MISCELLANEOUS AMENDMENTS JULY 2013

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INTRODUCTION

1 This memo provides guidance on the changes introduced by the Social Security (Miscellaneous Amendments) (No.2) Regulations 2013 (SI 2013 No.1508). The changes take effect from

1. 29.7.13 for paragraphs 3, 10 – 13, 15 – 24, 31 - 41\(^1\) and

2. 29.10.13 for paragraphs 4 – 9, 14, 25 - 30\(^2\).

\(^1\) Social Security (Miscellaneous Amendments) (No.2) Regulations 2013, reg 1(2)(a); \(^2\) reg 1(2)(b)

2 The guidance in paragraphs 3 – 40 of this memo applies to

1. UC

2. new style JSA

3. new style ESA.

Guidance for these benefits and related decision making issues can be found in the guidance known as Advice for Decision Making or ADM. Paragraph 41 of this memo applies to all benefits for which guidance is given in the DMG.

UNIVERSAL CREDIT

Date of claim for couples

3 A couple who are joint claimants are to be treated as making a claim for UC where
1. one of them was entitled to UC as a single person and ceased to be entitled on becoming a member of the couple and

2. that claimant formed the couple with another person who did not previously have an award of UC as a single person before formation of the couple.

In these cases the claim is to be treated as made on the day after the person mentioned at paragraph 1.1. ceased to be entitled to UC.

Example

Bertram is in receipt of UC. His assessment period runs from the 12th of each month. He moves in with Clarice on 27 June and contacts the Department to say that he is now part of a couple with Clarice. His award as a single claimant is terminated. Clarice was not previously in receipt of UC. The DM treats this contact as a claim for UC jointly between Bertram and Clarice. The date of the new joint-claim is 12 June. The assessment period for this claim still runs from 12 June to 11 July. The first payment of UC will be made at the end of this AP.

Persons not subject to the Habitual Residence Test

As stated in Chapter C1 (International Issues: Universal Credit) at C1050, persons with certain types of right to reside are not subject to the requirement that they be habitually resident in the CTA. With effect from 29.10.13 persons who

1. have been granted discretionary leave to enter or remain in the UK outside the immigration rules or

2. have been granted leave to remain in the UK outside the immigration rules under the Destitution Domestic Violence concession or

3. are deemed to have been granted leave outside the immigration rules by virtue of specific legislation which, in accordance with an EU directive, provides temporary protection to persons affected when the Council of the EU decides that there is (or will be) a mass influx of displaced persons who cannot return to their country of origin

(Note: DMs will be notified when this provision is triggered.)

do not have to satisfy the requirement that they be habitually resident in the CTA. This continues to be the case for as long as the leave lasts, including periods when the
person has applied in time for an extension of leave.

1 UC Regs, reg 9(4)(e); 2 Displaced Persons (Temporary Protection) Regs 2005; 3 Directive 2001/55/EC

Discretionary Leave

5 The outdated reference to “exceptional leave” is amended to “discretionary leave”.

The guidance at ADM C1112-3 already reflects the current position.

Destitution Domestic Violence concession

6 Since 1.4.12, individuals who came to the UK or were granted leave to stay in the UK as the spouse or partner of

1. a British citizen or

2. someone settled in the UK and

whose relationship has broken down due to domestic violence have been able to apply to the Home Office for limited leave to remain (granted outside the Immigration Rules) pending consideration of an application for indefinite leave to remain.

7 The Home Office consider whether:

1. the applicant entered the UK or was given leave to remain in the UK as a spouse, civil partner, unmarried or same sex partner of a British Citizen or someone present and settled in the UK and

2. the relationship has broken down due to domestic violence and

3. they do not have the means to access accommodation or to support themselves and need financial help and

4. they will apply to stay permanently in the UK under the Destitution Domestic Violence immigration rule. If the Home Office accepts that someone satisfies all 4 of the conditions above it will issue the applicant with letters notifying the start and end date for 3 months limited leave to remain in the UK. During this 3 month period the claimant must apply to stay permanently under the Domestic Violence immigration rule.

1 Immigration Rules, rule 289B

8 If the person has made an application to stay permanently within the 3 month period but the Home Office has not yet made a decision by the end of the 3 month period, the period of limited leave under the Destitution Domestic Violence concession continues.
until the final decision is made. In these circumstances (i.e. where an application has been made within the 3 month period but the Home Office has not made a decision within that 3 month period) where the final decision is a refusal to grant indefinite leave to remain, the limited leave continues for a further 10 days after the Home Office decision is sent to the applicant.

9 During any period when a person has limited leave under the Destitution Domestic Violence concession (including the periods of extension described in paragraph 8 above), that person does not have to satisfy the requirement that they be habitually resident in the CTA\(^1\) and therefore (provided they satisfy the other conditions of entitlement) will be eligible for UC.

\(1\) UC Regs, reg 9(1) & (4)(e)(ii)

### Self-employed earnings and expenses

10 ADM H4272 provides guidance to say that no deduction can be made for a payment of interest on business loans. From 29.7.13 the guidance at H4272 should no longer be followed\(^1\).

\(1\) Social Security (Miscellaneous Amendments) (No.2) Regulations 2013, reg 3(7)

11 A deduction can be made for a payment of interest in relation to a loan taken out for the purposes of the

1. trade

2. profession or

3. vocation.

The deduction cannot exceed £41 in total in respect of any amount of interest paid in the assessment period\(^1\). The £41 figure is a cumulative limit and covers the total amount of interest payable across any and all relevant loans.

**Note:** Interest on loans may include but is not limited to credit card and overdraft interest and charges where the original expense related to the trade, profession or vocation.

\(1\) UC Regs, reg 58(3A)

12 The Note to ADM H4234 advises that no deduction can be made for the acquisition or use of a motor vehicle (including a motor cycle) during an assessment period other than the fixed amounts per mile as set out in H4232 and H4233. From 29.7.13
deductions can be allowed for the actual purchase and running costs of a motor cycle1.

1 UC Regs, reg 59(2)

Calculating core rent and the amount from which HCC deductions are made for joint tenants

13 ADM F3196 provides guidance in respect of calculating the core rent for joint tenants. ADM F3266 provides guidance on calculating the amount of HCC deductions for joint tenants. C in both calculations has been amended to confirm that only listed persons liable to make relevant payments should be taken into account in the calculation1.

1 UC Regs, Sch 4, para 24(4) & 35(4)

Meaning of “attendance allowance”

14 In the meaning of "AA" for BC purposes, E5044 3. is to be removed1. This is because people to whom IIDB is paid when immediately before 5.12.12 they received CAA with

1. WC or

2. PB and MDB

are included at E5044 2.

1 Social Security (Miscellaneous Amendments) (No.2) Regulations 2013, reg 3(2)

Child element

15 The exemption to allow certain looked after children to be included in the UC benefit unit is extended to include children who have looked after status and have been placed to live with, or continue to live with either

1. their parents or

2. someone else who has parental responsibility for them1.

1 UC Regs, reg 4A(1)(b); 16 For the purposes of this exemption parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property1. A person does not have parental responsibility if they are a foster parent or, in Scotland, a Kinship carer.

1 Children Act 1989, s3; Children (Scotland) Act 1995, s 1 or 2
Childcare costs element

17 ADM F7022 describes what constitutes relevant childcare. This is expanded to include domiciliary care provided by persons who are registered with the Care Quality Commission.¹

¹ UC Regs, reg 35(2)(c)

18 In England the parameters of when relevant childcare is undertaken on school premises are amended so that the care no longer has to be on school premises although it does have to be part of the school’s activities and provided either

1. out of school hours, where a child has reached compulsory school age or
2. at any time, where a child has not yet reached compulsory school age.¹

¹ UC Regs, reg 35(2)(b)

19 For the purpose of relevant childcare in England a school is now defined as a school that Her Majesty’s Chief Inspector of Education, Children’s Services and Skills is, or may be required to inspect.¹

¹ UC Regs, reg 35(5A)

20 The definition has also been amended to clarify that, in Wales, care provided out of school hours, either by a

1. school on school premises or
2. Local Authority (whether on school premises or elsewhere)

will constitute relevant childcare.¹

¹ UC Regs, reg 35(4)(d)

21 The legislation supporting the guidance at ADM F7023 concerning relevant childcare in Scotland has been brought up to date.

¹ Public Service Reform (Scotland) Act 2010, Sch 12; Public Service Reform (Scotland) Act 2010, part 5; Public Service Reform (Scotland) Act 2010, Sch 12 para 5
JOBSEEKER’S ALLOWANCE

Employed earners

22 ADM S2086 provides guidance on the special occupations. For sub-para 2, a P/T fire-fighter in Scotland is a person employed by the Scottish Fire and Rescue Service.

1 JSA Regs 13, Sch. para 6(b); Fire (Scotland) Act 2005, s 1A

Share fishermen

23 The calculation of the disregard for share fishermen with other work not as a share fisherman is covered in guidance at ADM S3958 - S3960. The legislation has been amended to correct an error. ADM S3960 already has the correct amended amounts.

1 JSA Regs 13, reg 73(3)(61(5)(b))

People treated as not in remunerative work

24 ADM R2474 1.1 is amended so that a person is to be treated as not being in remunerative work if they are working as a part-time fire-fighter

1. in England but live in Scotland or
2. in Scotland but live in England.

1 JSA Regs 13, reg 44(1)(c)(ii); Fire (Scotland) Act 2005, s 1A

VICTIMS OF DOMESTIC VIOLENCE

25 The ADM provides guidance on the victims of domestic violence and work-related requirements. For UC the guidance is in Chapter J3, for JSA it is in Chapter R4 and for ESA it is in Chapter U5.

26 The definition of domestic violence is now amended to correspond with the new cross government definition of domestic violence and abuse. This amendment extends the definition of domestic violence whilst still retaining the elements of the original definition. There are no changes to how the work-related requirements rules work; it is just a change to the definition of domestic violence. DMs should continue to apply the guidance in Chapters J3, R4 and U5 by taking account of paragraphs 27 – 30 and the Appendix to this memo.
The changes

When applying the work-related requirements rules to a victim of domestic violence, the following terms are now defined or redefined as follows.

**Domestic violence**

Domestic violence means any incident or pattern of incidents of controlling behaviour, coercive behaviour, violence or abuse including (but not limited to)

1. psychological abuse
2. physical abuse
3. sexual abuse
4. emotional abuse
5. financial abuse

regardless of the gender or sexuality of the victim. The Appendix to this memo provides examples of domestic violence.

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**Coercive behaviour**

Coercive behaviour means an act of

1. assault or
2. humiliation or
3. intimidation or
4. other abuse

that is used to harm, punish or frighten the victim.

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**Example**

Abdul and Gita are married. Gita threatens Abdul with a kitchen knife during an argument after Abdul tells her that he wishes to give up work and return to education.
She doesn't actually use the knife but it is intended to frighten Abdul. This is an example of coercive behaviour.

**Controlling behaviour**

30 Controlling behaviour means an act designed to make the victim subordinate or dependent by

1. isolating them from sources of support or
2. exploiting their resources and capacities for personal gain or
3. depriving them of the means needed for
   3.1 independence or
   3.2 resistance or
   3.2 escape or
4. regulating their everyday behaviour.

Example

Susan is married to Jim. Jim does not allow Susan to contact her parents or other members of her family. Jim tells Susan that she cannot communicate with them in any way unless he gives her permission. This is an example of controlling behaviour because Jim is isolating Susan from a source of support.

**HOSPITAL PATIENTS**

31 ADM G2015 and U2040 explain that a claimant can be treated as having LCW for the purposes of UC and ESA if they are a patient undergoing medical or other treatment in a hospital or similar institution. G2017 and U2042 state that this applies only where the claimant has been advised by an HCP to stay overnight or for a longer period after the treatment.

Example

From 29.7.13, the claimant can only be treated as having LCW as in G2015 and U2040 where they are advised by an HCP to stay for 24 hours or longer.
THIRD PARTY DEDUCTIONS

Deductions from benefit and paid to third parties - maximum amount of deductions

33 The definition of "5% of the standard allowance" (ADM D2013) is removed from legislation.

1 Social Security (Miscellaneous Amendments) (No. 2) Regulations, reg 6(3)(b)

34 The rounding rules are simplified when calculating rates of deductions for third party payments. Where the relevant percentage of the claimant’s standard allowance results in a fraction of a penny, that fraction is disregarded if it is less than half a penny, otherwise it is treated as a penny.

1 UC, PIP, JSA & ESA (C&P) Regs, Sch 6, para 1(2)

35 The claimant’s consent is required where the total amount deducted (or combination of deductions), from the claimant’s award of UC, for fuel costs and water charges exceed 25% of the aggregate of the standard allowance and any child element (see ADM D2031).

1 UC, PIP, JSA & ESA (C&P) Regs, Sch 6, para 3(3)

36 Deductions may not be made from a claimant’s award of UC under one or more of the items within the priority list in ADM D2043, if those deductions would result in deducting an amount in excess of 40% of the standard allowance (See ADM D2038).

1 UC, PIP, JSA & ESA (C&P) Regs, Sch 6, para 4(1)

Deductions from benefit and paid to third parties – eligible loans

37 Specified legislation is amended to prevent duplicate deductions being made for eligible loans. Duplication can occur when a claimant is in receipt of benefits paid under that legislation whilst, at the same time, being paid UC, new-style ESA or new-style JSA (awarded under different specified legislation). This is likely to only happen on rare occasions, because some of the benefits paid under that specified legislation are incompatible with UC, new-style ESA or new-style JSA.

1 SS (C & P) Regs, Sch 9, para 7C; 2 UC, PIP, JSA & ESA (C&P) Regs, Sch 6, para 11

38 No deduction will be made from a benefit mentioned within specified legislation, where the borrower is in receipt of

1. UC
2. new style ESA or

3. new style JSA

unless the amount of benefit at 1., 2. or 3. is insufficient to meet the deduction.

1 SS (C & P) Regs, Sch 9, para 7C(6A); 2 Sch 9, para 7C(2); 3 UC, PIP, JSA & ESA (C&P) Regs. Sch 6, para 11(8)

Example

Petra is entitled to CA of £59.75 per week and UC of £197.33 per month. The DM receives an application from an eligible lender for deductions under ELDS and calculates 5% of Petra’s standard allowance of UC as £15.58. The DM decides that the deduction should be taken from Petra’s UC as there is sufficient UC in payment to meet the deduction.

Deductions from benefit in respect of child support maintenance and paid to the PWC

39 Specified legislation \(^1\) is amended to prevent duplicate deductions from benefit being made in respect of child support maintenance that is paid to the PWC. Duplication can occur when a claimant is in receipt of benefits paid under that legislation whilst, at the same time, being paid UC, new-style ESA or new-style JSA (awarded under different specified legislation \(^2\)).

1 SS (C & P) Regs, Sch 9B; 2 UC, PIP, JSA & ESA (C&P) Regs 13, sch 7, para 1

40 Where a deduction \(^1\) from benefit in respect of child support maintenance is made under specified legislation \(^2\), no deduction from benefit will be made under alternative specified legislation \(^3\), unless the amount of

1. new style ESA \(^4\)

2. new style JSA \(^5\) or

3. UC \(^6\)

is insufficient to meet the deduction.

1 SS (C & P) Regs, Sch 9B, para 2(2A); 2 UC, PIP, JSA & ESA (C&P) Regs 13, Sch 7, para 5;

3 SS (C & P) Regs, Sch 9B, paras 5 & 6; 4 UC, PIP, JSA & ESA (C&P) Regs 13, Sch 7, para 1(a);

5 para 1(b); 6 para 1(c)
Example

Craig is in receipt of CA at the rate of £59.75 per week and UC of £197.33 per month. The DM receives a request for a deduction from benefit in respect of child support maintenance. The DM decides that the deduction should be taken from Craig’s UC, as there is sufficient UC in payment to meet the deduction.

PAYMENTS ON ACCOUNT OF BENEFIT

DMG 09324 gives guidance on the definition of "benefit" for the purposes of payments on account of benefit. With effect from 29.7.13, GA is added to the list of exceptions shown at 09324 3.¹

¹ SS (POR) Regs, reg 3(1)(f)

ANNOTATIONS

Please annotate the number of this memo (Memo ADM 03/13) against the following ADM paragraphs:

A2038, C1050 (heading), C1112 (heading), D2013, D2031, D2038, D2152, D2185, E5044, F3196, F3266, F1021, F7021, F7022, F7023, G2015, G2017, H4272, H4234, J3180, J3183, Appendix to Chapter J3, R2474, R4180, R4183, Appendix to Chapter R4, S2086, U2040, U2042, U5180, U5183, Appendix to Chapter U5

and the following DMG paragraph:

09324

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in Memo DMG 03/13 - Obtaining legal advice and guidance on the Law.

DMA Leeds: July 2013
Victims of domestic violence are not confined to one gender or ethnic group. Domestic violence can encompass, but is not limited to, the following types of abuse:

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Psychological</td>
<td>Includes intimidation, insulting, isolating a person from friends and family, criticising, denying the abuse, treating a person as an inferior, threatening to harm children or take them away, forced marriage.</td>
</tr>
<tr>
<td>Physical</td>
<td>Includes shaking, smacking, punching, kicking, presence of finger or bite marks, starving, tying up, stabbing, suffocation, throwing things, using objects as weapons, genital mutilation, “honour violence”.</td>
</tr>
<tr>
<td></td>
<td>Physical effects are often in areas of the body that are covered and hidden (i.e. breasts, legs or stomach).</td>
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<tr>
<td>Sexual</td>
<td>Includes forced sex, forced prostitution, ignoring religious prohibitions about sex, refusal to practise safe sex, sexual insults, sexually transmitted diseases, preventing breastfeeding.</td>
</tr>
<tr>
<td>Emotional</td>
<td>Includes swearing, undermining confidence, making racist remarks, making a person feel unattractive, calling a person stupid or useless, eroding a person’s independence.</td>
</tr>
<tr>
<td>Financial</td>
<td>Includes not letting a person work, undermining efforts to find work or study, refusing to give money, asking for an explanation of how every penny is spent, making a person beg for money.</td>
</tr>
<tr>
<td></td>
<td>gambling, not paying bills.</td>
</tr>
</tbody>
</table>