20(a) and (b) of Schedule 2 to the 1999 Regulations is to continue to apply in respect of decisions regarding interim payments referred to in regulation 19(2)(b).

Signed by authority of the Secretary of State for Work and Pensions.

25th February 2013

*Freud*  
 Parliamentary Under Secretary of State  
 Department for Work and Pensions

#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the circumstances when payments on account of benefit may be made.

Part 1 makes general provision relating to coming into force and interpretation.

Part 2 relates to payments on account of benefit which can be made in certain circumstances. These are where it appears to the Secretary of State that a person would be entitled to a benefit listed in regulation 3 and has claimed such a benefit but the claim has not been determined or is not required by law to claim such a benefit (regulation 5). These can also be paid where a claim for benefit has been determined but benefit cannot be paid at the appointed time in certain circumstances (regulation 6). In both cases, such advances can only be made where the Secretary of State is satisfied that the person is in financial need (defined in regulation 7). There is also provision relating to notices which must be given when such payments on account of benefit are made (regulation 8) and allowing such payments to be made by direct credit transfer (regulation 9). Regulation 10 provides for bringing these payments on account of benefit into account against future awards of the benefit on account of which the payment was made.

Part 3 relates to payment of what are termed budgeting advances. These can be paid to persons for the purpose of defraying intermittent expenses where those persons are in receipt of universal credit and have been receiving it or its predecessor benefits for a continuous period of at least 6 months (except where the expense necessarily relates to obtaining or retaining employment) (regulation 12). The person must also satisfy certain conditions as to their earnings (regulation 13). Regulation 14 prescribes that a budgeting advance is payable only if there is no amount of budgeting advance outstanding and the Secretary of State is also satisfied that the budgeting advance can reasonably be expected to be recovered. Regulation 15 prescribes the maximum and minimum amounts payable by way of a budgeting advance. Regulation 16 prescribes that capital over £1,000 is offset against the amount of a budgeting advance which would otherwise be awarded. Regulations 17 and 18 respectively make similar provision for budgeting advances to those in regulations 8 and 9.

Part 4 amends the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 (S.I. 1988/664) (“the 1988 Regulations”). Regulation 19(1) revokes Part 2 of the 1988 Regulations under which payments on account are currently made. However, regulation 19(2) contains a saving provision so that those provisions continue to apply for applications made before regulation 19(1) comes into force and to payments on account made pursuant to such applications.

Part 4 also makes consequential amendments to Schedule 2 to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991). In particular, regulation 20(1)(a) removes the reference to decisions under Part 2 of the 1988 Regulations and regulation 20(1)(b) provides that there will be no right of appeal against a decision made under these Regulations except where it relates to bringing payments into account under regulation 10. There is a saving in regulation 20(2) in respect of decisions relating to applications for interim payments to which regulation 19(2) applies.

A full impact assessment has not been produced for this instrument as it has no impact on the private sector or civil society organisations.

