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

DRAFT STATUTORY INSTRUMENTS

2013 No. 0000

SOCIAL SECURITY

The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013

Made - - - - ***

Coming into force in accordance with Regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by:

— sections 5(1A), 159D(1) and (6), 189(1), (4) to (6) and section 191 of the Social Security Administration Act 1992(**1**);

— sections 9(1), (4) and (6), 10(3) and (6), 10A, 11(1), 12(2), (3), (3A), (3B), (6) and (7)(b), 16(1), 17, 18(1), 21(1) to (3), 22 and 23, 25(3)(b) and (5)(c), 26(6)(c), 28(1), 31(2), 79(1) and (4) to (7) and 84 of, and paragraph 9 of Schedule 2, paragraphs 1, 4 and 9 of Schedule 3 and Schedule 5 to, the Social Security Act 1998(**2**).

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

(**1**) 1992 c.5. Section 5(1A) was inserted by section 99(1) and (3) of the Welfare Reform Act 2012 (c. 5) ("the 2012 Act"). Section 159D was inserted by section 31 of, and paragraph 23 of Schedule 2 to, the 2012 Act, and was further amended by the 2012 Act, sections 33(3) and 147 and by Schedule 3, paragraph 8, and Schedule 14, Part 1. Section 198(1) was amended by paragraph 109(a) of Schedule 7 and Schedule 8 to the Social Security Act 1998 (c. 14) ("the 1998 Act"), by paragraph 75(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) ("the Contributions Act 1999") and by Schedule 6 to the Tax Credits Act 2002 (c.21) ("the Tax Credits Act"). Section 189(4), (5) and (6) were amended by paragraphs 109(c), (d) and (e) of Schedule 7 and Schedule 8 to the 1998 Act, paragraph 57(1) and (2) of Schedule 3 to the the Contributions Act 1999 and by Schedule 6 to the Tax Credits Act. Subsections (5A) and (5B) are inserted by section 104(1) of the 2012 Act. Section 191 is an interpretation provision and is cited for the meaning of the word "prescribe". The definition of "prescribe" was amended by paragraphs 2 and 10 of Schedule 5 to the Welfare Reform Act 2007 (c.5) ("the 2007 Act").

(**2**) 1998 c. 14. Section 9(1) was amended by section 147 of, and Schedule 14, Part 8 to the 2012 Act. Section 10A was inserted by section 18 of, and paragraph 24 of Schedule 7 to, the Contributions Act 1999 and was amended by S.I. 2009/56. Section 12(2) was substituted by section 18 of, and paragraphs 25(1) and (3) of Schedule 7 to, the Contributions Act 1999, and was amended by S.I. 2008/2833 and by section 102(1) and (2) of the 2012 Act. Subsections (3A) and (3B) were inserted by section 102(1) and (3) of the 2012 Act. Subsection (7) was amended by section 102(4)(b) of the 2012 Act. Schedule 5 was amended by S.I. 2008/2833. Section 17 was amended by S.I. 2008/2833. Section 18(1) was amended by section 18 of, and paragraph 29 of Schedule 7 to, the Contributions Act 1999, and by S.I. 2008/2833. Section 21(2) and (3) was amended by S.I. 2008/2833. Section 22(3) was amended by section 99(5) of the 2012 Act. Section 22(4) was repealed by section 147 and Part 10 of Schedule 14 to the 2012 Act. Section 28(1) was amended by S.I. 2008/2833 Section 79(1) was amended by paragraphs 12 and 13 of Schedule 4 to the Tax Credits Act and by S.I. 2008/2833. Subsections (6A) and (6B) were inserted by section 104(2) of the 2012 Act. Section 84 is an interpretation provision and is cited for the meaning of the word "prescribe". Schedule 5 was amended by S.I. 2008/2833.

The Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it(**3**).

PART 1

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013.

(2) They come into force—

(a) in so far as they relate to personal independence payment and for the purposes of this regulation, on 8th April 2013;

(b) for all remaining purposes, on 29th April 2013.

(3) These Regulations apply in relation to—

(a) an employment and support allowance payable under 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);

(b) a jobseeker's allowance payable under the Jobseekers Act as amended by Part 1 of Schedule 14 to the 2012 Act (to remove references to an income-based allowance);

(c) personal independence payment; and

(d) universal credit.

Interpretation

2. In these Regulations—

"the 1998 Act" means the Social Security Act 1998(**4**);

"the 2007 Act" means the Welfare Reform Act 2007(**5**);

"the 2012 Act" means the Welfare Reform Act 2012(**6**);

"the Administration Act" means the Social Security Administration Act 1992(**7**);

"appeal", except where the context otherwise requires, means an appeal to the First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007(**8**);

"appropriate office" means—

(a) in the case of a contributions decision which falls within Part 2 (contributions decisions) of Schedule 3 (decisions against which an appeal lies) to the 1998 Act, any National Insurance Contributions office of HMRC or any office of the Department for Work and Pensions; or

(**3**) *See* section 173(1)(b) of the Social Security Administration Act 1992 (c. 5).
(**4**) 1998 c. 14.
(**5**) 2007 c. 5.
(**6**) 2012 c. 5.
(**7**) 1992 c. 5.
(**8**) 2007 c. 15.

(b) in any other case, the office of the Department for Work and Pensions, or other place, the address of which is specified on the notification of the original decision referred to in regulation 5(1) (revision on any grounds);

"assessment period" is to be construed in accordance with regulation 21 (assessment periods) of the Universal Credit Regulations;

"benefit" means a benefit or an allowance in relation to which these Regulations apply;

"benefit week" has the same meaning as in—

(a) regulation 2 (interpretation) of the Employment and Support Allowance Regulations 2013(**9**) in the case of an employment and support allowance;

(b) regulation 2 (general interpretation) of the Jobseeker's Allowance Regulations 2013(**10**), in the case of a jobseeker's allowance;

"child" means a person under the age of 16;

"claimant" means—

(a) any person who has claimed—

(i) an employment and support allowance;

(ii) a jobseeker's allowance;

(iii) personal independence payment;

(b) in the case of universal credit, any person who is a claimant for the purposes of section 40 (interpretation) of the 2012 Act; and

(c) any other person from whom an amount of benefit is alleged to be recoverable;

"the Claims and Payments Regulations 2013" means the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(**11**);

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992(**12**);

"the date of notification", in relation to a decision of the Secretary of State, means the date on which the notification of the decision is treated as having been given or sent in accordance with—

(a) regulation 3 (service of documents); or

(b) where the notification is given or sent using an electronic communication, Schedule 2 (electronic communications) to the Claims and Payments Regulations 2013;

"designated authority" means—

(a) the Secretary of State; or

(b) a person providing services to the Secretary of State;

"electronic communication" has the same meaning as in section 15(1) of the Electronic Communications Act 2000(**13**);

"employment and support allowance" means an employment and support allowance in relation to which these Regulations apply;

(**9**) S.I. 2013/XXXX.
(**10**) S.I. 2013/XXXX.
(**11**) S.I. 2013/XXXX.
(**12**) 1992 c. 4.
(**13**) 2000 c.7. The definition of "electronic communication" was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

"the Fraud Act" means the Social Security Fraud Act 2001(**14**);

"fraud penalty", in relation to any claimant of an employment and support allowance, a jobseeker's allowance or universal credit, means any period during which the provisions of section 6B, 7 or 9 of the Fraud Act(**15**) apply to the award;

"family" means the claimant's partner and any—

(a) child; or

(b) qualifying young person, within the meaning of regulation 5 (meaning of "qualifying young person") of the Universal Credit Regulations,

who is a member of the same household as the claimant and for whom the either the claimant or their partner is, or both of them are, responsible;

"HMRC" means Her Majesty's Revenue and Customs;

"the Jobseekers Act" means the Jobseekers Act 1995(**16**);

"jobseeker's allowance" means a jobseeker's allowance in relation to which these Regulations apply;

"limited capability for work" has the same meaning as in—

(a) section 1(4) of the 2007 Act in relation to an employment and support allowance;

(b) section 37(1) of the 2012 Act in relation to universal credit;

"limited capability for work determination" means—

(a) where the determination relates to an employment and support allowance, a determination whether a person has limited capability for work following a limited capability for work assessment in accordance with regulation 15(1) (determination of limited capability for work) of the Employment and Support Allowance Regulations 2013, or a determination that a person is to be treated as having limited capability for work in accordance with regulation 16 (certain claimants to be treated as having limited capability for work) or 25 (exceptional circumstances) of those Regulations;

(b) where the determination relates to universal credit, a determination whether a person has limited capability for work following a limited capability for work assessment referred to in regulation 39(6) (limited capability for work) of the Universal Credit Regulations, or a determination that a person is to be treated as having limited capability for work in accordance with regulation 39(4) of those Regulations;

"official error" means an error made by—

(a) an officer of the Department for Work and Pensions or HMRC acting as such which was not caused or materially contributed to by any person outside the Department or HMRC;

(b) a person employed by, and acting on behalf of, a designated authority which was not caused or materially contributed to by any person outside that authority,

but excludes any error of law which is shown to have been such by a subsequent decision of the Upper Tribunal, or of the court as defined in section 27(7) of the 1998 Act(**17**);

(**14**) 2001 c. 11 ("the Fraud Act").

(**15**) Section 6B was inserted by section 24(1) of the Welfare Reform Act 2009 (c. 24) ("the 2009 Act"). Section 6B was amended by section 113(8) of the 2012 Act and is amended by the 2009 and 2012 Acts, from a date to be appointed. Section 7 was amended by paragraph 45 of Schedule 2 to the State Pension Credit Act 2002 ("the 2002 Act") (c.16), by Schedule 6 to the Tax Credits Act, by section 49 of, and paragraph 23 to Schedule 3 to, the 2007 Act and by paragraph 2 of Schedule 4 to the 2009 Act. Section 7(4A) was inserted by paragraph 45(2) of Schedule 2 to the 2002 Act. Subsection (4B) was inserted by paragraph 23(2) of Schedule 3 to the 2007 Act. Section 9(4A) was inserted by paragraph 46(3) of Schedule 2 to the 2002 Act. Section 9(4B) was inserted by paragraph 23(5) of Schedule 3 to 2007 Act. Sections 7 to 9 were amended by Schedule 4 to the 2009 Act.

(**16**) 1995 c. 18.

(**17**) Relevant amendments were made to section 27(7) by section 40 of, and paragraph 64 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), section 28 of, and paragraph 17 of Schedule 3 to, the 2007 Act, by S.I. 2011/1043, and by sections 31 and 91 of, and paragraphs 43 and 47 of Schedule 2 and paragraphs 37 and 41 of Schedule 9 to, the 2012 Act.

"partner" means one of a couple within the meaning of section 39 (couples) of the 2012 Act;

"personal independence payment" means an allowance payable under Part 4 (personal independence payment) of the 2012 Act;

"relevant benefit" has the same meaning as in Chapter 2 (social security decisions and appeals) of Part 1 (decisions and appeals) of the 1998 Act;

"the Rent Officers Order 2013" means the Rent Officers (Universal Credit Functions) Order 2013(**18**);

"terminally ill", in relation to a claimant, means that the claimant is suffering from a progressive disease and that death in consequence of that disease can reasonably be expected within 6 months;

"the Tribunal Procedure Rules" means the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008(**19**);

"the Universal Credit Regulations" means the Universal Credit Regulations 2013(**20**);

"universal credit" means the benefit payable under Part 1 (universal credit) of the 2012 Act;

"writing" includes writing produced by means of electronic communications used in accordance with regulation 4 (electronic communications).

Service of documents

3.—(1) Where, under any provision of these Regulations, any notice or other document is given or sent by post to the Secretary of State, it is to be treated as having been given or sent on the day on which it is received by the Secretary of State.

(2) Where, under any provision of these Regulations, the Secretary of State sends a notice or other document by post to a person's last known address, it is to be treated as having been given or sent on the day on which it was posted.

Electronic communications

4. Schedule 2 (electronic communications) to the Claims and Payments Regulations 2013 applies to the delivery of electronic communications to or by the Secretary of State for the purposes of these Regulations in the same manner as it applies to the delivery of electronic communications for the purposes of the Claims and Payments Regulations 2013.

PART 2

REVISION

CHAPTER 1

REVISION ON ANY GROUNDS

Revision on any grounds

5.—(1) Any decision of the Secretary of State under section 8 or 10 of the 1998 Act ("the original decision")(**21**) may be revised by the Secretary of State if—

(**18**) S.I. 2013/XXXX.
(**19**) S.I. 2008/2685.
(**20**) S.I. 2013/XXXX.
(**21**) Relevant amendments were made to section 8 by section 18 of, and paragraph 22 of Schedule 7 to, the Contributions Act 1999, by section 11 of, and paragraphs 4 and 6 of Schedule 1 to, the 2002 Act, by section 28 of, and paragraph 17 of Schedule 3 to,