

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

3rd Report of Session 2015–16

**Universal Credit (Waiting Days)
(Amendment) Regulations 2015**

**Criminal Legal Aid
(Remuneration etc.)
(Amendment) Regulations 2015**

Includes 2 Information Paragraphs on 2 Instruments

Ordered to be printed 23 June 2015 and published 25 June 2015

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£price

HL Paper 10

Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)

Historical Note

In January 2000, the Royal Commission on the Reform of the House of Lords said that there was a good case for enhanced Parliamentary scrutiny of secondary legislation and recommended establishing a “sifting” mechanism to identify those statutory instruments which merited further debate or consideration. The Merits of Statutory Instruments Committee was set up on 17 December 2003. At the start of the 2012–3 Session the Committee was renamed to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee has the following terms of reference:

- (1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
 - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
 - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament, with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (2).
- (2) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
 - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
 - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
 - (c) that it may inappropriately implement European Union legislation;
 - (d) that it may imperfectly achieve its policy objectives;
 - (e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation;
 - (f) that there appear to be inadequacies in the consultation process which relates to the instrument.
- (3) The exceptions are—
 - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
 - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
 - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (4) The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.
- (5) The Committee shall also consider such other general matters relating to the effective scrutiny of secondary legislation and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Baroness Andrews	Lord Hodgson of Astley Abbots	Baroness Stern
Lord Bowness	Baroness Humphreys	Rt Hon. Lord Trefgarne (<i>Chairman</i>)
Lord Goddard of Stockport	Rt Hon. Lord Janvrin	Lord Woolmer of Leeds
Lord Haskel	Baroness O’Loan	

Registered interests

Information about interests of Committee Members can be found in Appendix 1.

Publications

The Committee’s Reports are published on the internet at www.parliament.uk/seclegpublications

Information and Contacts

If you have a query about the Committee’s work, or opinions on any new item of secondary legislation, please contact the Clerk of the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020–7219 8821; fax 020–7219 2571; email hlseclegscrutiny@parliament.uk.

Statutory instruments

The National Archives publishes statutory instruments on the internet at <http://www.legislation.gov.uk/>, together with a plain English explanatory memorandum.

Third Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Universal Credit (Waiting Days) (Amendment) Regulations 2015 (SI 2015/1362)

Date laid: 11 June 2015

Parliamentary procedure: negative

Summary: These Regulations amend the Universal Credit Regulations 2013 to introduce seven “waiting days” for new claims for Universal Credit made after 3 August 2015. They make transitional arrangements for claimants migrating to Universal Credit from existing benefits. Certain vulnerable groups will be exempt from the requirement. For those affected it will mean that they receive their first payment at least six weeks after making a claim and that this will not include any money for the seven day waiting day period which they will have to finance from their own savings. The Department for Work and Pensions estimates that this will save £150 million a year. Following extensive consultation, the Social Security Advisory Committee recommended that these Regulations should not be made or, at the very least, that the housing element of the benefit should not be subject to the waiting days. The policy objective as a cost saving measure is clearly stated but in the view of the Committee the Explanatory Memorandum should do much more to spell out the costs, benefits and practical consequences of the instrument. We have written to the Minister seeking further clarification.

This instrument is drawn to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.

1. These Regulations have been laid by the Department for Work and Pensions (DWP) under the Welfare Reform Act 2012 (“the 2012 Act”) with an Explanatory Memorandum (EM). No Impact Assessment (IA) has been provided. As required by statute, the DWP has consulted the Social Security Advisory Committee (SSAC). A report of the SSAC’s findings and recommendations, including a Government response, has been laid alongside the instrument.¹

Background

2. These Regulations amend the Universal Credit Regulations 2013 to introduce seven “waiting days” for new claims for Universal Credit made after 3 August 2015. Transitional arrangements are made for claimants migrating to Universal Credit from existing benefits. Certain vulnerable groups will also be exempted from the requirement to serve waiting days. DWP anticipate that Universal Credit claimants will be less affected than those on existing out of work benefits because waiting days will only be

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434281/universal-credit-waiting-days-report.pdf

served at the beginning of a new claim. Those, therefore, moving from low-income work to unemployment will not have to serve them as their existing claim will continue.

3. Currently, Universal Credit is paid on a monthly in arrears basis from the date of claim. Section 6 of the 2012 Act, however, allows for regulations to prescribe a period of up to seven days, at the beginning of a claim, where, although the entitlement conditions for Universal Credit are met, benefit will not be paid. A period of seven working days is the maximum allowed by the 2012 Act and mirrors the recent change to the contributory benefits, Jobseekers' Allowance and Employment Support Allowance (JSA/ESA), made by SI 2014/2309, which increased the number of unpaid waiting days for those benefits from three to seven.
4. A person with the same family circumstances making a new claim to Universal Credit before and after this change would receive the same amount at their first payment but, after the new Regulations take effect, the initial payment would be one week later and not include a sum for the first seven days. An illustration of how the new arrangement will work in practice is set out below:

“Universal Credit (UC) is paid as a calendar monthly assessed benefit. The way waiting days will be applied is that they are served before the assessment period starts e.g. if the date of claim is 1st September, waiting days are served from 1st September to 7th September (waiting days are days of non-entitlement). The assessment period starts from the date of entitlement, 8th September. So the assessment period runs for a complete calendar month from 8th September to 7th October. The payday is fixed at 7 days after the end of the assessment period so it would be on 14.10.15. So the first payment for one month's money would be due to be received 6 weeks after the date of claim.”
(Source DWP)

Comments by the Social Security Advisory Committee

5. The SSAC conducted a consultation exercise and received responses from 88 organisations and eight individuals. All expressed concern about the effect of imposing waiting days in relation to a benefit that is means-tested. They argue (see pages 12–16 for example) that those receiving JSA or ESA will receive the benefit if they have paid sufficient National Insurance contributions regardless of their income. Universal Credit, however, is based on means-testing and intended as a “safety net” for those with insufficient income to meet their basic needs.
6. These Regulations will delay the first benefit payment by a week and not include any sum in relation to the first seven days of their claim, which claimants will have to finance from their own savings. The SSAC report, pages 14–16, sets out data to underpin its concern that many families do not have sufficient savings to do this. Pages 23–26 set out concerns that this change will lead to more families having rent arrears and the consequent effect that will have on the willingness of landlords to offer housing to benefit claimants. **The SSAC recommended that the Regulations should not be made or, at the very least, that the housing element of the benefit should not be subject to the waiting days.**

7. The Government did not accept the SSAC's recommendation. Paragraph 8.2 of the EM explains that the Secretary of State judged "that the potential risks were outweighed by the benefits that could be derived from re-investing the savings generated by the policy into measures to help get claimants into work". **This explanation is unsatisfactory and the House may wish to press the Minister for more information about why the recommendation of the SSAC was not followed.**
8. The Committee asked the Department whether the totality of the savings would be redeployed in this way or, if not, what proportion would be and to what sort of schemes it would be applied. DWP replied that "all of the savings from Universal Credit waiting days in 15–16 will be reinvested in delivering additional support for claimants in Job Centre Plus. This includes weekly work search for 50% of benefit claimants, quarterly work search interviews for all claimants, English Language training for those with language barriers to moving into work, and additional voluntary support for lone parents with children aged 3–4." Whilst we find this reassuring in the short term, we note that this does not explain the intention for subsequent years.

Advances

9. Under current rules, those in financial need making a new claim for Universal Credit can apply for an advance of benefit of up to 50% of their total indicative monthly amount to help them to manage until their first Universal Credit payment is received. The advance is recovered over six months starting from the first payment of Universal Credit.
10. To help those affected by the waiting days, the SSAC recommended that the DWP should make claimants aware of the availability of an advance of benefit. The Government agreed (page 9 of the SSAC report) and said they would consider improving the information provided, particularly with regard to the digital claim process which does not currently make reference to advances.
11. However, in paragraph 32 on page 9 of the SSAC report, the Government state: "Advances will not be available to everyone: the Government has a responsibility to both claimants and taxpayers to ensure that Advances are made responsibly. Advances will not be paid to those who cannot demonstrate that they will otherwise be in financial need until they receive their first award of Universal Credit *or to those who will not be able to afford the repayment*" (italics added). The DWP does not explain how someone in this final category is expected to manage.

Lack of evidence in the EM and potential impact

12. One aspect of these Regulations about which the Committee is particularly concerned is the lack of information in the EM about potential costs and benefits. Section 10 of the EM states that an Impact Assessment (IA) has not been prepared "because there is no impact on business or civil society organisations": chapters 4 and 5 of the SSAC report, however, set out clearly the extra burdens anticipated by landlords, local authorities, housing charities and food banks as a result of this change.

13. The material published in the SSAC report covers an extended period and it is unclear what information applies at the date the instrument was laid: for example, page 52 of the SSAC report states that £200 million will be saved in year 2016–17 as Universal Credit rolls out but, in paragraph 15 on page 8, the savings fall to £150 million a year.² **This is not good enough. We expect an EM to include a clear statement of the position at the time the Regulations are laid, preferably backed by an IA to demonstrate the figures on which this calculation is based.**
14. Information about the number of claimants affected is also missing. The DWP Equality Analysis, which appears on page 56 of the SSAC report, does not address this point, but only refers to the types of claimants. It concludes that, of the new Universal Credit claimants who will need to serve waiting days, 75% will be single and predominantly men, 10% will be from households which include children and 10% from households where at least one person is disabled. The number of people on which these figures are based is not provided.

Conclusion

15. **The policy objective as a cost saving measure is clearly stated but, in the view of the Committee, the Explanatory Memorandum should do much more to spell out the costs, benefits and practical consequences of these Regulations.** We have written to the Minister seeking further clarification.

Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations 2015 (SI 2015/1369)

Date laid: 10 June 2015

Parliamentary procedure: negative

Summary: This instrument sets out the second stage of cuts in the fees paid to providers of Criminal Legal Aid which will result in a cumulative decrease of 17.5% on April 2013 fee levels. This second 8.75% fee reduction will apply to new cases starting on or after 1 July 2015. The Regulations will also introduce, from 11 January 2016, fixed fees for Crown Court litigation in cases with 500 or fewer pages of prosecution evidence, for police station work and magistrates' court work. We acknowledge that these cuts are being made alongside a number of other changes. However, so little detail is given about the effects of the stage one cuts and the anticipated impact of this second stage of cuts that this Committee cannot form a view as to whether these Regulations will operate as intended. Material received from the Law Society indicates difficulty caused not simply by the drop in fees but also by deviation from the timetable originally announced. We have written to the Minister with a number of questions.

We draw these Regulations to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation.

² In supplementary material from the DWP, the Department confirmed that, once fully rolled out, it is estimated that this measure will reduce Universal Credit expenditure by around £150 million a year.

16. These Regulations have been laid by the Ministry of Justice (MoJ) under provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 together with an Explanatory Memorandum (EM) and an Impact Assessment (IA). The overarching policy, which is implemented in part by this instrument, is set out in *Transforming Legal Aid - Next Steps: Government Response* (“the *Response*”),³ published on 27 February 2014, which among other things proposed that the cuts to Criminal Legal Aid be made in two stages.
17. This instrument sets out the second stage of planned cuts to providers of Criminal Legal Aid which will result in a cumulative decrease of 17.5% on April 2013 fee levels. This second, 8.75% fee reduction will apply to new cases starting on or after 1 July 2015 and will therefore take a while to impact on the legal aid income of providers.
18. This instrument will also introduce, from 11 January 2016, fixed fees for Crown Court litigation in cases with 500 or fewer pages of prosecution evidence (“PPE”) (paragraph 49 of the *Response*), for police station work (paragraph 49 of the *Response*) and Magistrates’ Court work (paragraph 46 of the *Response*). The new fixed fee scheme for Crown Court litigation in cases with 500 or fewer PPE is based on three variables: the class of offence, the number of PPE (in five bands of 100 PPE from 0 to 500), and case type (guilty plea, cracked trial or trial). Due to their complexity, cases with more than 500 pages of PPE will still be paid under the existing graduated fee scheme.
19. The new fixed fee structure for police station advice simplifies the current arrangements by replacing the 245 existing fees with two fixed fees depending on whether the work is conducted in London or outside London. The fixed fees for Magistrates’ Court work will also simplify the fee scheme by introducing a single standard fee (depending on case type), regardless of location.

Insufficient information

20. The first 8.75% reduction was implemented by SI 2014/415 which came into effect on 20 March 2014. Contrary to the Committee’s normal expectation, when implementing stage two of a project, the EM accompanying the current Regulations gives no information about the effects of the stage one cuts, despite the fact that the EM for SI 2014/415 stated that there would be continual monitoring and a review within a year of service commencement.
21. We note that the IA accompanying the current instrument indicates that there will be additional savings to the MOJ of £55 million a year and does not anticipate that there will be any major impact on future clients eligible for legal aid services. However, the IA is very short on detail and offers nothing about quantification of the impact on legal aid providers, stating that this is dependent on the “provider response to the changes” (IA at paragraph 10). The Law Society has responded to the Regulations with a press notice and open letter,⁴ suggesting that 120 providers are already on the verge of

³ <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/results/transforming-legal-aid-next-steps-respons.pdf>

⁴ <http://www.lawsociety.org.uk/news/press-releases/law-society-response-to-moj-announcement-on-criminal-legal-aid-cuts/>

bankruptcy as a result of the previous round of cuts and that many firms have moved away from this market. The open letter argues that this will leave gaps in provision. The information provided by the MoJ does not address this point.

Broader developments

22. We acknowledge that the context of these Regulations is complex as these cuts are happening alongside a radical restructuring of the Criminal Legal Aid contract bidding process: the Law Society refers to the number of contracts for solicitors providing cover at police stations being reduced to 527 from 1,600. A related policy initiative involves MoJ actively pressing for smaller legal firms to expand or consolidate to achieve economies of scale if they wish to bid for the work. Both these policies will also affect the number of firms willing or able to bid for legal aid contracts.
23. The Committee has also received a letter from the Law Society which is published in full on our website. It outlines further difficulties caused to legal firms by changes to the timetable from MoJ's original announcement in February 2014. In particular the changes to the tendering system and the fee reductions were intended to occur in parallel. The Law Society, however, states that because of delays to the MoJ's tendering process for delivering the consolidation there will now be a six month gap which may cause further harm to an already fragile market. Furthermore, according to the Law Society, delaying the start of the fixed fee schemes until January 2016 will impact differently in different parts of the country.
24. The supporting paperwork provided by MoJ provides so little detail about the effects of the stage one cuts and the anticipated impact of this second stage of cuts that the Committee cannot form a view on whether these Regulations will have their intended effect. We have written to the Minister with a number of questions. **The House may wish to press the Minister for further information on the effects of the cuts so far, the anticipated impact of this second decrease in fees and the effect of the introduction of the fixed fee system on the firms that provide Criminal Legal Aid and whether this may lead to any localised gaps in the provision of services to clients.**

INSTRUMENTS OF INTEREST

Draft Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-Jury Trial Provisions) Order 2015

25. This instrument provides for a fourth extension of the temporary provisions that allow trial without jury for certain cases in Northern Ireland (the system that replaced “Diplock courts”). The current provision will expire on 31 July 2015. The use of such courts is dependent on the Director of Public Prosecutions in Northern Ireland issuing a certificate stating that certain conditions, set out in the Justice and Security (Northern Ireland) Act 2007, are met. In 2013 these non-jury trials represented 1.6% of Crown Court trials in Northern Ireland, the provisional figure for 2014 is 2.5%. Those against further extension of the system suggest that the conditions in Northern Ireland are now no different to those in the rest of the UK. The Government maintain that these courts are still necessary to prevent jury intimidation and this instrument would extend the system to July 2017.

Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015 (SI 2015/1001)

26. The Department for Communities and Local Government (DCLG) has laid these Regulations with an Explanatory Memorandum (EM). They restrict the ability of local authorities to issue parking tickets by post based solely on evidence from CCTV cameras, and require that traffic wardens should either affix tickets physically to the vehicle, or hand the ticket to the person that appears to be in charge of the vehicle.
27. The Regulations were made by the last Government, and brought into force on 1 April 2015. In the EM, DCLG states that it was important to change the law as quickly as possible, since “the delay between announcing the intention to legislate and the legislation coming into force has caused significant confusion amongst the public.” While the EM does not make this clear, the intention to legislate was confirmed in the Government’s response to a 2013–14 consultation on local authority parking. Since they both published this response (in July 2014) and also promoted the relevant legislation (the Deregulation Act 2015), the Government might have been expected to foresee the delay which resulted in the confusion described.
28. In the EM, DCLG refers to a related instrument on parking—the Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2015 (SI 2015/561)—which introduced a 10-minute grace period prior to the imposition of a Penalty Charge Notice where a vehicle has been left in an on-street or off-street permitted parking place beyond the permitted parking period. We drew that instrument to the special attention of the House in our 30th Report of the last Session, on the ground that the explanatory material laid in support provided insufficient information about the instrument’s policy objective and implementation.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

Draft instruments subject to affirmative approval

Justice and Security (Northern Ireland) Act 2007
(Extension of duration of non-jury trial provisions) Order
2015

Instruments subject to annulment

- Cm 9076 Agreement between the European Union and Iceland concerning Iceland's Participation in the Joint Fulfilment of the Commitments of the European Union and Iceland for the Second Commitment Period of the Kyoto Protocol to the United Nations Framework Convention on Climate Change
- Cm 9077 Doha Amendment to the Kyoto Protocol
- SI 2015/1001 Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015
- SI 2015/1325 Common Agricultural Policy (Amendment) Regulations 2015
- SI 2015/1336 Late Payment of Commercial Debts (Amendment) Regulations 2015
- SI 2015/1337 Health and Care Professions Council (Registration and Fees) (Amendment) (No. 2) Rules Order of Council 2015
- SI 2015/1346 Poole Harbour Fishery Order 2015
- SI 2015/1348 Honey (England) Regulations 2015
- SI 2015/1350 Agricultural or Forestry Tractors (Emission of Gaseous and Particulate Pollutants) and Tractor etc (EC Type-Approval) (Amendment) Regulations
- SI 2015/1353 Higher Education (Wales) Act 2015 (Consequential Provision) Order 2015
- SI 2015/1359 Planning (Hazardous Substances) (Amendment) Regulations 2015
- SI 2015/1360 Hazardous Waste (Miscellaneous Amendments) Regulations 2015
- SI 2015/1361 South Sudan (European Union Financial Sanctions) (No. 2) Regulations 2015
- SI 2015/1371 Child Trust Funds (Amendment No. 3) Regulations 2015

SI 2015/1374 Safety of Sports Grounds (Designation) (No. 2) Order
2015

SI 2015/1375 General Medical Council (Licence to Practise and
Revalidation) (Amendment) Regulations Order of Council
2015

SI 2015/1384 Blyth Harbour Revision Order 2015

APPENDIX 1: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 23 June 2015 Members declared no interests.

Attendance:

The meeting was attended by Baroness Andrews, Lord Bowness, Lord Haskel, Lord Janvrin, Baroness O'Loan, Baroness Stern, Lord Trefgarne and Lord Woolmer of Leeds.