Draft Regulations laid before Parliament under section 80(1)(b) of the Social Security Act 1998 for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2013 No. 000

SOCIAL SECURITY

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

Made - - - - ***

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(**1**) and section 84 of, and paragraph 9 of Schedule 2 to, the Social Security Act 1998(**2**).

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(**3**) and is made before the end of the period of 6 months beginning with the coming into force of those sections(**4**).

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—

(**1**) 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".

(**2**) 1998 c.14. Section 84 is cited for the definition of "prescribe".

(**3**) 2012 c.5.

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

(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";

(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(**5**);

"the 2007 Act" means the Welfare Reform Act 2007(**6**);

"the 2012 Act" means the Welfare Reform Act 2012;

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992(**7**);

"the 1988 Regulations" means the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988(**8**);

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations 1987(**9**);

"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(**10**);

"the Universal Credit Regulations" means the Universal Credit Regulations 2013(**11**);

"couple" —

(a) where these Regulations apply in relation to universal credit, has the same meaning as in Part 1 of the 2012 Act(**12**);

(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(**13**);

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

(**5**) 1995 c.18.
(**6**) 2007 c.5.
(**7**) 1992 c.4.
(**8**) S.I.1988/664.
(**9**) S.I.1987/1968.
(**10**) S.I.2013/ .
(**11**) S.I.2013/ .
(**12**) *See* section 39 of that Act.
(**13**) The definition is inserted by paragraph 46 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

"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(**14**) 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(**15**),

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 disability living allowance.

(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.

(**14**) *See* section 40 of that Act.
(**15**) Schedule 9ZC is inserted by S.I.2003/2800 and amended by S.I.2005/3321and 2011/1498 and 2943.

(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) (**16**),

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.

(**16**) 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.