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STATUTORY RULES OF NORTHERN IRELAND

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**2019 No. 152**

**SOCIAL SECURITY**

**The Universal Credit (Managed Migration and Miscellaneous Amendments) Regulations (Northern Ireland) 2019**

*Made* - - - - *22nd July 2019*

*Laid before Parliament* *23rd July 2019*

*Coming into operation in accordance with Regulation 1*

The Secretary of State makes the following Regulations in exercise of the powers conferred by Articles 9(2), 48(1) and (2) of, and paragraph 4(1), (3)(a) and (4) of Schedule 1 and paragraphs 1(1) and 4(1), (2)(a), (c) and (d) and (3) of Schedule 6 to, the Welfare Reform (Northern Ireland) Order 2015<sup>(1)</sup>

Those powers are exercisable by the Secretary of State by virtue of Article 4(1)(a) of the Welfare Reform (Northern Ireland) Order 2015.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Universal Credit (Managed Migration and Miscellaneous Amendments) Regulations (Northern Ireland) 2019.

(2) Regulation 2 and this regulation come into force on 24th July 2019.

(3) Regulations 3 and 4 come into force on 22nd July 2020.

(4) Regulation 5 comes into force on 23rd September 2020.

(5) Regulation 6 comes into force on 27th January 2021.

**Amendment of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016: managed migration (including provision for persons previously entitled to a severe disability premium)**

2.—(1) The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016<sup>(2)</sup> are amended in accordance with paragraphs (2) to (10).

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

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(1) [S.I. 2015/2006 \(N.I.1\)](#).

(2) [S.R. 2016 No. 226](#).

- (i) after the definition of “capital” insert—
  - ““childcare costs element” has the meaning in the Universal Credit Regulations;”;
- (ii) after the definition of “claimant” insert—
  - ““deadline day” has the meaning in regulation 45;
  - “earned income” has the meaning in Chapter 2 of Part 6 of the Universal Credit Regulations;”;
- (iii) in the definition of “existing benefit” before “regulation 26(2)” insert “paragraph (3) and”;
- (iv) after the definition of “existing benefit” insert—
  - ““final deadline” has the meaning in regulation 47;
  - “HMRC” means Her Majesty’s Revenue and Customs;”;
- (v) after the definition of “income support” insert—
  - ““indicative UC amount” has the meaning in regulation 55;”;
- (vi) after the definition of “joint claimants” insert—
  - ““migration day” has the meaning in regulation 50;
  - “migration notice” has the meaning in regulation 45;”;
- (vii) after the definition of “new style JSA” insert—
  - ““notified person” has the meaning in regulation 45;”;
- (viii) after the definition of “personal independence payment” insert—
  - ““qualifying claim” has the meaning in regulation 49;”;
  - and
- (ix) after the definition of “temporary accommodation”(3) insert—
  - ““total legacy amount” has the meaning in regulation 54;
  - “transitional capital disregard” has the meaning in regulation 52;
  - “transitional element” has the meaning in regulation 53.”; and
- (b) after paragraph (2) insert—
  - “(3) In these Regulations—
    - (a) references to an award of income-based jobseeker’s allowance are to an award of old style JSA where the claimant is, or joint claimants are, entitled to the income-based allowance; and
    - (b) references to an award of income-related employment and support allowance are to an award of old style ESA where the claimant is entitled to the income-related allowance.
  - (4) In regulation 47 (termination of existing benefits if no claim before the deadline) and regulation 48 (notified persons who claim as a different benefit unit) “terminate” in relation to an award of income-based jobseeker’s allowance or income-related employment and support allowance means treating that award as if the following provisions had come into force (including where a saving provision has ceased to apply) in relation to that award—
    - (a) Article 39(1)(a) and (b) and (2) of the Order (abolition of benefits);

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(3) The definition of “temporary accommodation” was inserted by regulation 9(2) of [S.R. 2018 No. 92](#).

(b) paragraphs 17 to 21 of Schedule 3 to the Order (abolition of benefits: consequential amendments) and Article 39(3) of the Order in so far as it relates to those paragraphs; and

(c) the repeals in Part 1 of Schedule 12 to the Order (abolition of benefits superseded by universal credit) that come into force if a claim is made for universal credit.”.

(3) At the end of regulation 2B (restriction on claims for universal credit by persons entitled to a severe disability premium)(4) after the existing provision (which is now paragraph (1)) add the following paragraph—

“(2) This regulation does not apply in relation to a claim for universal credit by a single claimant who is a notified person or by joint claimants both of whom are notified persons.”.

(4) In regulation 3(2)(a) (exclusion of entitlement to certain benefits)(5) after “6(2A)” insert “, 47(1) or 48(2)”.

(5) In regulation 6A (transitional housing payment)(6)—

(a) after “regulation 6” insert “, 47 or 48”;

(b) in paragraphs (a) and (b) after “6(2A)” insert “, 47(1) or 48(2)”;

(c) at the end of paragraph (a) omit “and”; and

(d) at the end of paragraph (b) insert—

“; and

(c) if a claim for universal credit is made by a notified person then, notwithstanding anything in the Housing Benefit Regulations(7), the weekly amount of housing benefit to which the person is entitled for that period of two weeks is the same as the weekly amount they were entitled to on the first day of that period.”.

(6) In regulation 9(1) (ongoing awards of tax credits)—

(a) for “regulations 5(7) and 6(4)” substitute “these Regulations”; and

(b) at the end of sub-paragraph (b) add the following words—

“,

and references to an award of a tax credit are to be read accordingly.”.

(7) In regulation 11(2) (modification of tax credits legislation: finalisation of tax credits) for “the Schedule to these Regulations” substitute “Schedule 1”.

(8) After regulation 44 (abolition of higher amount of the child element for first child or qualifying young person) (8)add—

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(4) Regulation 2B was inserted by regulation 2(3) of [S.R. 2019 No. 2](#).

(5) Regulation 3(2)(a) was amended by regulation 9(3) of [S.R. 2018 No. 92](#).

(6) Regulation 6A was inserted by regulation 9(7) of [S.R. 2018 No. 92](#).

(7) [S.R. 2006 No. 405](#).

(8) Regulation 44 was inserted by regulation 3(3) of [S.R. 2017 No. 79](#).

## “PART 4

### MANAGED MIGRATION TO UNIVERSAL CREDIT

#### *The Migration Process*

##### **Migration notice**

**45.**—(1) The Department may, at any time, issue a notice (“a migration notice”) to a person who is entitled to an award of an existing benefit—

- (a) informing the person that all awards of any existing benefits to which they are entitled are to terminate and that they will need to make a claim for universal credit; and
- (b) specifying a day (“the deadline day”) by which a claim for universal credit must be made.

(2) The migration notice may contain such other information as the Department considers appropriate.

(3) The deadline day must not be within the period of three months beginning with the day on which the migration notice is issued.

(4) If the person who is entitled to an award of an existing benefit is, for the purposes of that award, a member of a couple or a member of a polygamous marriage, the Department must also issue the migration notice to the other member (or members).

(5) The Department may cancel a migration notice issued to any person—

- (a) if it has been issued in error;
- (b) if the Department has made a determination in accordance with regulation 2A (discretion to determine that claims for universal credit may not be made) **(9)** that would affect a claim by that person; or
- (c) in any other circumstances where the Department considers it necessary to do so in the interests of the person, or any class of person, or to safeguard the efficient administration of universal credit.

(6) A “notified person” is a person to whom a migration notice has been issued.

(7) The Department must not issue a migration notice while the restriction in regulation 2 (managed migration pilot: limit on number of cases migrated) of the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019**(10)** is in force.

##### **Extension of the deadline day**

**46.**—(1) The Department may determine that the deadline day should be changed to a later day either—

- (a) on the Department’s own initiative; or
- (b) if a notified person requests such a change before the deadline day,

where there is a good reason to do so.

(2) The Department must inform the other notified person or persons of the new deadline day.

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**(9)** Regulation 2A was inserted by regulation 12(2) of S.R. 2017 No. 116.

**(10)** S.I. 2019/1152.

### **Termination of existing benefits if no claim before the deadline**

**47.**—(1) Where a notified person has not made a claim for universal credit on or before the deadline day, all awards of any existing benefits to which the person is entitled terminate—

- (a) in the case of housing benefit, on the last day of the period of two weeks beginning with the deadline day; and
- (b) in the case of any other existing benefit, on the day before the deadline day.

(2) An award of housing benefit to which a claimant is entitled in respect of specified accommodation or temporary accommodation does not terminate by virtue of this regulation.

(3) Where paragraph (1) applies and the notified person makes a claim for universal credit—

- (a) after the deadline day; and
- (b) on or before the final deadline specified in paragraph (4),

then, notwithstanding anything in regulation 25 of the Claims and Payments Regulations (time within which a claim for universal credit is to be made) as modified by regulation 14 of these Regulations, the award is to commence on the deadline day.

(4) The final deadline is the day that would be the last day of the first assessment period in relation to an award commencing on the deadline day.

(5) This regulation is subject to regulation 48.

### **Notified persons who claim as a different benefit unit**

**48.**—(1) This regulation applies where—

- (a) notified persons who were a couple for the purposes of an award of an existing benefit when the migration notice was issued are single persons or members of a different couple for the purposes of a claim for universal credit; or
- (b) notified persons who were members of a polygamous marriage for the purposes of an award of an existing benefit when the migration notice was issued are a couple or single persons for the purposes of a claim for universal credit.

(2) If any of those notified persons makes a claim for universal credit on or before the deadline day then, notwithstanding anything in regulation 6 (termination of awards of certain existing benefits: other claimants), all awards of any existing benefits to which any of those persons is entitled terminate—

- (a) in the case of housing benefit, on the last day of the period of two weeks beginning with the earliest day on which any of those persons is entitled to universal credit in connection with a claim (or, in a case where the person is not entitled to universal credit, on the day they would have been entitled if all the basic and financial conditions had been met); or
- (b) in the case of any other existing benefit, on the day before the “earliest day” referred to in sub-paragraph (a).

(3) If, where paragraph (2) applies—

- (a) a notified person makes a claim for universal credit—
  - (i) on or before the deadline day, or
  - (ii) after the deadline day, but on or before the “final deadline” referred to in regulation 47(4); and
- (b) there would otherwise be a gap between the termination of existing benefits and the commencement of the award,

the award is to commence on the “earliest day” referred to in paragraph (2)(a).

(4) If none of those notified persons makes a claim for universal credit on or before the deadline day, all awards of any existing benefits to which any of them is entitled terminate in accordance with regulation 47(1), and regulation 47(3) applies in relation to any subsequent claim by any of those persons.

(5) An award of housing benefit to which a claimant is entitled in respect of specified accommodation or temporary accommodation does not terminate by virtue of this regulation.

### *Transitional Protection*

#### **Meaning of “qualifying claim”**

**49.** A “qualifying claim” is a claim for universal credit by a single claimant who is a notified person or by joint claimants, both of whom are notified persons, where the claim is made on or before the final deadline (see regulation 47(4)).

#### **Meaning of “migration day”**

**50.** “Migration day”, in relation to a qualifying claim, means the day before the first day on which the claimant is entitled to universal credit in connection with that claim.

#### **Department to determine whether transitional protection applies**

**51.—(1)** Before making a decision on a qualifying claim the Department must first determine whether—

- (a) a transitional capital disregard is to apply; or
- (b) a transitional element is to be included,

(or both) in the calculation of the award.

(2) But the Department is not to determine whether a transitional element is to be included in a case where regulation 48 (notified persons who claim as a different benefit unit) applies.

#### **The transitional capital disregard**

**52.—(1)** A transitional capital disregard is to apply where, on the migration day, the claimant—

- (a) is entitled to an award of a tax credit; and
- (b) has capital exceeding £16,000.

(2) Where a transitional capital disregard applies, any capital exceeding £16,000 is to be disregarded for the purposes of—

- (a) determining whether the financial condition in Article 10(1)(a) or (2)(a) of the Order (capital limit) is met; and
- (b) calculating the amount of an award of universal credit (including the indicative UC amount).

(3) Where a transitional capital disregard has been applied in the calculation of an award of universal credit but, in any assessment period, the claimant no longer has (or joint claimants no longer have) capital exceeding £16,000, the transitional capital disregard is not to apply in any subsequent assessment period.

(4) A transitional capital disregard is not to apply for more than 12 assessment periods.

### **The transitional element**

**53.**—(1) A transitional element is to be included in the calculation of an award if the total amount of any awards of existing benefits determined in accordance with regulation 54 (“the total legacy amount”) is greater than the amount of an award of universal credit determined in accordance with regulation 55 (“the indicative UC amount”).

(2) Where a transitional element is to be included in the calculation of an award, the amount of that element is to be treated for the purposes of Article 13 of the Order (calculation of awards), as if it were an additional amount to be included in the maximum amount under Article 13(2) before the deduction of income under Article 13(3).

### **The transitional element - total legacy amount**

**54.**—(1) The total legacy amount is the sum of the representative monthly rates of all awards of any existing benefits to which a claimant is, or joint claimants are, entitled on the migration day.

#### Tax credits

(2) To calculate the representative monthly rate of an award of working tax credit or child tax credit—

- (a) take the figure for the daily rate of the award on the migration day provided by HMRC and calculated on the basis of the information as to the claimant’s circumstances held by HMRC on that day; and
- (b) convert to a monthly figure by multiplying by 365 and dividing by 12.

(3) For the purposes of paragraph (2)(a) “the daily rate” is—

- (a) in a case where section 13(1) of the Tax Credits Act 2002(**11**) applies (relevant income does not exceed the income threshold or the claimant is entitled to a prescribed social security benefit), the maximum rate of each element to which the claimant is entitled on the migration day divided by 365; and
- (b) in any other case, the rate that would be produced by applying regulations 6 to 9 of the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002(**12**) as if the migration day were a relevant period of one day.

#### IS, JSA(IB) and ESA(IR)

(4) To calculate the representative monthly rate of an award of income support, income-based jobseeker’s allowance or income-related employment and support allowance—

- (a) take the weekly rate on the migration day calculated in accordance with—
  - (i) in the case of income support, Part 7 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**13**) and the Income Support (General) Regulations (Northern Ireland) 1987(**14**),
  - (ii) in the case of income-based jobseeker’s allowance, Part 1 of the Jobseekers Order 1995(**15**) and the JSA Regulations 1996(**16**), or
  - (iii) in the case of income-related employment and support allowance, Part 1 of the 2007 Act(**17**) the ESA Regulations 2008(**18**) and the ESA (Transitional Provisions) Regulations 2010(**19**),

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(11) 2002 c.21.

(12) S.I. 2002/2008. Relevant amending instruments are S.I. 2008/796, 2011/1035, 2012/849 and 2015/451.

(13) 1992 c.7 (N.I.).

(14) S.R. 1987 No. 459.

(15) S.I. 1995/2705 (N.I. 15).

(16) S.R. 1996 No. 198.

(17) 2007 c.2 (N.I.).

on the basis of the information held by the Department on that day; and

(b) convert to a monthly figure by multiplying by 52 and dividing by 12.

(5) The amount of an award of income-based jobseeker's allowance or income-related employment and support allowance is to be calculated before any reduction for a sanction.

(6) Where —

(a) a claimant who is entitled to income-based jobseeker's allowance is also entitled to contribution-based jobseeker's allowance; or

(b) a claimant who is entitled to income-related employment and support allowance is also entitled to a contributory allowance,

then, notwithstanding Article 6(8) to (11) of the Jobseekers Order 1995 and section 6(3) to (7) of the 2007 Act (excess over the contributory allowance to be treated as attributable to the income-based, or income-related, allowance) the weekly rate in paragraph (4) is to be calculated as the applicable amount<sup>(18)</sup> less the claimant's income (if any).

Housing benefit

(7) To calculate the representative monthly rate of an award of housing benefit—

(a) take the weekly rate on the migration day calculated in accordance with Part 7 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and the Housing Benefit Regulations, on the basis of the information held by the Department on that day, and convert to a monthly figure by multiplying by 52 and dividing by 12; or

(b) in a case where the claimant has rent free periods, calculate the annual rate by multiplying the weekly rate (as above) by the number of weeks in the year in respect of which the claimant is liable to pay rent, and convert to a monthly figure by dividing by 12.

(8) For the purposes of paragraph (7), if the migration day falls in a rent free period, the weekly rate of housing benefit is to be calculated by reference to the amount of rent for the last complete week that was not a rent free period.

(9) In paragraphs (7) and (8) “rent free period” has the meaning in regulation 79 of the Housing Benefit Regulations.

(10) In a case where regulation 6(3) (continuation of housing benefit in respect of specified accommodation or temporary accommodation) applies, no amount is to be included in the total legacy amount in respect of housing benefit.

The benefit cap

(11) Where—

(a) the existing benefits do not include an award of housing benefit, or they include an award of housing benefit that has been reduced to the minimum amount by virtue of Part 8A of the Housing Benefit Regulations (the benefit cap);

(b) Part 7 of the Universal Credit Regulations (the benefit cap) applies in the calculation of the indicative UC amount; and

(c) the claimant's total entitlement to welfare benefits (as defined in Article 101(7) of the Order)<sup>(21)</sup> on the migration day is greater than the relevant amount,

the total legacy amount is reduced by the excess (minus the amount for childcare costs referred to in regulation 55(2)(b) where applicable) over the relevant amount.

(12) For the purposes of paragraph (11)—

<sup>(18)</sup> S.R. 2008 No. 280.

<sup>(19)</sup> S.R. 2010 No. 312.

<sup>(20)</sup> See Article 6 of the Jobseekers Order 1995 and section 6 of the 2007 Act for the meaning of “applicable amount”.

<sup>(21)</sup> The definition of welfare benefit was amended by Article 5(4) of the Welfare Reform and Work (Northern Ireland) Order 2016 (S.I. 2016/999 (N.I. 1)).



- (a) the amount of each welfare benefit is the monthly equivalent calculated in the manner set out in regulation 73 (unearned income calculated monthly) of the Universal Credit Regulations; and
- (b) the “relevant amount” is the amount referred to in regulation 80A of those Regulations<sup>(22)</sup> which is applicable to the claimant.

**The transitional element - indicative UC amount**

**55.**—(1) The indicative UC amount is the amount to which a claimant would be entitled if an award of universal credit were calculated in accordance with Article 13 of the Order by reference to the claimant’s circumstances on the migration day, applying the assumptions in paragraph (2).

(2) The assumptions are—

- (a) if the claimant is entitled to an award of child tax credit, the claimant is responsible for any child or qualifying young person in respect of whom the individual element of child tax credit is payable;
- (b) if the claimant is entitled to an award of working tax credit that includes the childcare element, the indicative UC amount includes the childcare costs element and, for the purposes of calculating the amount of that element, the amount of the childcare costs is equal to the relevant weekly childcare charges included in the calculation of the daily rate referred to in regulation 54(2), converted to a monthly amount by multiplying by 52 and dividing by 12;
- (c) the amount of the claimant’s earned income is—
  - (i) if the claimant is entitled to an award of a tax credit, the annual amount of any employment income or trading income, as defined by regulation 4 or 6 respectively of the Tax Credits (Definition and Calculation of Income) Regulations 2002<sup>(23)</sup>, by reference to which the representative monthly rate of that tax credit is calculated for the purposes of regulation 54(2) converted to a net monthly amount by—
    - (aa) dividing by 12, and
    - (bb) deducting such amount for income tax and national insurance contributions as the Department considers appropriate;
  - (ii) if paragraph (i) does not apply and the claimant is entitled to an award of income support, income-based jobseeker’s allowance or income-related employment and support allowance, the amount of earnings by reference to which the representative monthly rate of that benefit was calculated for the purposes of regulation 54(4) to (6) (including nil if none were taken into account) converted to a monthly amount by multiplying by 52 and dividing by 12, or
  - (iii) if paragraphs (i) and (ii) do not apply, but the claimant had an award of housing benefit, the amount of earnings by reference to which the representative monthly rate of that benefit was calculated for the purposes of regulation 54(7) to (10) (including nil if none were taken into account) converted to a monthly amount by multiplying by 52 and dividing by 12.

(3) If the claimant would not meet the financial condition in Article 10(1)(b) of the Order (or, in the case of joint claimants, they would not meet the condition in Article 10(2)(b) of the

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<sup>(22)</sup> Regulation 80A was inserted by regulation 3(4) of S.R. 2016 No. 375.

<sup>(23)</sup> S.I.2002/2006.

Order) the claimant is to be treated, for the purposes of calculating the indicative UC amount, as if they were entitled to an award of universal credit of a nil amount.

(4) If a transitional capital disregard is to apply, the claimant is to be treated as having met the financial condition in Article 10(1)(a) or (2)(a) of the Order (capital limit).

(5) The indicative UC amount is to be calculated after any reduction under Part 7 of the Universal Credit Regulations (the benefit cap) but before any reduction under Article 31 (higher-level sanctions) or 32 (other sanctions) of the Order.

(6) But there is to be no reduction for the benefit cap under that Part where the amount of the claimant's earned income (or, in the case of a couple their combined earned income) on the migration day, calculated in accordance with paragraph (2)(c), is equal to or exceeds the amount specified in regulation 82(1)(a) of the Universal Credit Regulations (exceptions – earnings)(24).

(7) The calculation of the indicative UC amount is to be based on information that is used for the purposes of calculating the total legacy amount, supplemented as necessary by such further information or evidence as the Department requires.

#### **The transitional element – initial amount and adjustment where other elements increase**

**56.**—(1) The initial amount of the transitional element is—

- (a) if the indicative UC amount is greater than nil, the amount by which the total legacy amount exceeds the indicative UC amount; or
- (b) if the indicative UC amount is nil, the total legacy amount plus any amount by which the income which fell to be deducted in accordance with Article 13(3) of the Order exceeded the maximum amount.

(2) The amount of the transitional element to be included in the calculation of an award is—

- (a) for the first assessment period, the initial amount;
- (b) for the second assessment period, the initial amount reduced by the sum of any relevant increases in that assessment period;
- (c) for the third and each subsequent assessment period, the amount that was included for the previous assessment period reduced by the sum of any relevant increases (as in sub-paragraph (b)).

(3) If the amount of the transitional element is reduced to nil in any assessment period, a transitional element is not to apply in the calculation of the award for any subsequent assessment period.

(4) A “relevant increase” is an increase in any of the amounts that are included in the maximum amount under Articles 14 to 17 of the Order (including any of those amounts that is included for the first time)(25), apart from the childcare costs element.

(24) Regulation 82(1)(a) was amended by regulation 2(3)(a) of S.R. 2017 No. 145.

(25) Article 15 was amended by Article 10(2), (3) and (4) of the Welfare Reform and Work (Northern Ireland) Order 2016 (S.I. 2016/999 (N.I. 1)), Article 16 was amended by Article 15(10) of that Order and Article 17 was amended by Article 11 of that Order.

### *Ending of transitional protection*

#### **Circumstances in which transitional protection ceases**

**57.**—(1) A transitional capital disregard or a transitional element does not apply in any assessment period to which paragraph (2) or (4) applies, or in any subsequent assessment period.

Cessation of employment or sustained drop in earnings

(2) This paragraph applies to an assessment period if the following condition is met—

(a) in the case of a single claimant—

- (i) it is the assessment period after the third consecutive assessment period in which the claimant’s earned income is less than the amount specified in regulation 97(14)(a) of the Universal Credit Regulations (“the single administrative threshold”), and
- (ii) in the first assessment period of the award, the claimant’s earned income was equal to or more than that threshold; or

(b) in the case of joint claimants—

- (i) it is the assessment period after the third consecutive assessment period in which their combined earned income is less than the amount specified in regulation 97(14)(b) of the Universal Credit Regulations (“the couple administrative threshold”), and
- (ii) in the first assessment period of the award, their combined earned income was equal to or more than that threshold.

(3) For the purposes of paragraph (2) a claimant is to be treated as having earned income that is equal to or more than the single administrative threshold (or, as the case may be, the couple administrative threshold) in any assessment period in respect of which regulation 63 (minimum income floor) of the Universal Credit Regulations applies to that claimant or would apply but for regulation 63(6) of those Regulations (minimum income floor not to apply in a start-up period).

Couple separating or forming

(4) This paragraph applies to an assessment period in which—

- (a) joint claimants cease to be a couple or become members of a different couple; or
- (b) a single claimant becomes a member of a couple, unless it is a case where the person may, by virtue of regulation 3(2) of the Universal Credit Regulations (claimant with an ineligible partner), claim as a single person.

#### **Application of transitional protection to a subsequent award**

**58.**—(1) Where—

- (a) a transitional capital disregard is applied, or a transitional element is included, in the calculation of an award, and that award terminates; or
- (b) the Department determines (in accordance with regulation 51) that a transitional capital disregard is to apply, or a transitional element is to be included in the calculation of an award, but the decision on the qualifying claim is that there is no entitlement to an award,

no transitional capital disregard is to apply and no transitional element is to be included in the calculation of any subsequent award unless paragraph (2) applies.

(2) This paragraph applies if—

- (a) the reason for the previous award terminating or, as the case may be, there being no entitlement to an award, was that the claimant (or joint claimants) had earned income

on account of which the financial condition in Article 10(1)(b) or (2)(b) of the Order (income is such that the amount payable is at least 1p) was not met; and

(b) the claimant becomes entitled to an award within the period of three months beginning with—

(i) where paragraph (1)(a) applies, the last day of the month that would have been the final assessment period of the previous award (had it not terminated), or

(ii) where paragraph (1)(b) applies, the day that would have been the last day of the first assessment period had there been entitlement to an award.

(3) Where paragraph (2) applies in a case where a previous award has terminated, the new award is to be treated for the purposes of regulation 52 (transitional capital disregard), 56 (transitional element – initial amount and adjustment where other elements increase) and 57 (circumstances in which transitional protection ceases) as if it were a continuation of that award.

### *Miscellaneous*

#### **Qualifying claim – Department may set later commencement day**

**59.** Where the Department decides a qualifying claim, and it is not a case where the award is to commence before the date of claim by virtue of regulation 47(3) or 47(4) (claim made by the final deadline) or regulation 25 of the Claims and Payments Regulations (time within which a claim for universal credit is to be made)<sup>(26)</sup> as modified by regulation 14 of these Regulations, the Department may determine a day on which the award of universal credit is to commence that is after, but no more than one month after, the date of claim.

#### **Minimum income floor not to apply for first 12 months**

**60.—**(1) Where universal credit is awarded to a claimant who is a notified person, regulation 64 of the Universal Credit Regulations (start-up period) is to apply as if paragraph (1)(a) (requirement that the claimant has begun to carry on the trade, profession or vocation within the past 12 months) were omitted.

#### **Protection for full-time students until course completed**

**61.** Where a notified person does not meet the basic condition in Article 9(1)(d) of the Order (not receiving education) on the day on which all awards of any existing benefit are to terminate as a consequence of a claim for universal credit because the person is undertaking a full-time course (see regulation 12(2) and 13 of the Universal Credit Regulations), that condition is not to apply in relation to the notified person while they are continuing to undertake that course.

#### **Rounding**

**62.** Regulation 7 of the Universal Credit Regulations (rounding)<sup>(27)</sup> applies for the purposes of calculating any amount under this Part.

<sup>(26)</sup> S.R. 2016 No. 220.

<sup>(27)</sup> Regulation 7 was amended by regulation 2(2) of S.R. 2017 No. 142, regulation 2(2) of S.R. 2017 No. 145 and regulation 3(2) of S.R. 2018 No. 187.

### **Effect of revision, appeal etc. of an award of an existing benefit**

**63.**—(1) Nothing in regulation 54 (total legacy amount) or 55 (indicative UC amount) requiring a calculation in relation to the transitional element to be made on the basis of information held on the migration day prevents the Department from revising or superseding a decision in relation to a claim for, or an award of, universal credit where—

- (a) in the opinion of the Department, the information held on that day was inaccurate or incomplete in some material respect because of—
  - (i) a misrepresentation by a claimant,
  - (ii) a failure to report information that a claimant was required to report where that failure was advantageous to the claimant, or
  - (iii) an official error; or
- (b) a decision has been made on or after the migration day on—
  - (i) an application made before migration day to revise or supersede a decision in relation to an award of an existing benefit (including the report of a change of circumstances), or
  - (ii) an appeal in relation to such an application.

(2) In this regulation “official error” means an error that—

- (a) was made by an officer of, or an employee of a body acting on behalf of, the Department, HMRC or the Northern Ireland Housing Executive; and
- (b) was not caused, or materially contributed to, by any person outside that body or outside the Department, HMRC or the Northern Ireland Housing Executive,

but excludes any error of law which is shown to have been such by a subsequent decision of the Commissioner or of a court as defined in Article 27(7) of the Social Security Order 1998<sup>(28)</sup>.

### **Claimants previously entitled to a severe disability premium**

**64.** Schedule 2 contains provision in respect of certain claimants who have been entitled to a benefit which included a severe disability premium.

### **Discretionary hardship payments**

**65.** The Department may, in such circumstances and subject to such conditions as the Department considers appropriate, make payments to notified persons who appear to be in hardship as a result of the termination of an existing benefit in accordance with these Regulations or otherwise as a result of the provisions of this Part.”

(9) The Schedule is renumbered “Schedule 1”.

(10) After renumbered Schedule 1 insert—

“SCHEDULE 2

Regulation 64

Claimants previously entitled to severe disability premium: transitional payments

#### *Determination by the Department*

1. Where it comes to the attention of the Department that—

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(28) The definition of “court” was amended by paragraph 67 of Schedule 9 to the Constitutional Reform Act 2005 (c.4).

- (a) an award of universal credit has been made in respect of a claimant who, within the period of one month immediately preceding the first day on which the claimant became entitled to universal credit as a consequence of making a claim, was entitled to an award of income support, income-based jobseeker's allowance or income-related employment and support allowance that included a severe disability premium;
- (b) in a case where the award of income support, income-based jobseeker's allowance or income-related employment and support allowance ended during that month, the claimant continued to satisfy the conditions for eligibility for a severe disability premium for the remainder of that month;
- (c) the award of universal credit has not since terminated (whether by a claimant ceasing to meet the conditions of entitlement to universal credit or becoming, or ceasing to be, a member of a couple);
- (d) the claimant has not (or, in the case of joint claimants, neither of them has) ceased to be entitled to the care component, the daily living component, armed forces independence payment or attendance allowance (all of which have the same meaning as in paragraph 6 of Schedule 4 to the ESA Regulations 2008); and
- (e) no person has become a carer for—
  - (i) in the case of a single claimant, the claimant, or
  - (ii) in the case of joint claimants—
    - (aa) if a severe disability premium was payable at the higher rate, both of them, or
    - (bb) if a severe disability premium was payable at the lower rate, the claimant who was the qualifying partner,

the Department must determine an additional amount of universal credit (“the transitional SDP amount”) which is to be payable in respect of each assessment period that precedes that determination and then for each subsequent assessment period that begins before the conversion day.

2. The transitional SDP amount, calculated by reference to the date of the determination, is—
  - (a) in the case of a single claimant —
    - (i) £120, if the LCWRA element is included in the award, or
    - (ii) £285, if the LCWRA element is not included in the award;
  - (b) in the case of joint claimants—
    - (i) £405 if the higher SDP rate was payable and no person has since become a carer for either of them,
    - (ii) £120, if paragraph (i) does not apply and the LCWRA element is included in the award in respect of either of them, or
    - (iii) £285, if paragraph (i) does not apply and the LCWRA element is not included in the award in respect of either of them.

3. The Department must decide the manner in which the transitional SDP amount is to be paid, which may include payment of a lump sum covering all assessment periods preceding the determination under paragraph 1 and monthly payments thereafter.

4. If the LCWRA element is not included in the award at the time of the determination under paragraph 1, but is included in a later assessment period (and paragraph 2(b)(i) does not apply), the amount for that assessment period, and each subsequent assessment period beginning before the conversion day, is to be £120 (and the Department must make a further determination).

#### *Conversion to a transitional element*

5. In the first assessment period that begins on or after the conversion day, the calculation of the award is to include the amount of the transitional SDP payment as if it were the initial amount of a transitional element calculated under regulation 56(1).

6. In respect of each subsequent assessment period, the award is to be treated, for the purposes of regulation 56(2) (adjustment where other elements increase), regulation 57 (circumstances in which transitional protection ceases) and regulation 58 (application of transitional protection to a subsequent award), as if the transitional SDP payment had been converted into a transitional element.

#### *Capital disregard*

7. Any amount paid as a lump sum as a consequence of a determination under this Schedule is to be disregarded in the calculation of capital for 12 months from the date of that payment or, if longer, the remainder of the award.

#### *Interpretation*

8. In this Schedule—

“the conversion day” is a day determined by the Department having regard to the efficient administration of universal credit;

“LCWRA element” has the meaning in the Universal Credit Regulations

“the lower SDP rate” and “the higher SDP rate” are the rates specified in sub-paragraph (i) and (ii) respectively of paragraph 11(2)(b) of Schedule 4 to the ESA Regulations 2008(29) or, as the case may be, the corresponding rates of a severe disability premium in relation to income support or income-based jobseeker’s allowance;

“the qualifying partner” in relation to a couple in respect of whom the lower SDP rate was payable, is the partner who had no carer or, as the case may be, had not been a patient for a period exceeding 28 days,

and references to a person being a carer for another person are to the person being entitled to, and in receipt of, a carer’s allowance or having an award of universal credit which includes the carer element in respect of caring for that other person.”.

### **Two week run-on of income support, income-based jobseeker’s allowance and income-related employment and support allowance: amendment of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016**

**3.—(1)** The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016(30) are amended in accordance with paragraphs (2) to (7).

(2) For regulation 3(2)(a) (exclusion of entitlement to certain benefits) **(31)** substitute—

“(a) housing benefit in respect of specified accommodation or temporary accommodation;

(ab) housing benefit or income support where regulations 6(2A), 47(1) or 48(2) apply; or”.

(3) In regulation 6 (termination of awards of certain existing benefits: other claimants)—

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(29) Paragraph 11 was amended by paragraph 1 of Schedule 11 to the Social Security (2018 Benefits Up-Rating) Order (Northern Ireland) 2019 (S.I. 2019/46).

(30) Relevant amendments to these Regulations made by regulation 3 come into force on 24<sup>th</sup> July 2019 and the further amendments made by this regulation come into force on 22<sup>nd</sup> July 2020.

(31) Regulation 3(2)(a) was amended by regulation 9(3) of S.R. 2018 No. 92 and regulation 2(3) of these Regulations.

- (a) in paragraph (2)(32) omit “income support,”; and
  - (b) in paragraph (2A)(33) omit the words “income support or” where they appear before “a tax credit” and insert them before “housing benefit”.
- (4) After regulation 6A (transitional housing payment)(34) insert—

**“Effect on universal credit award of two week run-on of income support, income-based jobseeker’s allowance and income-related employment and support allowance**

**6B.** In a case where an award of income support, income-based jobseeker’s allowance or income-related employment and support allowance is to continue for two weeks after the commencement of an award of universal credit by virtue of regulation 6(2A), 47(1) or 48(2) or by virtue of regulation 4 (two week run-on of income-based jobseeker’s allowance and income-related employment and support allowance: day appointed for abolition) of the Universal Credit (Managed Migration and Miscellaneous Amendments) Regulations (Northern Ireland) 2019—

- (a) regulation 79 of the Universal Credit Regulations applies as if the benefit in question was not included in the list of welfare benefits in Article 101(7) of the Order (benefit cap)(35); and
  - (b) in a case where the claimant has become entitled to an award of new style JSA or new style ESA on the termination of an award of income-based jobseeker’s allowance or income-related employment and support allowance, the claimant is to be treated, for the purposes of regulation 73 of the Universal Credit Regulations (unearned income calculated monthly), as if they had been entitled to that award of new style JSA or new style ESA from the first day of the award of universal credit”.
- (5) In regulation 47(36) (termination of existing benefits if no claim before the deadline)—
- (a) in paragraph (1)(a) after “housing benefit” insert “income support, income-based jobseeker’s allowance or income-related employment and support allowance,”; and
  - (b) in paragraph (1)(b) for “any other existing benefit” substitute “a tax credit”.
- (6) In regulation 48(37) (notified persons who claim as a different benefit unit)—
- (a) in paragraph (2)(a) after “housing benefit” insert “income support, income-based jobseeker’s allowance or income-related employment and support allowance,”; and
  - (b) in paragraph (2)(b) for “any other existing benefit” substitute “a tax credit”.
- (7) In regulation 12(3) (appeals etc. relating to certain existing benefits) after “regulation 6” insert “, 47 or 48”.

**Two week run-on of income-based jobseeker’s allowance and income-related employment and support allowance: day appointed for abolition**

**4.—(1)** Subject to paragraph (2) where, in relation to any relevant claim for universal credit, an article (“the specified article”) of any Order made under the powers in Article 2(2) of the Welfare Reform (Northern Ireland) Order 2015 provides for the coming into force of the amending provisions, the provision in that Article for the day appointed is to be read as though the day appointed was the last day of the period of two weeks beginning with the day mentioned in that provision.

(32) Paragraph (2) was amended by regulation 9(6)(a) of [S.R. 2018 No. 92](#).

(33) Paragraph (2A) was inserted by regulation 9(6)(b) of [S.R. 2018 No. 92](#).

(34) Regulation 6A was inserted by regulation 9(7) of [S.R. 2018 No. 92](#).

(35) Article 101(7) was amended by Article 5(4) of the Welfare Reform and Work (Northern Ireland) Order 2016 ([S.I. 2016/999\(N.I.1\)](#)).

(36) Regulation 47 was inserted by regulation 2(8) of these Regulations.

(37) Regulation 48 was inserted by regulation 2(8) of these Regulations.



(2) For the purposes of paragraphs (4) and (5) of Article 6 of the No. 8 Order (conversion to employment and support allowance of awards of incapacity benefit and severe disablement allowance), including as they apply for the purposes of any other Order made under Article 2(2) of the Welfare Reform (Northern Ireland) Order 2015, the day appointed by the specified Article for the coming into force of the amending provisions shall be treated as though it was the day that applies apart from this regulation.

(3) In this regulation—

“amending provisions” has the meaning given by Article 2(1) of the No. 8 Order;

“the No. 8 Order” means the Welfare Reform (Northern Ireland) Order 2015 (Commencement No 8 and Transitional and Transitory Provisions) Order 2017<sup>(38)</sup>;

“relevant claim for universal credit” means a claim for universal credit made on or after 22nd July 2020 including a claim where, under the Article in question, the amending provisions come into force despite incorrect information having been given by the claimant, but excluding any claim that is treated as made by a couple in the circumstances referred to in regulation 8(8) (claims for universal credit by members of a couple) of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2016<sup>(39)</sup>.

### **12 month exemption from the minimum income floor for new claimants**

5.—(1) For regulation 64(1)(a) of the Universal Credit Regulations (Northern Ireland) 2016 (start-up period)<sup>(40)</sup> substitute—

“(a) regulation 63 (minimum income floor) has not previously applied to the claimant in relation to the trade, profession or vocation which is currently the claimant’s main employment (whether in relation to the current award or a previous award); and”.

(2) Regulation 60 (minimum income floor not to apply for first 12 months) of the Universal Credit (Transitional Provisions) Regulations 2016<sup>(41)</sup> is revoked.

### **Abolition of restriction on claims by persons entitled to SDP**

6. Regulation 2B (Restriction on claims for universal credit by persons entitled to a severe disability premium)<sup>(42)</sup> of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 is revoked.

Signed by authority of the Secretary of State for Work and Pensions

22nd July 2019

*Alok Sharma*  
Minister of State  
Department for Work and Pensions

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<sup>(38)</sup> S.R. 2017 No. 190 (C. 11).

<sup>(39)</sup> S.R. 2016 No. 220.

<sup>(40)</sup> S.R. 2016 No. 216.

<sup>(41)</sup> Regulation 60 was inserted by regulation 2(8) of these Regulations.

<sup>(42)</sup> Regulation 2B was inserted by regulation 2(3) of S.R. 2019 No. 2.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the managed migration of claimants on existing benefits to universal credit. They set out the process for moving those claimants, the circumstances in which transitional protection is given and the manner in which it is calculated. They also include provision in relation to certain claimants who were entitled to a severe disability premium, claimants who are self-employed and claimants in hardship as a result of managed migration.

Regulation 1 provides for citation and commencement.

Regulation 2 contains amendments to the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 (S.R. 2016 No. 226) ('the UC Transitional Regulations'): paragraph (2) inserts new definitions into regulation 2; paragraph (3) excludes notified persons from the restriction on claims by persons entitled to a severe disability premium; paragraphs (4), (6), (7) and (9) are consequential amendments; paragraph (5) amends regulation 6A (two week continuation of housing benefit on migration to universal credit) by providing for the amount of housing benefit to be frozen during the two week period in a case where the claimant is moved to universal credit; paragraph (8) inserts a new Part 4 (Managed Migration to Universal Credit) in the UC Transitional Regulations.

New regulation 45 provides for the issue of a migration notice which informs a person that their existing benefits are to terminate and gives a deadline for claiming universal credit. A person who receives a migration notice is a "notified person". Regulation 45 also stipulates that the Department must not issue a migration notice whilst the restriction in regulation 2 (managed migration pilot: limit on the number of cases migrated) of the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 (S.I. 2019 No. 1152), which apply in Great Britain, is in force.

New regulation 46 provides for the circumstances in which the deadline can be extended.

New regulation 47 provides for termination of all awards of any existing benefits where a notified person does not claim universal credit by the deadline day. In the case of an income-based jobseeker's allowance or income-related employment and support allowance "terminate" means treating the award in the same way as if Article 39(1)(a) or (b) (abolition of those benefits) and associated provisions had come into force. This means that any contribution-based or contributory allowance to which a claimant is entitled becomes an award of new style JSA or new style ESA (as defined in regulation 2 of the UC Transitional Regulations). Where the person claims universal credit by the final deadline (which is the last day of the first assessment period of an award commencing on the deadline day) the award is backdated to the deadline day.

New regulation 48 provides for cases where notified persons have been treated as a couple or members of a polygamous marriage in relation to an existing benefit, but claim universal credit as different benefit units, for example as single persons, or a different couple. If there is more than one possible date on which the existing benefits could terminate, they are to terminate on the earliest of those dates and a claim by the other notified person or persons is backdated to that date.

New regulations 49 to 58 deal with transitional protection. The Department is required to determine whether transitional protection applies where the person makes a "qualifying claim" (new regulations 49 and 50). The two types of protection are a "transitional capital disregard" (regulation 52) and a "transitional element" (regulations 53 to 56). The transitional capital disregard enables claimants entitled to a tax credit and with capital over £16,000 to be entitled to universal credit for up to 12 months. The transitional element is an additional amount of universal

credit based on the difference between the total amount of existing benefits and the amount of universal credit entitlement. This is added to the award before income is deducted and erodes as other elements increase.

New regulation 57 provides for the circumstances in which transitional protection ceases. These are where there is a drop in earnings over a three month period or where an award ends (including where a couple separate or form). Transitional protection can be carried over to a subsequent award in certain circumstances under new regulation 58.

New regulations 59 to 64 deal with miscellaneous matters.

New regulation 59 enables the Department to set a date for commencement of the award of universal credit up to a month after the date of a qualifying claim (provided it is not a case where the claim is to be backdated).

New regulation 60 provides for all notified persons who would otherwise be subject to the minimum income floor (under which certain self-employed claimants are to have an assumed level of earnings) to have the 12 month “start-up” period without the requirement to have started their business within the past 12 months.

New regulation 61 provides for notified persons who are students, and entitled to existing benefits, to be exempt from the exclusion of full-time students from universal credit until they complete their course.

New regulation 62 allows rounding to be applied to calculation under new Part 4.

New regulation 63 ensures that the requirement to apply the information held at the migration day when calculating transitional protection does not prevent the subsequent revision of the universal credit award in cases of misrepresentation or error or in order to give effect to an outstanding revision or appeal.

New regulation 64 introduces the new Schedule 2 (claimants previously entitled to a severe disability premium: transitional payments).

New regulation 65 makes provision for discretionary payments where notified persons are in hardship as result of the termination of an existing benefit or otherwise as a result of the migration process.

Regulation 2(10) inserts a new Schedule 2 in the UC Transitional Regulations. The Schedule provides for transitional payments in respect of certain claimants who were entitled to a severe disability premium before claiming universal credit. The payments are based on a flat rate for each assessment period since the move to universal credit. The flat rate is converted into a transitional element after a date determined by the Department.

Regulation 3 amends the UC Transitional Regulations to provide for an award of income support, income-based jobseeker’s allowance or income-related employment and support allowance to continue for two weeks beyond the date on which it would otherwise have terminated as result of a claim for universal credit or, in a managed migration case, a failure to make a claim by the deadline day. This regulation comes into force on 22nd July 2020.

Regulation 4 provides for the relevant commencement orders bringing into force the abolition of income-based jobseeker’s allowance and income-related employment and support allowance on a claim for universal credit to be read with appropriate modifications to give effect to the two week run on. This regulation also comes into force on 22<sup>nd</sup> July 2020.

Regulation 5 amends regulation 64 of the Universal Credit Regulations which provides for a 12 month start-up period during which the minimum income floor does not apply. The amendment extends the start-up period to all claimants for universal credit who are in gainful self-employment and have not previously been subject to the minimum income floor (even if they have not started their business within the past 12 months). All other conditions will apply, for example a claimant may only have one start-up period every 5 years and may not have more than one start-up period in

**Status:** *This is the original version (as it was originally made).*

relation to the same business. This regulation comes into force on 23rd September 2020 and revokes new regulation 60 (above).

Regulation 6 revokes regulation 2B of the UC Transitional Regulations (restriction on claims by persons entitled to a severe disability premium) from 27th January 2021.

An impact assessment has not been produced for this instrument as it has no impact on business and civil society organisations.