The Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017 (S.I. 2017 No. 138)

Report by the Social Security Advisory Committee under Section 174(1) of the Social Security Administration Act 1992 and statement by the Secretary of State for Work and Pensions in accordance with Section 174(2) of that Act

Presented to Parliament pursuant to Section 174(2) of the Social Security Administration Act 1992

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The Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017

INTRODUCTION

1. The Department notes the Social Security Advisory Committee's (SSAC) report on The Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017 which it has carefully considered and reviewed.

2. The regulations, which will come into force on 1 April 2017, will amend the existing benefit cap earnings exception threshold of £430 per month in Universal Credit with a threshold indexed to the national living wage.

3. A threshold linked to the national living wage ensures the work incentive provided by the benefit cap is maintained. The new threshold is consistent with the original intention of the earnings exception threshold, by excepting from the cap any household that earns the monthly equivalent of working 16 hours per week at the highest minimum wage rate in force.

4. The Committee sought responses to the potential effects of this policy change on first year apprentices, in particular, any robust data or other evidence that would indicate whether first year apprentices would be earning below the new earnings exception threshold and so be subject to the cap.

5. The Committee recommended that the Department revise the earnings threshold so that first year apprentices are not impacted by the policy change.

THE COMMITTEE'S RECOMMENDATIONS

The Committee have concerns about a potentially small cohort of predominantly young claimants in households where there are no other earners and who may be impacted by the benefit cap without any obvious options for taking action to avoid its effects – namely apprentices on the national minimum wage rate of £3.40 an hour.

We recommend that the Department reconsiders its position and seeks a mechanism to adjust the earnings threshold so that apprentices are not inadvertently impacted by these proposals. In any event we would be grateful to have access to the data considered by Ministers in reaching your final decision on the draft regulations to lay before Parliament.

The Government does not accept this recommendation. We anticipate that very few apprentices will be affected by the new earnings exception threshold, and operating different earnings thresholds would introduce disproportionate complexity for both the Department and claimants.

The new threshold is only expected to affect apprentices where all of the following apply:

1. They are aged under 19, or aged 19 or over and in the first year of their apprenticeship. After their first year, apprentices aged 19 or over must be paid at least the relevant national minimum wage rate for their age, which would lift them comfortably above the £520 earnings exception threshold even if they worked the minimum requirement of 30 hours per week.
2. They are working under 35 hours at the apprentice minimum wage of £3.50 per hour in 2017/18 or working even fewer hours if earning more per hour (for example, all apprentices earning £4.00 or more per hour would not be affected as they would meet the threshold doing the minimum required hours of 30 per week).
3. Their partner (if applicable) has no significant earnings.
4. They are in receipt of Universal Credit and their household benefit entitlement is above the cap levels – this would require them to have high housing costs and/or several children.

In addition, evidence indicates that many apprentices are paid more than the legal minimum and/or work enough hours to exempt themselves from the cap. The biennial Apprenticeship Pay Survey (2014)[1] showed that for apprentices eligible to be paid the apprentice minimum wage (those aged 16-18, or aged 19 and above and in the first year of their apprenticeship), the mean weekly hours worked was 35.1 (median 37.5 hours). This would take the apprentice over the earnings exception threshold even if they were only paid the legal minimum. However, the survey also showed that many apprentices were paid more than the apprentice minimum wage (which was £2.68 at the time the survey was conducted): the mean hourly wage for apprentices eligible for the apprentice minimum wage was £6.60 (median £6.19), enough to take an apprentice over the threshold even if they worked the minimum of 30 hours per week.

The Department has limited information on the number of apprentices claiming benefits. Statistics on apprenticeship starters are available indicating the proportion of individuals who, during the 3 or 6 months before staring their apprenticeship, were claiming benefits.[2] In 2014/15, 7.7% of all apprentices aged 19-64 (27,800 individuals) were claiming benefits during the 3 months before starting their

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[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409023/Apprenticeship-Pay-Survey-2014-supplementary-table-Great-Britain-all-apprentice-levels.xlsx

[2] Benefits included are Jobseeker's Allowance, Employment and Support Allowance, Income Support, Incapacity Benefit, Severe Disablement Allowance or Pension Credit.

apprenticeship, while 10.9% of all apprentices aged 19-64 (39,500 individuals) claimed benefits during the 6 months before starting their apprenticeship.[3] While these figures suggest the number of apprentices on benefits is likely to be small, they should be interpreted with caution as they do not provide information on apprentices claiming Universal Credit and the individual's situation will also be different once they are an apprentice, which may affect their benefit claim. In addition, this does not provide a reliable indicator of how many may be in scope for the cap as some of the disability benefits would exempt those individuals from the benefit cap and neither Housing Benefit nor Child Tax Credit claims are included in these statistics, which are the benefits most likely to bring an individual in scope for the benefit cap.

It is also worth noting that there is still an incentive to work for all apprentices on Universal Credit. Claimants who work are always better off in work even if they remain below the earnings exception threshold, as they continue to receive Universal Credit. Their award is simply adjusted according to how much they earn subject to the 63% taper rate, where for every £1 earned above their work allowance, the claimant retains 37p of benefit. The table below compares what the monthly incomes would be in 2017/18 of apprentices in comparable situations – living outside of Greater London, with the same high housing costs and numbers of children, earning the apprentice minimum wage – but working different numbers of hours per week.

Table 1: Earnings scenarios of apprentices on the apprentice minimum wage, 2017/18

	Apprentice working 30 hours per week	**Apprentice working 34 hours per week**	**Apprentice working 35 hours per week**
Monthly earnings	£455	£515.67	£530.83
Gross UC award	£2,500	£2,500	£2,500
Earnings adjusted UC award (63% taper rate)	£2,500 – (455 x 0.63) = £2,213.35	£2,500 – (515.67 x 0.63) = £2,175.13	£2,500 – (530.83 x 0.63) = £2,165.58
Capped at £1,916.67?	Yes, UC award reduced by £296.68	Yes, UC award reduced by £258.46	No
Total monthly income (UC plus earnings)	£1,916.67 + £455 = £2,371.67	£1,916.67 + £515.67 = £2,432.34	£2,165.58 + £530.83 = £2,696.41

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/529495/Further_Education_for_Benefit_Claimants_tables_2014_to_2015.xlsx

Where an apprentice is affected by the new earnings exception threshold and needs help to adapt to it, a range of support is available including budgeting and housing advice, and Discretionary Housing Payments.

In conclusion, the Government does not agree with the Social Security Advisory Committee on this issue, but are grateful to them for their careful consideration of these regulations. We are committed to monitoring the impacts of our policies and to establishing the extent to which they have met their objectives and are therefore developing plans to evaluate the impact of the new, lower, tiered benefit cap. Findings from this evaluation for Universal Credit claimants will be based on this new earnings exception threshold.

SOCIAL SECURITY
ADVISORY COMMITTEE

The Right Honourable Damian Green MP
Secretary of State for Work and Pensions
Caxton House
London
SW1H 9NA

10 January 2017

Dear Damian,

Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017

The Social Security Advisory Committee considered the proposed Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017 at its meeting on 14 December 2016. [4] The Committee decided to take these regulations on formal reference, but agreed there was no need on this occasion to undertake external consultation before letting you have this formal response and advice.

Exemptions from the benefit cap (including one for households where the claimant, the claimant's partner or both, were working) have existed since it was first introduced in 2012. From the outset, the threshold by which a household was judged to be in work was set at gross earnings of £430 a month – a figure which equated to 16 hours a week at the national minimum wage for someone aged 21 or over. Since then the national minimum wage has increased each year whilst the figure of £430 a month[5] has remained unchanged. In April 2016 the Government introduced the national living wage for workers aged 25 or above. This was initially set at £7.20 an hour and will rise to £7.50 an hour from April 2017. Your proposal is now to link the earnings threshold to 16 hours a week at the national living wage. This would set it at £520 per month from this April.

The Committee recognises the rationale for this decision. Had the national living wage existed in 2012 when the earnings threshold was first set, it is likely it would have been used to provide the benchmark from the outset.

However, the Committee does have concerns about a potentially small cohort of predominantly young claimants in households where there are no other earners and who may be impacted by the benefit cap without any obvious options for taking action to avoid its effects – namely apprentices on the national minimum wage rate of £3.40 an hour.

An apprentice working a standard working week of 37 hours on the national minimum wage will have earnings of £545.13 per month – just enough to exceed the proposed threshold of £520 a month. However, because the earnings threshold works on an 'all-or-nothing' principle, a small shortfall from this number of hours

[4] Sections 172(1) and 174(1) of the Social Security Administration Act 1992.
[5] Regulation 82(1)(a) of the Universal Credit Regulations 2013.

would be enough to bring the benefit cap into operation. This leaves little room for manoeuvre for apprentices and their employers where the working pattern is on the margins of this particular cliff edge. Some may well already be below the £520 threshold; and it would also seem sensible to build flexibility into the threshold structure so that if there was a down-turn in the economy, apprentices whose employers reduced their weekly hours by a small amount would also not be capped.

The Department's view is that many apprentices will be paid at a higher rate than £3.40 an hour, and that most work for 37 hours each week. That may be the case with larger employers but is likely to be less prevalent among smaller businesses (for example self-employed traders). It should also be noted that the annual Apprenticeship Learner Survey (2015) indicated that 75 per cent of apprentices surveyed worked more than 30 hours a week, implying that a minimum of 25 per cent work 35 or fewer hours per week and therefore, if paid the minimum wage of £3.40 per hour, would fall short of the £520 per month threshold. Either way, the Department has not provided any data which would enable the Committee to understand the scale of the problem, or indeed whether one exists at all. The Department's view that very few will be impacted may prove to be accurate, but the Committee's firm view is that policy decisions should wherever possible be based on robust evidence rather than assumption.

The reason why this strikes us as important is that the entire rationale for the benefit cap is that it provides an incentive to get claimants into work. At the second reading of the Welfare Reform and Work Bill the then Secretary of State said:

> *"The cap has been a huge success in getting people back to work and reintroducing fairness to the welfare system. Capped households are more than 40% more likely to go into work after a year than similar uncapped households. It is right to keep the level of the cap under review to ensure that it continues to be fair and that it provides the right incentives for people to move into work".*[6]

If an apprentice working just short of a full working week is capped, the rationale does not hold. That apprentice cannot be incentivised to move into work – they are already doing so. Apprenticeships are an important step on a journey to future sustainable employment, a point which the Government recognises in its broader policy which places a strong emphasis upon such opportunities to deliver three million new apprenticeship starts over the course of this parliament. **We therefore recommend that the Department reconsider its position and seeks a mechanism to adjust the earnings threshold so that apprentices are not inadvertently impacted by these proposals. In any event we would be grateful to have access to the data considered by Ministers in reaching your final decision on the draft regulations to lay before Parliament.**

Paul Gray
Chair

[6] Hansard (20 July 2015 : Column 1256)

APPENDIX 1

Members of the Social Security Advisory Committee

Paul Gray (Chair)
Rachael Badger
Bruce Calderwood
Carl Emmerson
Colin Godbold
Chris Goulden
Jim McCormick
Grainne McKeever
Dominic Morris
Judith Paterson
Charlotte Pickles
Seyi Obakin
Liz Sayce
Victoria Todd

Department for Work & Pensions

Universal Credit Policy Division
3rd Floor
Caxton House
6-12 Tothill Street
London SW1H 9NA

Denise Whitehead
Secretary, Social Security Advisory Committee
Caxton House
Tothill Street
London
SW1H 9NA

28th November 2016

Dear Denise,

The Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017

I am writing to inform the Committee about a proposed amendment to the benefit cap provisions in the Universal Credit Regulations 2013 (S.I. 2013/376).

This is pursuant to section 10(1) of the Welfare Reform and Work Act 2016, which provides that, from 9th June 2016, the Government should consult with SSAC in respect of any regulations relating to the benefit cap made pursuant to sections 96 to 97 of the Welfare Reform Act 2012 (the 2012 Act).

I attach for SSAC's consideration:

I. The **Explanatory Memorandum** which sets out:
   - the amendment to the existing benefit cap exceptions provisions within the Universal Credit Regulations 2013 – specifically,
     - the earnings exception threshold, updating the threshold level from a fixed amount to a formula based on current National Living Wage rates, and
     - some small consequential and technical changes;
   - the impact of the changes on claimants and operations; and
   - plans for implementation.

II. The **draft Equality Analysis**.

III. The **draft Impact Assessment**.

IV. The **draft regulations**, "*The Universal Credit (Exceptions to the Benefit Cap) Amendment Regulations 2017*". Note: this is a near-final draft, but remains subject to final legal checks so further minor technical amendments may be required.

V. A **Keeling Schedule** setting out the changes these amendments make to the current provisions.

Purpose of the amendment

Under powers in the 2012 Act, these amending regulations amend the existing benefit cap exception provisions in the Universal Credit Regulations 2013 in order to provide for the fixed earnings exception threshold of £430 per month to be updated to a threshold based on monthly earnings from working 16 hours per week at the National Living Wage.

The amended earnings exception threshold is consistent with the key policy intention of the benefit cap, to increase incentives to work. A threshold linked to the National Living Wage ensures that it does not become progressively easier for claimants to exempt themselves from the cap as minimum wage levels rise. The Government proposes to introduce the new earnings exception threshold on 1st April 2017, to coincide with the uprating of the National Living Wage.

The Explanatory Memorandum provides a more comprehensive rationale for this amendment and an evaluation of its impact.

I hope this letter, together with the Explanatory Memorandum, which includes a detailed description of each of the amending regulations and the supporting documentation, will be helpful to the Committee. Officials will attend SSAC's December 2016 meeting to answer any queries members may have and we will be happy to provide any further information they may require.

Yours sincerely,

James Wolfe
Deputy Director Universal Credit Policy Division

2017 No.

SOCIAL SECURITY

The Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017

Made	- - - -	***
Laid before Parliament		***
Coming into force	- -	*1st April 2017*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 96(4)(c) and (g) of the Welfare Reform Act 2012([7]):

[In accordance with section 173(1)(b) of the Social Security Administration Act 1992([8]), the Social Security Advisory Committee has agreed that the proposals for these Regulations need not be referred to it.] / [In accordance with section 172(1) of the Social Security Administration Act 1992([9]), the Secretary of State has referred the proposals for these Regulations to the Social Security Advisory Committee.]

Commencement

1.—(1) These Regulations may be cited as the Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017 and come into force on 1st April 2017.

(2) Where an amendment made by these Regulations applies in respect of an existing award of universal credit, that amendment has effect for the purposes of that award—

(a) on 1st April 2017, if there is an assessment period for the award that begins on that day; or

(b) if sub-paragraph (a) does not apply, on the first day of the next assessment period for the award beginning after that day.

Exception to the application of the benefit cap – earnings

2.—(1) The Universal Credit Regulations 2013([10]) are amended as follows.

(2) In regulation 6(1A) (rounding), before paragraph (a) insert—

"(za) regulation 82(1)(a) (benefit cap exceptions – earnings);".

(3) In regulation 82 (exceptions – earnings)—

(a) in paragraph (1)(a), for "£430", substitute—

"the amount that a person would be paid at the national living wage rate set out in regulation 4 of the National Minimum Wage Regulations for 16 hours per week, converted to a net monthly amount by—

(i) multiplying by 52 and dividing by 12; and

(ii) deducting such amount for income tax and national insurance contributions as the Secretary of State considers appropriate";

([7]) 2012 c.5
([8]) 1992 c.5
([9]) 1992 c.5
([10]) S.I. 2013/376. Regulation 6(1A) was inserted by S.I. 2015/1754.

(b) in paragraph (2)(a), for “less than the amount mentioned in paragraph (1)(a)”, substitute—

“less than—

(i) where the assessment period began before 1st April 2017, £430; or

(ii) in any other case, the amount mentioned in paragraph (1)(a)”; and

(c) in paragraph (3), for “exceeded the amount mentioned in paragraph (1)(a)”, substitute—

“exceeded—

(a) in any month beginning before 1st April 2017, £430; and

(b) in any other case, the amount mentioned in paragraph (1)(a)”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Universal Credit Regulations 2013 (S.I. 2013/376) (the “Universal Credit Regulations”) in relation to the exception to the application of the benefit cap to a universal credit award in an assessment period where the claimant’s earnings (or if the claimant is a member of a couple, the couple’s combined earnings) exceed a specified threshold (the “earnings exception threshold”).

Regulation 2(2) amends regulation 6 (rounding) of the Universal Credit Regulations to provide that, when calculating the level of the earnings exception threshold in relation to a universal credit award, that amount is to be rounded down to the nearest whole pound.

Regulation 82(1)(a) of the Universal Credit Regulations provides that the benefit cap does not apply to a universal credit award in relation to an assessment period where the claimant’s earnings (or the couple’s combined earnings) are equal to or exceed the earnings exception threshold. Regulation 2(3)(a) of these Regulations amends this threshold from the existing fixed amount of £430 to a formula to calculate the net monthly amount a person would earn whilst working 16 hours per week at the National Living Wage.

Regulation 82(2) and (3) of the Universal Credit Regulations provide that a grace period from the benefit cap may apply if the claimant’s earnings (or the couple’s combined earnings), during their current period of entitlement, have fallen below the earnings exception threshold. This is on condition that, in each of the previous 12 months, the claimant’s earnings (or the couple’s combined earnings) were equal to or exceeded the earnings exception threshold. Regulations 2(3)(b) and (c) of these Regulations amend these provisions in order to ensure that any entitlement to the grace period already accrued prior to the application of these Regulations to the universal credit award is not retrospectively affected by the amendment to the earnings exception threshold.

This instrument has no impact on business or civil society organisations. The instrument has no impact on the public sector.

Keeling Schedule

The Universal Credit (Exceptions to the Benefit Cap) Amendment Regulations 2017

General

6.— Rounding

(1) Where the calculation of an amount for the purposes of these Regulations results in a fraction of a penny, that fraction is to be disregarded if it is less than half a penny and otherwise it is to be treated as a penny.

(1A) Where the calculation of an amount for the purposes of the following regulations results in a fraction of a pound, that fraction is to be disregarded—

(za) regulation 82(1)(a) (benefit cap exceptions – earnings);

(a) regulation 90 (claimants subject to no work-related requirements – the earnings thresholds); and

(b) regulation 99(6) (circumstances in which requirements must not be imposed).

THE BENEFIT CAP

82.— Exceptions – earnings

(1) The benefit cap does not apply to an award of universal credit in relation to an assessment period where—

(a) the claimant's earned income or, if the claimant is a member of a couple, the couple's combined earned income, is equal to or exceeds ~~£430~~ the amount that a person would be paid at the national living wage rate set out in regulation 4 of the National Minimum Wage Regulations for 16 hours per week, converted to a net monthly amount by—

(i) multiplying by 52 and dividing by 12; and

(ii) deducting such amount for income tax and national insurance contributions as the Secretary of State considers appropriate; or

(b) the assessment period falls within a grace period or is an assessment period in which a grace period begins or ends.

(2) A grace period is a period of 9 consecutive months that begins on the most recent of the following days in respect of which the condition in paragraph (3) is met—

(a) a day falling within the current period of entitlement to universal credit which is the first day of an assessment period in which the claimant's earned income (or, if the claimant is a member of a couple, the couple's combined earned income) is ~~less than the amount mentioned in paragraph (1)(a)~~ less than—

(i) where the assessment period began before 1st April 2017, £430; or

(ii) in any other case, the amount mentioned in paragraph (1)(a);

(b) a day falling before the current period of entitlement to universal credit which is the day after a day on which the claimant has ceased paid work.

(3) The condition is that, in each of the 12 months immediately preceding that day, the claimant's earned income or, if the claimant was a member of a couple, the couple's combined earned income was equal to or ~~exceeded the amount mentioned in paragraph (1)(a)~~ exceeded—

(i) in any month beginning before 1st April 2017, £430; or

(ii) in any other month, the amount mentioned in paragraph (1)(a).

(4) "Earned income" for the purposes of this regulation does not include income a person is treated as having by virtue of regulation 62 (minimum income floor).

EXPLANATORY MEMORANDUM TO THE SOCIAL SECURITY ADVISORY COMMITTEE

FROM THE DEPARTMENT FOR WORK AND PENSIONS

Draft Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017

Introduction

1. The Universal Credit (Exceptions to the Benefit Cap) Amendment Regulations 2017 (the draft Regulations) **(Annex A)** will provide for an updated benefit cap earnings exception threshold that is based on the National Living Wage (NLW).

2. During the passage of the Welfare Reform and Work Act 2016 (the 2016 Act), the Government accepted the recommendation of the Delegated Powers and Regulatory Reform Committee (DPRRC) to consult with the Social Security Advisory Committee (SSAC) in respect of changes to the benefit cap regulations. Section 10 of the 2016 Act provides that, with the exception of any regulations relating to changes to the level of the cap, the Government should, in the future, consult with SSAC in respect of any regulations made pursuant to sections 96 to 97 of the Welfare Reform Act 2012 (the 2012 Act). The Welfare Reform and Work Act 2016 (Commencement No 2) Regulations 2016, which were made on 26th May 2016, provide that Section 10 of the 2016 Act came into force on the 9th June 2016.

Summary of the provisions in the draft Regulations

3. The draft Regulations will amend the Universal Credit Regulations 2013 (S.I. 2013/376) (the "UC Regulations") in order to:

    a. replace the existing benefit cap earnings exception threshold with a new threshold that is the monthly earnings equivalent of working 16 hours per week at the National Living Wage; and
    b. ensure this change to the threshold does not retrospectively affect any entitlement accrued by a claimant to the benefit cap grace period.

4. These provisions are made pursuant to existing powers in the 2012 Act.

Background

Earnings exception threshold

5. From April 2013 the Government introduced a cap on the total amount of benefit that working-age people are entitled to receive. In UC, claimants are exempt from the benefit cap in a monthly assessment period when the individual, or a couple jointly, earns £430 or more in that period (Regulation 82(1)(a) of the UC Regulations). The fixed value of £430 was based on the following formula:

a. gross monthly earnings from 16 hours of work per week paid at the 2012 National Minimum Wage (NMW) rate for those aged 21 years or older, the highest minimum wage rate in force at the time.

6. When the £430 threshold was set, instead of inserting the formula to the regulations, we opted to insert the figure because it was felt that the figure would be better understood. However, using a figure for the threshold means that each year, as the minimum wage rates change, a regulation change is required to update the figure. To future proof the policy we have decided to insert the formula into the regulations instead of a figure which requires annual regulation changes.

7. The £430 threshold has remained the same despite increases to NMW rates and the introduction of the higher NLW. As increases to NMW rates since 2013 have been incremental, these changes did not put the £430 threshold far out of line with the NMW. However, the introduction of the NLW in April 2016 has meant the £430 threshold is now no longer aligned with the highest minimum wage rate in force and needs to be updated.

8. UC Regulation 82(2) provides for a 'grace period' whereby the benefit cap will not be applied for 9 months to those who have stopped working, before claiming UC, or whose earnings have dropped below the earnings exception threshold for the first time, where the claimant, or couple, if the claimant is part of a couple, was earning at or more than the earnings exception threshold in each of the previous 12 months.

The policy change

9. From April 2017 it is proposed that the fixed benefit cap earnings exception threshold of £430 in UC be replaced with a formula based on the NLW for all claimants: the net monthly earnings equivalent to working 16 hours per week at the NLW. The NLW is the minimum wage for individuals aged 25 years and over, while the NMW is for younger workers and has different rates for apprentices, under 18s, 18-20 year olds and 21-24 year olds. The NMW rates change every October and the NLW rate changes each April. After linking the benefit cap earnings exception threshold to the NLW, the threshold will change automatically upon any change to the NLW. Changes to the benefit cap earnings exception threshold will not retrospectively affect any benefit cap grace period entitlement already accrued.

Rationale for change

10. A key policy aim for the benefit cap is to increase incentives to work. The fixed benefit cap earnings exception threshold of £430 in UC means that, as the NMW and the NLW rise, it becomes progressively easier for UC claimants to become exempt from the benefit cap. A threshold based on a formula using the NLW ensures that it will not become easier for claimants to exempt themselves from the cap and also ensures that the work incentive continues. The principle as to how the earnings exception threshold is set remains the same – both the new threshold and the current £430 threshold are determined using the monthly earnings equivalent to working 16 hours per week at the highest minimum wage rate in force at the time – however, the amended regulations would allow the new threshold to change each year and so remain in line with the most recent highest minimum wage rate. The proposed threshold also maintains fairness in relation to Working Tax Credits, where some claimants become eligible for the exception from the benefit cap at 16 hours of work. Amending the earnings exception

threshold to ensure it does not become easier for claimants to exempt themselves from the cap is consistent with the benefit cap's aim to ensure fairness for taxpayers.

11. Additionally, the earnings exception policy is designed to encourage sustained employment. The new, higher earnings exception threshold, along with the other work incentives of UC, will encourage some claimants to work and earn more. In particular, for those claimants who are exempt under the current earnings exception threshold but earn just below the new earnings threshold, and would lose large amounts of benefit by being capped, the policy provides a strong incentive to increase their hours in order to remain exempt from the cap following the change.

12. Finally, the new threshold is based on net earnings at the NLW rather than on gross earnings at the NMW, which was the basis of the £430 threshold. Considering a claimant's net, rather than gross, earned income is consistent with the approach in UC more widely: net earnings are considered both when the claimant's UC award is calculated and when their entitlement to the benefit cap earnings exception is determined. However, in practice this isn't expected to have an impact as the proposed earnings threshold is currently below Tax and National Insurance thresholds.

13. The rationale for choosing to replace the fixed earnings exception threshold with a single threshold based on the NLW, rather than multiple thresholds based on the NLW or NMW rate for different age groups, was that a single threshold is easier to administer and is simpler for claimants to understand. It was for the same reason that the £430 threshold, when it was introduced, was a single rule. Introducing separate thresholds for each age group, rather than a single threshold, is much more complex. Under this option, there could be up to five different earnings exception thresholds: one based on the NLW for those aged 25 and over, and then a separate threshold for each of the four NMW categories (21-24, 18-20, under 18, apprentice). Alternatively, if only two thresholds were introduced, one based on the NLW, applying to 25s and over, and one using the NMW for 21-24 year olds but applying to all under 25s, it might appear to be an arbitrary choice to have a specific earnings exception threshold for 21-24 year olds, but not for other groups of young claimants.

Impact on legislation

14. In order to realise these changes, the draft Regulations (**Annex A**) amend the Universal Credit Regulations 2013.

15. The regulations are described in greater detail below:

<u>**Regulation 1 – Citation and Commencement**</u>

Regulations 1(1) provides the date that the amendments to the Universal Credit Regulations 2013 will come into force as 1st April 2017. This is to coincide with the introduction of the new rate of the National Living Wage.

Regulation 1(2) provides that the amendments made by regulation 2(2) or (3) only come into force in relation to an existing award of Universal Credit in the first full assessment period commencing on or after 1st April 2017. This is to avoid the potential administrative complexity of two different earnings exception thresholds applying in one assessment period.

Regulation 2 – Amendments to the Universal Credit Regulations 2013

Regulation 2(2) amends the existing regulation 6(1A) (rounding) under the powers in the 2012 Act, to include that when the amount for the benefit cap earnings exception threshold is calculated, it should be rounded down to the nearest pound. This is to make the threshold easier to apply and understand.

Regulation 2(3) makes a number of amendments to the existing regulation 82 (exceptions – earnings) of the UC Regulations under the powers in the 2012 Act.

These amend:

- the earnings exception threshold from £430 to the net monthly earnings equivalent of an individual working 16 hours per week at the National Living Wage rate. This amount is calculated by multiplying the weekly earnings by 52 and dividing by 12, and making an appropriate deduction for a notional amount of income tax and national insurance contributions as the Secretary of State thinks appropriate.
- the benefit cap grace period entitlement conditions to ensure that any grace period entitlement already accrued by April 2017 is not retrospectively affected by the amendment to the earnings exception threshold. This is achieved by retaining, for the purposes of the grace period, the £430 per month earnings threshold in relation to an assessment period or month (as appropriate) starting before 1st April 2017, when the updated threshold is planned to come into force, and applying the updated threshold in any assessment period or month (as appropriate) starting on or after that date.

Impact on operations

16. The benefit cap UC earnings exception will continue to be administered by DWP decision makers.

17. Staff will need to know about the updated earnings exception threshold and will need to be able to explain it to claimants. To this end, the comprehensive guidance and training products available to staff in DWP are being amended in time to support implementation.

18. The Government will also continue to maintain a Discretionary Housing Payments (DHP) Guidance Manual, which includes a Good Practice guide for Local Authorities. To help Local Authorities protect the most vulnerable and to support households adjusting to the reforms, the Government is providing £870 million funding for the DHP scheme over 5 years (from 2016/17).

Impact on claimants

19. An Equality Analysis is included at **Annex C** and an Impact Assessment at **Annex D**.

Support for claimants

20. Claimants can apply to their local authority for a DHP if they need additional financial support to meet housing costs. To help local authorities protect the most vulnerable

and to support households adjusting to the reforms, the Government is providing £870 million funding for the DHP scheme over 5 years (from 2016/17).

21. A range of employment support and advice is already available from Jobcentres, including for claimants who do not have any conditionality requirements, as part of the support offer for the overall benefit cap policy. Additional work coach time is provided for those claimants not already fully supported in their work search and also for the small number of claimants who identify themselves as having moved house as a result of the lowering of the benefit cap.

22. The Flexible Support Fund (FSF) is available to be used by Jobcentre Plus District Managers and Work Coaches to provide the local support that claimants may need to return to work. Where our existing national support options do not provide what claimants need and there is no other non-contracted provision in the area, then the FSF can be used to purchase additional specific provision to support claimants who may be impacted by the benefit cap.

Consultation and scrutiny

23. There has been no formal consultation specifically in relation to this instrument. This is because the policy to provide an earnings threshold and how the threshold is set have not changed, but it has been decided to align it with the NLW for the reasons set out above. The original fixed threshold was based on working 16 hours per week at the highest minimum wage rate at the time; the amended threshold provided for by this instrument is consistent with this policy intention. No consultation was done to set the original earnings exception threshold, which was referred to, and accepted by, the Social Security Advisory Committee as part of the Universal Credit Regulations 2013.

Monitoring and evaluation

24. We are committed to monitoring the impacts of our policies and to establishing the extent to which they have met their objectives. Ahead of the draft Regulations being laid in Parliament, we intend to publish a finalised impact assessment, to ensure the assessment is based on the latest information available at the time.

25. The Department will also continue to produce Official Statistics on the benefit cap on a quarterly basis allowing frequent monitoring on the number of households affected by the policy. The statistics cover:

- Cumulative and point-in-time statistics on the number of households capped in Great Britain, regional and local authority level by household type, number of children and amount of the benefit cap.
- Great Britain and regional level off-flow statistics from the benefit and by reason of the off-flow.
- Further breakdowns are also available by local authority and Parliamentary Constituency.

Family Impact

26. The Minister has considered the impact of the benefit cap on families, including the Family Test, as these policy amendments were developed.

Rural Impact

27. The change applies regardless of location and therefore will have no specific impact on those living in rural areas.

Impact on Devolved Administrations

28. The benefit cap is a reserved policy and will apply throughout Great Britain. The benefit cap is set on a national basis and, for the purposes of this earnings exception threshold, is applied through Universal Credit, which is a reserved benefit administered by the UK Government.

29. As of 31 May 2016, the benefit cap has been introduced in Northern Ireland. Northern Ireland and DWP colleagues will be working together on the legislation to amend the earnings exception threshold in accordance with the parity principle.

Diversity and Equality Impact

Please refer to the Equality Analysis and the Impact Assessment at **Annexes C and D** respectively.

EQUALITY ANALYSIS FOR

THE DRAFT UNIVERSAL CREDIT (BENEFIT CAP EARNINGS EXCEPTION) AMENDMENT REGULATIONS 2017

Introduction

This document records the equality analysis (EA) undertaken by the Department for Work and Pensions to enable Ministers to fulfil the requirements placed on them by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. The PSED requires the Minister to pay due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation and marriage and civil partnership.

Below is a full discussion of the expected impacts of the proposed amendment to the benefit cap earnings exception threshold in UC on certain groups with protected characteristics. When you are making your decision as regards this amendment, you are required by law to have regard to the PSED. In light of the impacts described below and their justifications, our view is that the proposed amendment does not result in, and/or support the elimination of, unlawful direct or indirect discrimination of groups of people who share a protected characteristic. The amendment is not expected to have any effect on groups with protected characteristics other than those identified below, nor does it engage any other aspects of the PSED.

Brief outline of policy

Background

From April 2013 the Government introduced a cap on the total amount of benefit that working age people are entitled to receive. In Universal Credit (UC), claimants are exempt from the benefit cap in a monthly assessment period when the individual, or a couple jointly, earns £430 or more in that period, regardless of household type (Regulation 82(1)(a) of the Universal Credit Regulations 2013 (the “UC Regulations”)). A fixed value was originally chosen because it was thought easier for claimants and staff to understand. The £430 figure (the “earnings exception threshold”) is based on gross earnings from 16 hours of work per week paid at the National Minimum Wage (NMW) for those aged 21 years of age or older (at the 2012 rate).

There is a ‘grace period’ whereby the benefit cap will not be applied for those with a consistent work history whose employment has ended or earnings have dropped below the earnings exception threshold level. The grace period will apply for 9 months from the end of their employment or reduction in earnings. If applicable, the grace period will remain in place irrespective of any reportable change of circumstances made by the claimant for the remainder of its duration. This provides a fixed period of protection during which they can adapt to their position and look for alternative employment. For UC claimants, a consistent work history means that in each of the 12 months prior to the end of their employment or reduction in earnings, the claimant, or couple, if the claimant is part of a couple, was earning at or more than the earnings exception threshold.

To protect those who are unable to work, households in receipt of Disability Living Allowance, Personal Independence Payment, Attendance Allowance, the Limited Capability for Work Related Activity element of UC or the support component of an employment and support allowance, Industrial Injuries Benefits (and equivalent payments made as part of a War Disablement Pension or the Armed Forces Compensation Scheme) are exempt from the benefit cap. From November 2016, those entitled to Carer's Allowance, the Carer element of UC or Guardian's Allowance are also exempt.

The change

From 1st April 2017 it is proposed that the fixed benefit cap earnings exception threshold of £430 in UC be replaced with a formula based on the National Living Wage (NLW) for all claimants (net earnings equivalent to working 16 hours per week at the NLW). The NLW is the minimum wage for individuals aged 25 years and over, while the NMW is for younger workers and has different rates for apprentices, under 18s, 18-20 year olds and 21-24 year olds. The NMW rates change every October and the NLW rate changes each April. After linking the benefit cap earnings exception threshold to the NLW, the threshold will also change automatically upon any change to the NLW. Changes to the benefit cap earnings exception threshold will not retrospectively affect any benefit cap grace period entitlement already accrued.

Rationale for change

A key policy aim for the benefit cap is to increase incentives to work. The fixed benefit cap earnings exception threshold of £430 in UC means that, as the NMW and the NLW rise, UC claimants become exempt from the benefit cap on the basis of fewer and fewer hours worked over time and they therefore may choose to work fewer hours. A threshold based on a formula using the NLW ensures that it will maintain the current incentives on the amount of hours claimants work to exempt themselves from the cap and also ensures that the work incentive continues. Amending the earnings exception threshold to ensure it does not become easier for claimants to exempt themselves from the cap is also consistent with the benefit cap's aim to ensure fairness for taxpayers.

Additionally, the earnings exception policy is designed to encourage sustained employment. The new, higher earnings exception threshold, along with the other work incentives of UC, will encourage some claimants to work and earn more. In particular, for those claimants who are exempt under the current earnings exception threshold but earn just below the new earnings threshold, and would lose large amounts of benefit by being capped, the policy provides a strong incentive to increase their hours in order to become or remain exempt from the cap.

Finally, the new threshold is based on net earnings at the NLW rather than on gross earnings at the NMW, which was the basis of the £430 threshold. Considering a claimant's net, rather than gross, earned income is consistent with the approach in UC more widely, and means the new threshold is fairer in principle than the £430 threshold was at the time it was introduced.

The rationale for choosing to replace the fixed earnings exception threshold with a single threshold based on the NLW, rather than multiple thresholds based on the NLW or NMW rate for different age groups, was that a single threshold is easier to administer and is simpler for claimants to understand. It was for the same reason that the £430 threshold, when it was introduced, was a single rule. Introducing separate thresholds for each age group, rather than a single threshold, is much more complex. Under this option, there could be up to five different earnings exception thresholds: one based on the NLW for those aged 25 and over, and then a separate threshold for each of the four NMW categories (21-24, 18-

20, under 18, apprentice). Alternatively, if only two thresholds were introduced, one based on the NLW, applying to 25s and over, and one using the NMW for 21-24 year olds but applying to all under 25s, it might appear to be an arbitrary choice to have a specific earnings exception threshold for 21-24 year olds, but not for other groups of young claimants.

Evidence and analysis

This section of the EA explores the impact of the amended earnings exception threshold on individuals with protected characteristics under the Equality Act 2010.

The impacts in this section are consistent with those presented in the Impact Assessment. A full description of the methodology can be found in the Impact Assessment.

Households affected by the change

For many households, the introduction of the NLW is likely to have meant their earnings continue to align with the proposed earnings exception threshold and it is likely that claimants who move into work will work 16 hours or more, rather than fewer than 16 hours, due to the design of labour market contracts. This means households on the NLW would be exempt from the benefit cap under both the current and new exception thresholds. However, those under 25 may receive the NMW rather than the NLW and therefore may fall in between the current (£430 per month) and new threshold levels even when working 16 hours per week. Some of these households may qualify for the grace period when the policy is first introduced as changes to the benefit cap earnings exception threshold will not retrospectively affect any benefit cap grace period entitlement already accrued.

The table below shows that under the current threshold the hours of work per week required to become exempt would reduce to 12 hours for those earning the NLW and 13 hours for those earning the NMW for 21-24 year olds by 2020/21. The proposed earnings threshold brings this requirement back up to 16 hours for those on the NLW and 19 hours for those on the NMW for 21-24 year olds by 2020/21.

Table 1: Hours work required to meet the current and proposed earnings exception

Year	Current Earnings Exception			Proposed Earnings Exception		
	Monthly earnings threshold	Hours per week at NLW	Hours per week at NMW (21-24)	Forecast monthly earnings threshold	Hours per week at NLW	Hours per week at NMW (21-24)
2017/18	£430	14	14	£528	16	18
2018/19	£430	13	14	£560	16	18
2019/21	£430	12	13	£591	16	18
2020/21	£430	12	13	£626	16	19

Notes:
1. Figures are rounded up to the nearest hour per week.
2. Forecasts of the proposed earnings threshold are based on OBR Budget 2016 forecasts of NLW and NMW for 21-24 year olds[11].

It is difficult to reliably predict the number that will have earnings between the two threshold levels; the estimates assume 6.5% of the UC capped caseload will be under 25 years old and expected to be entitled to housing support in UC (some claimants aged 18-21 will no

[11] http://budgetresponsibility.org.uk/docs/dlm_uploads/Economy_supplementary_tables_March_2016-4.xlsx

longer be automatically entitled to housing support) and around 30% of these will be working 16 hours at the National Minimum Wage and therefore affected by the change. This is based on:

- modelling that suggests around 6.5% of the lower capped caseload are under 25 years old and expected to be entitled to housing support in UC so may be on the NMW if they did work
- Evidence from the previous benefit cap suggests around 30% of all those capped since April 2013 have moved into work at 16 hours or more (measured by receipt of Working Tax Credits).[12]

This results in around 100 households affected in 2017/18, 500 in 2018/19, 1,100 in 2019/20 and 1,200 by 2020/21 as the UC caseload increases.

It is assumed those affected by the change will work a few additional hours to become exempt, meaning they will be financially better off than under the current policy as they will get to keep 35p of every additional £1 they earn under UC and will remain exempt from the benefit cap. However, for those that don't increase their hours they would not be exempt from the benefit cap so their UC award would be lower – based on the average benefit cap the reduction may be around £58 per week in 2017/18.

Age

Modelling suggests that around 6.5% of capped households are expected to be aged under 25 years old and entitled to housing support in UC (some claimants aged 18-21 will no longer be automatically entitled to housing support). The main reason this proportion is low is because those under 25 generally receive less in benefit payments (those under the age of 25 receive different (lower) benefit rates than those aged 25 and over) and are less likely to have children.

The change to the earnings exception threshold, compared to the current £430 threshold, means the under 25 group (and any claimants who are in the first year of an apprenticeship) have a greater minimum number of hours requirement to meet the new threshold. This is because the NLW applies only to those aged 25 and over (and apprentices who have completed their first year). However, age-based differences already exist in the current policy (those under 21 have different NMW rates) and in the equivalent for the current benefits system, where claimants without children have to be aged 25 or over to be eligible for Working Tax Credits and, therefore, are not able to exempt themselves from the benefit cap via any earnings exception.

The difference in the minimum number of hours those aged under 25 must work compared to those aged 25 or over is relatively small, around an additional 2 hours per week in 2017/18 increasing to 3 hours by 2020/21 as the NLW is expected to be uprated by more than the NMW over time, because it is a Government objective to have a NLW of over £9 by 2020.[13] This estimate of the additional hours under-25s must work at minimum wage to reach the earnings exception threshold is based on OBR Budget 2016 estimates of NLW and NMW rates over time, but the actual rates may differ and so the additional work hours required of under-25s at minimum wage to meet the threshold could change. The additional burden placed on those under 25 is not disproportionate, however. Claimants under the age of 25 without caring responsibilities or health conditions should be able to work these extra hours and exempt themselves from the cap. These claimants are also likely to be in the All Work Related Requirements conditionality group of UC and so receiving support through this group to increase their earnings to the Conditional Earnings Threshold level, which is set on an individual basis but is usually 35 hours of work per week at the NMW. Additionally, early evidence from the Annual Survey of Hours and Earnings suggests that many employers

[12] https://www.gov.uk/government/collections/benefit-cap-statistics

[13] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443328/BIS-15-409-NMW-Low-Pay-Commission-Remit-2016.pdf

might be paying younger workers the NLW even though they are not legally required to do so: around 10% of full-time 16- to 24-year-olds and 15% of part-time 16- to 24-year-olds appear to be getting paid at around the £7.20 NLW in April 2016.[14] In such cases, the work requirement to meet the earnings exception threshold would be the same for those under and over 25 years of age.

The numbers of claimants under 25 impacted by this change to the threshold are expected to be low – 6.5% of those affected by the lower cap are expected to be to be under 25 years old and entitled to housing support in UC and based on evidence from the previous cap around 30% of these capped households may be in work. This means that around 100 under 25s may be impacted in 2017/18 increasing to around 1,200 by 2020/21.

Gender

Under the new benefit cap levels, around 66% of claimants who are likely to have their benefit reduced by the cap will be single females but only around 13% will be single men. Most of the single women affected are likely to be lone parents: this is because we expect the majority of households affected by the benefit cap to have children. Around 61% (54,000) of the caseload are estimated to be female lone parents.

Given that the new earnings exception threshold places a slightly higher burden on those aged 22-24, it is acknowledged that female lone parents aged 22-24 may be adversely impacted by the amended earnings threshold – due to childcare responsibilities, these claimants may find it more difficult to work the additional hours at minimum wage in order to exempt themselves from the cap. However, the numbers of such claimants will be small: it is estimated that around 3.8% of the lower benefit cap caseload under UC will be under 25 years old and lone parents – the vast majority of these will be female. However, of these the new earnings exception threshold will only affect those in work but working less than 18 hours per week, estimated to be around 30% of this group based on the proportion of all households affected by the benefit cap since April 2013 who are in work.

Additional support may also be available, including employment support, childcare assistance and Discretionary Housing Payments, to assist them to increase their work hours. While lead carers of children under 3 years old have minimal work conditionality requirements, support to get into work is available to them on a voluntary basis. These households face the same decisions as working households do with statistics for April to June 2016 showing that 66.5% of lone parents were in employment in the UK[15] and 69.7% of females were in employment between June and August 2016.[16] The latest statistics also show that since the benefit cap was introduced, 23,500 households have moved into work, of which 12,600 (54%) were lone parents.

The current Working Tax Credits exception rules require 16 hours of work each week for lone parents. This proposed amendment to the earnings exception in UC, subject to the points made above in respect of age, is in line with the position under the current benefits system.

For couples, the earnings exception policy in UC is more favourable than the position in the current benefits system. Around 22% of the caseload are estimated to be couples, who would require just 16 hours (shared between both partners) of work a week to be exempt from the cap (assuming they are both aged 25 or older). The current Working Tax Credits

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[14] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/analysisofthedistributionofearningsacrosstheukusingashedata/2016

[15] http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/workingandworklesshouseholdstablepemploymentratesofpeoplebyparentalstatus

[16] http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/september2016

exception rules (usually) require 24 hours of work each week for couples with children, of which one person from the couple must work at least 16 hours.

Disability

Vulnerable claimants under the age of 25 for whom work is not currently a viable option are protected and exempted from the cap. Households where someone (including a child or qualifying young person) is entitled to Disability Living Allowance (or its replacement, Personal Independence Payment), or where either member of a couple is entitled to Attendance Allowance, Industrial Injuries Benefit, the Limited Capability for Work Related Activity element of Universal Credit or the support component of an Employment and Support Allowance are exempt from the benefit cap.

Those with a health condition that don't receive any of the exempt benefits may be adversely impacted by the new earnings exception threshold in that, if they are under the age of 25, they may find it more difficult to work the additional hours at minimum wage in order to exempt themselves from the cap. However, numbers affected are likely to be very small and additional support may be available to them (including employment support and Discretionary Housing Payments).

Any household that includes a claimant entitled to the Carer element of UC will be exempt from the benefit cap. This fits in with the wider Government strategy to do more to support and invest in carers.

Ethnicity

We cannot precisely quantify the number of households affected by the change to the earnings exception where a member is from an ethnic minority as the recording of ethnicity in benefits administrative data is not sufficiently reliable to be used. A large proportion of those affected by the benefit cap are larger families. Those from cultural backgrounds with a high prevalence of large families and households from certain ethnic minorities that tend to have a higher proportion of large families are more likely to be affected. Around 22% of the caseload is also expected to be in London which, relative to the rest of the country, has a more ethnically diverse population. An indicative proportion can be taken from the Ipsos MORI survey of affected claimants (with the cap set at the previous level of £26,000) which found that 37% of households sampled in the cohort were from a black or minority ethnic background; however, the new cap will, relatively, have a greater proportion of its caseload outside London, so this finding needs to be treated with some caution.

Sexual orientation

The Department does not hold information on its administrative systems on the sexual orientation of claimants. The Government does not envisage that the new earnings exception threshold will have any particular advantage or adverse impact on any group of claimants protected on these grounds.

Pregnancy and maternity

The Department only holds information on pregnancy and maternity on its administrative systems where it is the primary reason for incapacity. It cannot therefore be used to accurately assess the equality impacts. Pregnant women and new mothers, particularly single mothers, may find it harder to increase their work hours in order to meet the higher earnings exception threshold (although in some cases, these individuals may be exempt from the benefit cap due to application of the grace period). Additional support, including employment support and Discretionary Housing Payments, is available to them to help mitigate this.

Religion or belief

The Department does not hold information on its administrative systems on the religion or beliefs of claimants. There may be some religions with a high prevalence of large families that are more likely to be affected by the benefit cap. However, the Government does not envisage that the new earnings exception threshold will have any particular advantage or adverse impact on any group of claimants protected on these grounds.

Gender reassignment

The Department does not hold information on its administrative systems on gender reassignment. The Government does not envisage that the new earnings exception threshold will have any particular advantage or adverse impact on any group of claimants protected on these grounds.

Marriage and civil partnership

The Department does not hold information on its administrative systems on the marital or civil partnership status of claimants. While the equality impact cannot be accurately assessed, there is a potential advantage for married couples or civil partners under the benefit cap earnings exception in UC, as they may share the hours between them to meet the earnings threshold, and so are more likely than a single claimant to exempt themselves from the cap. This also means they are more likely to be able to meet the new earnings threshold than single households and for those that do earn below the NLW the additional 2 hours of work required per week compared to those on the NLW can be shared between them. The Government does not envisage that the new earnings exception threshold will have any particular adverse impact on any group of claimants protected on these grounds.

What are we doing in mitigation?

DWP has a number of measures in place to ease the transition for families affected by the amendment to the earnings exception threshold. Our strategy is based on the principle of providing mainstream services that are flexible enough at the point of delivery to deal with the needs of individual customers. Most of the obstacles to labour market participation faced by our customers are very similar, whatever their background. Barriers that may exist – such as lack of confidence, poor educational achievement, low skill levels, childcare or disabilities – are universal. Where impediments are specific to a person's ethnic origins, such as lack of fluency in English, these can be addressed within the mainstream programmes. Additional childcare provided will better support households with children to make the decision to move into work.

There is evidence to show behavioural change prior to implementation for the £26,000 level of the benefit cap:

- Of those who entered work prior to implementation: over three-in-five people (62%) of those who took action said they looked for a job after being notified they would be affected by the benefit cap.
- Around 14% of households in scope for the cap in May 2012 (a year before implementation) moved into work after a year compared to around 11% for similar uncapped households. After controlling for a range of observable characteristics, those in scope for the cap were 1.5 percentage points (14%) more likely to enter employment after a year compared to similar uncapped households.

Past behavioural change in response to the benefit cap suggests that it is likely that further movement into work will occur when households become notified that the new earnings exception threshold could mean they will become capped unless they increase their work hours.

Employment support

There is a wide range of help and employment support currently offered by and available through Jobcentre Plus and its partners, such as the Work Programme and Work Choice, and through Local Authorities. The Department has liaised extensively with Local Authorities to develop support offers which cover: employment support to consider and find work; budgeting support; housing support and advice, including applications for Discretionary Housing Payments.

Childcare costs

The Government currently provides 15 hours of free childcare during term time for all three and four year olds and for the most disadvantaged two year olds. From September 2017 onwards, this free entitlement will be doubled to 30 hours a week for working parents of three and four year olds, worth around £5,000 a year per child. The Government have implemented this extension of free hours early in eight local areas from September 2016. Additionally, since April 2016, families receiving UC can recover 85% of eligible childcare costs, up to a limit of £646.35 per month for one child and £1,108.04 per month for two or more children, where lone parents or where both parents are in work, regardless of the number of hours they work.

Discretionary Housing Payments (DHPs)

DHPs make an important contribution to managing the transition for various customers whilst they make the necessary changes to adapt to the application of the benefit cap.[17] Resources are available to provide short-term, temporary relief to families who may face a variety of challenges. DHPs can also help families manage their move into more appropriate accommodation. Each case is considered on its own merits rather than on predefined criteria. In 2013/14 £65 million was allocated to support those impacted by the benefit cap, with £45 million in 2014/15, £25 million in 2015/16 and £40m in 2016/17.

A total of £870m in Discretionary Housing Payments is being provided over the next 5 years (from 2016/17) which are available to vulnerable people who need extra support.

In 2015/16, benefit cap DHP expenditure was around £14m, 71% of the allocation to the 319 Local Authorities that returned data on benefit cap expenditure.[18]

Decision making

In respect of the new, higher benefit cap UC earnings exception threshold, we consider that any potentially indirectly discriminatory impacts on certain protected groups are proportionate and/or justified, as:

- many of the impacts will be mitigated (as described above); and
- the new earnings exception threshold strengthens work incentives and achieves fairness for taxpayers while also ensuring there is a reasonable safety net of support for the most vulnerable.

[17] DHPs provide claimants with further financial assistance, in addition to any welfare benefits, when an LA considers that help with housing costs is required.
[18] https://www.gov.uk/government/statistics/use-of-discretionary-housing-payments-financial-year-201516

Monitoring and evaluation

We are committed to monitoring the impacts of our policies and to establishing the extent to which they have met their objectives and are therefore developing plans to evaluate the impact of the new, lower, tiered benefit cap. The evaluation will aim to better understand claimants' behaviours and attitudes to looking for work; how local services have been affected by the change in the cap and how organisations such as local authorities are working with capped claimants. Findings from this evaluation for UC claimants will be based on this new earnings exception level introduced in April 2017.

Sign off

James Wolfe

Deputy Director, Universal Credit Policy Division

Title: Welfare Reform and Work Act: Draft Impact Assessment for The Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017 **Lead department or agency:** Department for Work and Pensions **Other departments or agencies:** Local Authorities	**Impact Assessment (IA)** **Date:** November 2016 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** workingage.benefitsstrategy@dwp.gsi.gov.uk

Summary: Intervention and Options

RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
	N/A	N/A	No	NA

What is the problem under consideration? Why is government intervention necessary?

The benefit cap operating under Housing Benefit (HB) has been shown to be successful with more households looking for and finding work. Currently, in Universal Credit (UC), claimants may qualify for the in-work exception to the benefit cap in a given assessment period if their earnings in that period exceed the earnings threshold of £430 per month. This amount was originally fixed at the level of earnings from 16 hours of work per week at the 2012 National Minimum Wage (NMW) for those aged 21 and over. The fixed benefit cap earnings threshold of £430 in UC means that, as the NMW rises and the National Living Wage (NLW) is introduced, it has become and will get progressively easier for claimants in UC to become exempt from the benefit cap, reducing work incentives.

What are the policy objectives and the intended effects?

The objectives of the amendment are to ensure that the strength of the work incentives are not eroded over time and that in-work progression and sustained employment is encouraged whilst ensuring the most vulnerable are supported. Without an amendment to the earnings exception it will become progressively easier for claimants to become exempt from the cap by working fewer hours. A new, progressively higher earnings exception threshold that better reflects growth in minimum wages, along with the work incentives of Universal Credit (UC), will encourage some claimants to work and earn more in order to become exempt from the cap.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

We considered 5 options: (1) Replace the fixed benefit cap earnings exception threshold in UC with a formula based on NLW for all claimants; (2) Replace the fixed benefit cap earnings exception threshold in UC with a formula based on the rate of the NLW or the NMW applicable to the claimant; (3) Align the benefit cap earnings exception threshold in UC with the existing exceptions rules in WTC; (4) Align the benefit cap earnings exception threshold in UC with other UC thresholds (5) Do nothing.
Option 1 was chosen because a single threshold is easier for claimants to understand; is consistent with the intention that UC will provide a simplified benefit system for claimants and administrators; ensures the work incentives of the benefit cap are maintained and is administratively simpler to implement.

Will the policy be reviewed? **If applicable, set review date:**					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** No	**< 20** No	**Small** No	**Medium** No	**Large** No
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

3.I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: ______________________ Date: ____/2016____

Summary: Analysis & Evidence

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 16/17	PV Base Year 16/17	Time Period Years 5	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price)	Yea	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate			£1m	

Description and scale of key monetised costs by 'main affected groups'

Households receiving the NLW are unlikely to be affected by the proposed amendment to the earnings exception threshold as it is likely that many of those in work are working at least 16 hours a week anyway due to the design of labour market contracts. However, a small number of households may fall in between the current (£430 per month) and proposed new threshold level (estimated to increase to around £528 per month in 2017/18 based on OBR Budget 2016 forecasts[19]) and therefore may no longer be exempt from the cap without increasing their earnings. The overall numbers directly impacted are difficult to reliably quantify, but are expected to be small – around 100 households affected in 2017/18, 500 in 2018/19, 1,100 in 2019/20 and 1,200 by 2020/21 as the UC caseload increases.

Other key non-monetised costs by 'main affected groups'

These costs do not include the operational cost of implementing the change or costs of any additi take-up of support from claimants affected by the change to the earnings exception.

BENEFITS (£m)	Total Transition (Constant Price)	Yea	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate			£1m	

Description and scale of key monetised benefits by 'main affected groups'

This measure is expected to make small fiscal savings as households who would have moved into work at the minimum requirement to meet the existing earnings exception threshold may now be encouraged to work an additional few hours per week to obtain the exception. Those earning the NMW for 21 to 24 year olds would need to work 18 hours per week under the proposed earnings exception (2 additional hours per week compared to those on the NLW). This would result in them remaining exempt from the cap and small savings would arise due to the decrease to the UC award from increased earnings. This is difficult to reliably quantify but it is estimated that savings to the exchequer will be negligible initially but increasing as UC rolls out, to around £1m per year in 2020/21.

Other key non-monetised benefits by 'main affected groups'

This measure aims to maintain the benefit cap policy intent and the work incentives already in place leading to long term, positive, intergenerational, effects from work. These estimates assume those affected by the change increase their earnings to remain exempt from the cap; however some households may either not respond or they may be discouraged from moving into work altogether, in which case slightly higher savings would then arise from the cap being applied where it would not have been previously, though this is not the aim of the policy.

[19] http://budgetresponsibility.org.uk/docs/dlm_uploads/Economy_supplementary_tables_March_2016-4.xlsx

Key assumptions/sensitivities/risks Discount rate (%)	3.5%
Estimates assume that those that do choose to work do so for at least 16 hours per week and therefore those on the NLW would be exempt under both the current and the proposed threshold. Estimates of those earning below the NLW are based on uncertain assumptions around the proportion of capped households who are under 25 years old and expected to be entitled to housing support in UC (some claimants aged 18-21 will no longer be automatically entitled to housing support) and the proportion of those expected to be in work. The number earning below the NLW is estimated based on modelling suggesting around 6.5% of the lower capped caseload are under 25 and expected to be entitled to housing support in UC and assuming around 30% of these are in work at the NMW for those aged 21-24. It is assumed that households affected choose to work the 2 additional hours (compared to those on the NLW) required to become, or remain, exempt from the cap.	

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies
Costs: N/A	**Benefits:** N/A	**Net:** N/A	No	NA

Introduction

This Impact Assessment examines the replacement of the fixed benefit cap UC earnings exception threshold with a formula-based threshold of gross earnings equivalent to working 16 hours per week at the National Living Wage (NLW).

The current policy

From April 2013 the Government introduced a cap on the total amount of benefit that working-age people can receive. In Universal Credit (UC), claimants are exempt from the benefit cap when the individual, or a couple jointly, earns £430 or more per monthly assessment period, regardless of household type. This exception reflects the main aim of the policy, which is to increase the incentive to work. A fixed value was originally chosen because it was thought easier for claimants and staff to understand. The £430 figure is based on gross earnings from 16 hours of work per week paid at the National Minimum Wage (NMW) for those aged 21 years of age or older (at the 2012 rate of £6.19 per hour).

There is a 'grace period' whereby the benefit cap will not be applied for those with a consistent work history whose employment has ended or earnings have dropped below the earnings exception threshold level. The grace period will apply for 9 months from the end of their employment or reduction in earnings. If applicable, the grace period will remain in place irrespective of any reportable change of circumstances made by the claimant for the remainder of its duration. This provides a fixed period of protection during which they can adapt to their position and look for alternative employment. For UC claimants, a consistent work history means that in each of the 12 months prior to the end of their employment or reduction in earnings, the claimant, or couple, if the claimant is part of a couple, was earning at or more than the earnings exception threshold.

To protect those who are unable to work, households in receipt of Disability Living Allowance, Personal Independence Payment, Attendance Allowance, the Limited Capability for Work Related Activity element of UC or the support component of an employment and support allowance, Industrial Injuries Benefits (and equivalent payments made as part of a War Disablement Pension or the Armed Forces Compensation Scheme) are exempt from the benefit cap. From November 2016, those entitled to Carer's Allowance, the Carer element of UC, or in receipt of Guardian's Allowance are also exempt.

What policy change are we making and why?

From 1st April 2017 the fixed benefit cap earnings exception threshold of £430 in UC will be replaced with a formula based on the National Living Wage (NLW) for all claimants (net earnings equivalent to working 16 hours per week at the NLW). The NLW is the minimum wage for individuals aged 25 years and over, while the National Minimum Wage (NMW) is for younger workers and has different rates for apprentices, under 18s, 18-20 year olds and 21-24 year olds. The NMW rates change every October and the NLW rate changes each April. After linking the benefit cap earnings exception threshold to the NLW, the threshold will change automatically upon any change to the NLW - based on OBR's Budget 2016 forecast of the NLW the earnings exception would be estimated to increase to around £528 in 2017/18, £560 in 2018/19, £591 in 2019/20 and £626 in 2020/21. Changes to the benefit cap earnings exception threshold will not retrospectively affect any benefit cap grace period entitlement already accrued.

Why is the earnings exception threshold being changed?

A key policy aim for the benefit cap is to increase incentives to work. The fixed benefit cap earnings exception threshold of £430 in UC means that, as the NMW and the NLW rise, UC claimants become exempt from the benefit cap on the basis of fewer and fewer hours worked over time and therefore may choose to work fewer hours. A threshold based on a formula using the NLW ensures that it will maintain the current incentives on the amount of hours claimants work to exempt themselves from the cap and also ensures that the work incentive continues. Amending the earnings exception threshold to ensure it does not become easier for claimants to exempt themselves from the cap is also consistent with the benefit cap's aim to ensure fairness for taxpayers.

Additionally, the earnings exception policy is designed to encourage sustained employment. The new, higher earnings exception threshold, along with the work incentives of UC, will encourage some claimants to work and earn more. In particular, for those claimants who lose large amounts of benefit by being capped and who also earn just below the earnings threshold, the policy provides a strong incentive to increase their hours in order to become or remain exempt from the cap.

Finally, the new threshold is based on net earnings at the NLW rather than on gross earnings at the NMW, which was the basis of the £430 threshold. Considering a claimant's net, rather than gross, earned income is consistent with the approach in UC more widely, and means the new threshold is fairer in principle than the £430 threshold was at the time it was introduced.

Options for policy change that have been considered

We considered 4 alternative options for the benefit cap earnings threshold exception:

(1) Replacing the fixed benefit cap earnings exception threshold in UC with a formula based on the rate of the NLW or NMW applicable to the claimant would increase the threshold automatically upon the uprating of the NMW and NLW and place an equal earnings expectation on claimants aged under and over 25. However, under this option the rules (and incentive effects) in UC and the current benefits system will not be aligned and additionally, this option is operationally more complex than the preferred option. Under this option, there could be up to five different earnings exception thresholds: one based on the NLW for those aged 25 and over, and then a separate threshold for each of the four NMW categories (21-24, 18-20, under 18, apprentice). This would be harder to administer and more difficult for claimants to understand.

(2) Aligning the benefit cap earnings exception threshold in UC with the existing exceptions rules in WTC would ensure that rules (and incentive effects) for the benefit cap operating under UC and those under Housing Benefit are aligned. Under Housing Benefit claimants are exempt from the benefit cap if they qualify for Working Tax Credits – to qualify for these a claimant must be over 25 and work a certain number of hours (rather than earn a certain amount). The hours required under WTC are shown in the table below - this would be a lot more complex than the preferred option and inconsistent with UC which uses earnings rather than hours worked as a measure of employment.

Working Tax Credit eligibility	Hours a week
Aged 25 to 59	At least 30 hours
Aged 60 or over	At least 16 hours
Disabled	At least 16 hours
Single with 1 or more children	At least 16 hours
Couple with 1 or more children	Usually, at least 24 hours between the couple (with 1 working at least 16 hours)

(3) Aligning the benefit cap earnings exception threshold in UC with other UC thresholds like the:

a) Administrative Earnings Threshold (AET) which would set the earnings exception threshold at £338 for single people (lower than the current exception), and £541 for couples, reducing work incentives for single claimants;

b) Conditionality Earnings Threshold (CET) which is based on the number of hours a claimant is expected to work depending on the individual's circumstances. The discretionary aspects of personalising the claimant's CET could raise issues, and this option is more complex than the preferred option and options 1 and 2. Additionally, CETs are set by work coaches; having work coaches also set the benefit cap earnings exception risks detracting from their primary focus of supporting claimants back into work.

(4) Doing nothing will mean the exception would not accord with the original policy intent, and the rules and work incentive effects of the benefit cap operating under UC and those under Housing Benefit will not be aligned; UC claimants will find it progressively easier to exempt themselves from the cap compared to Housing Benefit claimants.

Estimating costs and benefits of the policy change

The objective of the policy amendment is to ensure that the strength of the work incentives is not eroded over time and in-work progression is encouraged whilst still ensuring the most vulnerable are supported. The impacts presented in this assessment are based on the assumption that those that do choose to work do so for at least 16 hours per week and therefore those on the NLW would be exempt under both the current and the proposed threshold. Those affected will therefore be those earning below the NLW and it is assumed that they will choose to increase earnings through working a few additional hours in order to remain exempt from the cap.

Behavioural change

Under Housing Benefit, households in work become exempt from the benefit cap through entitlement to Working Tax Credit (WTC). Evidence (as is the case for WTC in general) shows that households tend to work at the minimum level to be entitled to WTC (around 16 hours at NMW) and part of the reason may be because there is very little incentive to work additional hours.

It is assumed that households who earn between the current threshold (£430 per month) and the new threshold level would increase their earnings in response to the new threshold. Those earning the NLW aren't assumed to fall between the two thresholds as most are likely to be working at least 16 hours per week anyway, so would meet the new threshold level, whereas those under 25 on the NMW would be required to work around 18 hours per week in order to become or remain exempt. For many of those affected there will be significant financial incentives to working an additional 2 hours (compared to those on the NLW) in order to become exempt from the cap. However, some households may either not respond or they may be discouraged from moving into work altogether. Households that don't increase their earnings to remain exempt would then face a financial reduction due to the cap being applied where it wouldn't have been previously, though this is not the aim of the policy.

Details of methodology

The estimated benefit cap caseload under Housing Benefit is based on commissioned datasets for use in the benefit cap evaluation, with the methodology approved by the Institute for Fiscal Studies; this data, whilst derived using slightly different methodology, very closely mirrors published Official Statistics (for further detail refer to Chapter 2 in Benefit Cap: Analysis of outcomes of capped claimants, published by DWP in December 2014).[20] This is administrative data of total household benefit income sourced from DWP and HMRC systems including the Single Housing Benefit Extract. These estimates are used to estimate the characteristics of capped households.

The UC roll-out schedule has been used to estimate the potential number of UC benefit cap claims over the next 5 years. Due to limited outturn data in UC, there is a degree of uncertainty in the forecasts.

OBR's Budget 2016 forecasts of NLW and NMW are used to estimate the change to the earnings exception threshold and the impact over time. Estimates assume that those that do choose to work do so for at least 16 hours per week and therefore only those earning below the NLW are affected. Estimates of those earning below the NLW are based on uncertain assumptions around the proportion of capped households who are under 25 years old and expected to be entitled to housing support in UC (some claimants aged 18-21 will no longer be automatically entitled to housing support) and the proportion of those expected to be in work. It is then assumed that all of those affected increase their hours to remain exempt from the cap causing a small reduction to their UC award through the earnings taper (the UC award is decreased by 65p for every £1 earned above the work allowance).

Savings

This measure is expected to make small fiscal savings as households who would have moved into work at the minimum requirement may now be encouraged to work an additional 2 hours (compared to those on the NLW) to obtain the exception. This would result in them remaining exempt from the cap but small savings would arise due to the UC earnings taper which reduces the award by 65p for every additional £1 earned above the work allowance. The additional earnings have been taken to be the difference between working 16 hours at the NMW and 16 hours at the NLW (the proposed earnings exception threshold). The

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[20] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385970/benefit-cap-analysis-of-_outcomes-of-capped-claimants.pdf

number of capped households this will affect is difficult to reliably quantify but it is estimated that savings will be negligible but increasing slightly as UC rolls to around £1m per year in 2020/21.

This measure aims to maintain the policy intent and the work incentives already in place leading to long term, positive, intergenerational, effects from work. These estimates assume those affected by the change increase their earnings to remain exempt from the cap, however some households may either not respond or they may be discouraged from moving into work altogether in which case slightly higher savings would then arise from the cap being applied where it wouldn't have been previously, though this is not the aim of the policy. For example, if all those assumed to be affected by the change did not increase their earnings then savings would be around £4m per year by 2020/21 rather than £1m assuming an average cap amount of around £58 per week from 2017/18 applies.

Caseload

For many households, the introduction of the NLW is likely to have meant their earnings continue to align with the proposed earning exception threshold and it is likely that claimants who move into work are likely to work 16 hours or more rather than fewer than 16 hours due to the design of labour market contracts. This means households on the NLW would be exempt from the benefit cap under both the current and new exception thresholds. However, those under 25 may receive the NMW rather than the NLW and therefore may fall in between the current (£430 per month) and new threshold levels even when working 16 hours per week. Some of these households may qualify for the grace period when the policy is first introduced as changes to the benefit cap earnings exception threshold will not retrospectively affect any benefit cap grace period entitlement already accrued.

The table below shows that under the current threshold the hours of work per week required to become exempt would reduce to 12 hours for those earning the NLW and 13 hours for those earning the NMW for 21-24 year olds by 2020/21. The proposed earnings threshold brings this requirement back up to 16 hours for those on the NLW and 19 hours for those on the NMW for 21-24 year olds by 2020/21.

Table 1: Hours work required to meet the current and proposed earnings exception

Year	**Current Earnings Exception**			**Proposed Earnings Exception**		
	Monthly earnings threshold	Hours per week at NLW	Hours per week at NMW (21-24)	Forecast monthly earnings threshold	Hours per week at NLW	Hours per week at NMW (21-24)
2017/18	£430	14	14	£528	16	18
2018/19	£430	13	14	£560	16	18
2019/21	£430	12	13	£591	16	18
2020/21	£430	12	13	£626	16	19

Notes:

3. Figures are rounded up to the nearest hour per week.
4. Forecasts of the proposed earnings threshold are based on OBR Budget 2016 forecasts of NLW and NMW for 21-24 year olds.[21]

It is difficult to reliably predict the number that will have earnings between the two threshold levels; the estimates assume 6.5% of the UC capped caseload will be under 25 years old and expected to be entitled to housing support in UC (some claimants aged 18-21 will no

[21] http://budgetresponsibility.org.uk/docs/dlm_uploads/Economy_supplementary_tables_March_2016-4.xlsx

longer be automatically entitled to housing support) and around 30% of these will be working 16 hours at the National Minimum Wage and therefore affected by the change. This is based on:

- modelling that suggests around 6.5% of the lower capped caseload are under 25 years old and expected to be entitled to housing support in UC so may be capped in UC and be on the NMW if they did work
- Evidence from the previous benefit cap suggests around 30% of all those capped since April 2013 have moved into work at 16 hours or more (measured by receipt of Working Tax Credits).[22]

This results in around 100 households affected in 2017/18, 500 in 2018/19, 1,100 in 2019/20 and 1,200 by 2020/21 as the UC caseload increases.

It is assumed those affected by the change will work a few additional hours to become exempt, meaning they will be financially better off than under the current policy as they will get to keep 35p of every additional £1 they earn under UC and will remain exempt from the benefit cap.

Impacts of the policy change

All impacts are shown for 2017/18 as the policy is introduced from April 2017. Impacts are subject to the same sensitivities as noted for the savings estimates.

This document records the analysis undertaken by the Department to enable Ministers to fulfil the requirements placed on them by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010.

The PSED requires the Minister to pay due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act;

- advance equality of opportunity between people who share a protected characteristic and those who do not; and

- foster good relations between people who share a protected characteristic and those who do not.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation and marriage and civil partnership.

Below is a full discussion of the expected impacts of the proposed amendment of the benefit cap earnings exception in UC on certain groups with protected characteristics. When you are making your decision as regards to this amendment, you are required by law to have regard to the PSED. In light of the impacts described below and their justifications, our view is that the proposed amendment does not result in, and/or support the elimination of, unlawful direct or indirect discrimination of groups of people who share a protected characteristic. The amendment is not expected to have any effect on groups with protected characteristics other than those identified below, nor does it engage any other aspects of the PSED.

Age

Modelling suggests that around 6.5% of capped households are expected to be under 25 years old and expected to be entitled to housing support in UC (some claimants aged 18-21 will no longer be automatically entitled to housing support). The main reason this proportion

[22] https://www.gov.uk/government/collections/benefit-cap-statistics

is low is because those under 25 generally receive less in benefit payments as benefit rates are lower than for those aged 25 and over and they are likely to have fewer children at this age.

The change to the earnings exception threshold, compared to the current £430 threshold, means those aged under 25 (and any claimants who are in the first year of an apprenticeship) have a greater minimum number of hours requirement to meet the new threshold. This is because the NLW applies only to those aged 25 and over (and apprentices who have completed their first year). However, age-based differences already exist in the current benefit cap policy under UC (those under 21 have different NMW rates) and under Housing Benefit, where claimants without children have to be aged 25 or over to be eligible for Working Tax Credits and, therefore, are not able to exempt themselves from the benefit cap via any earnings exception.

The difference in the minimum number of hours those aged under 25 must work compared to those aged 25 or over is relatively small, around an additional 2 hours per week in 2017/18 increasing to 3 hours by 2020/21 as the NLW is expected to be uprated by more than the NMW over time. This is based on OBR Budget 2016 estimates of NLW and NMW rates over time but the actual rates may differ and so the additional hours under-25s must work at minimum wage to reach the earnings exception threshold could change. The additional burden placed on those under 25 is not disproportionate, however. Claimants under the age of 25 without caring responsibilities or health conditions should be able to work these extra hours and exempt themselves from the cap. These claimants are also likely to be in the All Work Related Requirements conditionality group of UC and so receiving support through this group to increase their earnings to the Conditional Earnings Threshold level, which is set on an individual basis but is usually 35 hours of work per week at the NMW. Additionally, early evidence from the Annual Survey of Hours and Earnings suggests that many employers might be paying younger workers the NLW even though they are not legally required to do so: around 10% of full-time 16- to 24-year-olds and 15% of part-time 16- to 24-year-olds appear to be getting paid at around the £7.20 NLW in April 2016.[23] In such cases, the work requirement to meet the earnings exception threshold would be the same for those under and over 25 years of age.

The numbers of claimants under 25 impacted by this change to the threshold are expected to be low - 6.5% of those affected by the lower cap are expected to be under 25 years old and entitled to housing support in UC and based on evidence from the previous cap around 30% of these may be in work. This means that around 100 under 25's may be impacted in 2017/18 increasing to around 1,200 by 2020/21.

Gender

Under the new benefit cap levels, around 66% of claimants who are likely to have their benefit reduced by the cap will be single females but only around 13% will be single men. Most of the single women affected are likely to be lone parents: this is because we expect the majority of households affected by the benefit cap to have children. Around 61% (54,000) of the caseload are estimated to be female lone parents.

Given that the new earnings exception threshold places a slightly higher burden on those aged under 25, it is acknowledged that female lone parents under the age of 25 may be adversely impacted by the amended earnings threshold – due to childcare responsibilities, these claimants may find it more difficult to work the additional hours at minimum wage in order to exempt themselves from the cap. However, the numbers of such claimants will be

[23] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/analysisofthedistributionofearningsacrosstheukusingashedata/2016

small: it is estimated that around 3.8% of the lower benefit cap caseload under UC will be under 25 years old and lone parents - the vast majority of these will be female. However, of these the new earnings exception threshold will only affect those in work but working less than 18 hours per week, estimated to be around 30% of this group based on the proportion of all households affected by the benefit cap since April 2013 who are in work.

Additional support may also be available, including employment support, childcare assistance and Discretionary Housing Payments, to assist them to increase their work hours. While lead carers of children under 3 years old have minimal work conditionality requirements, support to get into work is available to them on a voluntary basis. These households face the same decisions as working households do with statistics for April to June 2016 showing that 66.5% of lone parents were in employment in the UK[24] and 69.7% of females were in employment between June and August 2016.[25] The latest statistics also show that since the benefit cap was introduced, 23,500 households have moved into work, of which 12,600 (54%) were lone parents.

The current Working Tax Credits exception rules require 16 hours of work each week for lone parents. This proposed amendment to the earnings exception in UC, subject to the points made above in respect of age, is in line with the position under Housing Benefit.

For couples, the earnings exception policy in UC is more favourable than the position under Housing Benefit. Around 22% of the caseload are estimated to be couples, who would require just 16 hours (shared between both partners) of work a week to be exempt from the cap (assuming they are both aged 25 or older) whereas the current Working Tax Credits exception rules (usually) require 24 hours of work each week for couples with children, of which one person from the couple must work at least 16 hours.

Disability

Vulnerable claimants under the age of 25 for whom work is not currently a viable option are protected and exempted from the cap. Households where someone (including a child or qualifying young person) is entitled to Disability Living Allowance (or its replacement, Personal Independence Payment), or where either member of a couple is entitled to Attendance Allowance, Industrial Injuries Benefit the Limited Capability for Work Related Activity element of Universal Credit or the support component of an Employment and Support Allowance are exempt from the benefit cap.

Those with a health condition that don't receive any of the exempt benefits may be adversely impacted by the new earnings exception threshold in that, if they are under the age of 25, they may find it more difficult to work the additional hours at minimum wage in order to exempt themselves from the cap. However, numbers affected are likely to be very small and additional support may be available to them (including employment support and Discretionary Housing Payments).

Any household that includes a claimant entitled to the Carer element of UC will be exempt from the benefit cap. This fits in with the wider Government strategy to do more to support and invest in carers.

[24] http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/workingandworklesshouseholdstablepemploymentratesofpeoplebyparentalstatus
[25] http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/september2016

Ethnicity

We cannot precisely quantify the number of households affected by the change to the earnings exception where a member is from an ethnic minority as the recording of ethnicity in benefits administrative data is not sufficiently reliable to be used. A large proportion of those affected by the benefit cap are larger families. Those from cultural backgrounds with a high prevalence of large families and households from certain ethnic minorities that tend to have a higher proportion of large families are more likely to be affected. Around 22% of the caseload is also expected to be in London which, relative to the rest of the country, has a more ethnically diverse population. An indicative proportion can be taken from the Ipsos MORI survey of affected claimants (with the cap set at the previous level of £26,000) which found that 37% of households sampled in the cohort were from a black or minority ethnic background; however, the new cap will, relatively, have a greater proportion of its caseload outside London, so this finding needs to be treated with some caution.

Sexual orientation

The Department does not hold information on its administrative systems on the sexual orientation of claimants. The Government does not envisage that the new earnings exception threshold will have any particular advantage or adverse impact on any group of claimants protected on these grounds.

Pregnancy and maternity

The Department only holds information on pregnancy and maternity on its administrative systems where it is the primary reason for incapacity. It cannot therefore be used to accurately assess the equality impacts. Pregnant women and new mothers, particularly single mothers, may find it harder to increase their work hours in order to meet the higher earnings exception threshold (although in some cases, these individuals may be exempt from the benefit cap due to application of the grace period). Additional support, including employment support and Discretionary Housing Payments, is available to them to help mitigate this.

Religion or belief

The Department does not hold information on its administrative systems on the religion or beliefs of claimants. There may be some religions with a high prevalence of large families that are more likely to be affected by the benefit cap. However, the Government does not envisage that the new earnings exception threshold will have any particular advantage or adverse impact on any group of claimants protected on these grounds.

Gender reassignment

The Department does not hold information on its administrative systems on gender reassignment. The Government does not envisage that the new earnings exception threshold will have any particular advantage or adverse impact on any group of claimants protected on these grounds.

Marriage and civil partnership

The Department does not hold information on its administrative systems on the marital or civil partnership status of claimants. While the equality impact cannot be accurately assessed, there is a potential advantage for married couples or civil partners under the benefit cap earnings exception in UC, as they may share the hours between them to meet the earnings threshold, and so are more likely than a single claimant to exempt themselves from the cap. This also means they are more likely to be able to meet the new earnings threshold than single households and for those that do earn below the NLW the additional 2 hours of work required per week compared to those on the NLW can be shared between them. The Government does not envisage that the new earnings exception threshold will have any particular adverse impact on any group of claimants protected on these grounds.

What are we doing in mitigation?

DWP has a number of measures in place to ease the transition for families affected by the amendment to the earnings exception threshold. Our strategy is based on the principle of providing mainstream services that are flexible enough at the point of delivery to deal with the needs of individual customers. Most of the obstacles to labour market participation faced by our customers are very similar, whatever their background. Barriers that may exist – such as lack of confidence, poor educational achievement, low skill levels, childcare or disabilities – are universal. Where impediments are specific to a person's ethnic origins, such as lack of fluency in English, these can be addressed within the mainstream programmes. Additional childcare provided will better support households with children to make the decision to move into work.

Employment support

There is a wide range of help and employment support currently offered by and available through Jobcentre Plus and its partners, such as the Work Programme and Work Choice, and through Local Authorities. The Department has liaised extensively with Local Authorities to develop support offers which cover: employment support to consider and find work; budgeting support; housing support and advice, including applications for Discretionary Housing Payments.

Childcare costs

The Government currently provides 15 hours of free childcare during term time for all three and four year olds and for the most disadvantaged two year olds. From September 2017 onwards, this free entitlement will be doubled to 30 hours a week for working parents of three and four year olds, worth around £5,000 a year per child. The Government have implemented this extension of free hours early in some local areas from September 2016. Additionally, since April 2016, families receiving UC can recover 85% of eligible childcare costs, up to a limit of £646.35 per month for one child and £1,108.04 per month for two or more children, where lone parents or where both parents are in work, regardless of the number of hours they work.

Discretionary Housing Payments (DHPs)

DHPs make an important contribution to managing the transition for various customers whilst they make the necessary changes to adapt to the application of the benefit cap.[26] Resources are available to provide short-term, temporary relief to families who may face a variety of challenges. DHPs can also help families manage their move into more appropriate accommodation. Each case is considered on its own merits rather than on predefined criteria. In 2013/14 £65 million was allocated to support those impacted by the benefit cap, with £45 million in 2014/15, £25 million in 2015/16 and £40m in 2016/17.

[26] DHPs provide claimants with further financial assistance, in addition to any welfare benefits, when an LA considers that help with housing costs is required.

A total of £870m in Discretionary Housing Payments is being provided over the next 5 years (from 2016/17) which are available to vulnerable people who need extra support.

In 2015/16, benefit cap DHP expenditure was around £14m, 71% of the allocation to the 319 Local Authorities that returned data on benefit cap expenditure.[27]

Decision making

In respect of the new, higher benefit cap UC earnings exception threshold, we consider that any potentially indirectly discriminatory impacts on certain protected groups are proportionate and/or justified, as:

- many of the impacts will be mitigated (as described above); and
- the new earnings exception threshold strengthens work incentives and achieves fairness for taxpayers while also ensuring there is a reasonable safety net of support for the most vulnerable.

Monitoring and evaluation

We are committed to monitoring the impacts of our policies and to establishing the extent to which they have met their objectives and are therefore developing plans to evaluate the impact of the new, lower, tiered benefit cap. The evaluation will aim to better understand claimants' behaviours and attitudes to looking for work; how local services have been affected by the change in the cap and how organisations such as local authorities are working with capped claimants. Findings from this evaluation for UC claimants will be based on this new earnings exception level introduced in April 2017.

[27] https://www.gov.uk/government/statistics/use-of-discretionary-housing-payments-financial-year-201516

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