

EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT, PERSONAL INDEPENDENCE PAYMENT, JOBSEEKER'S ALLOWANCE AND EMPLOYMENT AND SUPPORT ALLOWANCE (DECISIONS AND APPEALS) REGULATIONS (NORTHERN IRELAND) 2016

S.R. 2016 No. 221

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Social Development (Northern Ireland) ("The Department") on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes provision in relation to the administration of Universal Credit, Personal Independence Payment, contribution-based Jobseeker's Allowance and contributory Employment and Support Allowance. In particular, the Regulations make provision as to the making of decisions and in relation to rights of appeal.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 [Section 87 of the Northern Ireland Act 1998](#) places a statutory duty on the Minister for Social Development and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for the United Kingdom. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.
- 4.2 Underpinning the parity principle is the argument that, as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain, they are entitled to the same rights and benefits paid at the same rates.
- 4.3 [The Welfare Reform Act 2012](#) introduced a number of reforms including Universal Credit, Personal Independence Payment, the Jobseeker's Allowance Claimant Commitment and a cap on the amount of benefits working age people can receive..
- 4.4 On 17 November 2015 "[A Fresh Start: The Stormont Agreement and Implementation Plan](#)" was agreed by the main political parties in Northern Ireland. Included in this agreement was the approach agreed by the Executive and HM Government to implementing welfare reform in Northern Ireland. [The Northern Ireland \(Welfare](#)

[Reform\) Act 2015](#) provides a power for Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council may then confer power on the Secretary of State or a Northern Ireland department to make further provision regarding these matters by regulations or order. [The Welfare Reform \(Northern Ireland\) Order 2015](#) (“the 2015 Order”) was made on 9 December 2015 and regulations stemming from the Order, to implement in Northern Ireland an equivalent to the various welfare reforms set out in the Welfare Reform Act 2012, are now being brought forward.

- 4.5 The Regulations are modelled closely on provisions in the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (S.R. 1999/162) (the “1999 Regulations”) which apply to existing benefits and to child support. The Regulations apply for the purposes of Universal Credit and Personal Independence Payment which were introduced by the 2015 Order, and for the purposes of the reformed (“new style”) versions of Jobseeker’s Allowance and Employment and Support Allowance (both of which have been re-styled to remove any element of income-related provision wherever Universal Credit is available, leaving them providing solely for contribution-based entitlement).
- 4.6 These Regulations also make use of an additional power, inserted by Article 107 of the 2015 Order, which enables provision to be made requiring a person who wishes to challenge a decision to apply to the Department for it to be revised before they are permitted to appeal against it; and of the powers inserted by Article 108 of that Order relating to the use of electronic communications in relation to the administration of the benefits to which these Regulations apply.
- 4.7 Unlike the position in Great Britain, a unified appeals system under the control of the Justice department has not yet been established in Northern Ireland. Statutory responsibility for the relevant appeal tribunals still rests in the Department, and provisions relating to tribunal procedure etc are still set out in the 1999 Regulations. In NI, the analogue to the First-tier Tribunal is an appeal tribunal and the analogue to the Upper Tribunal is a Commissioner.
- 4.8 The relevant provisions of the 1999 Regulations and in particular those which correspond to matters covered by Tribunal Procedure Rules in GB (see regulation 54) will apply for the purposes of Universal Credit and Personal Independence Payment, and for the new style Jobseeker’s Allowance and Employment and Support Allowance.
- 4.9 In NI, determinations on rental areas, applicable local housing allowance etc are made by the NI Housing Executive rather than rent officers and this is reflected at regulations 19(2) and 30 etc.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is solely to Northern Ireland.
- 5.2 The territorial application of this instrument is Northern Ireland.
- 5.3 This instrument makes the corresponding changes for Northern Ireland that were made in Great Britain by the [Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance \(Decisions and Appeals\) Regulations 2013](#) (SI 2013/381).

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 Universal Credit and Personal Independence Payment are brand new benefits. Since a claimant cannot have concurrent entitlement to both Universal Credit and the old style versions of Employment and Support Allowance and Jobseeker's Allowance (both of which include both a contributory element and an income-related element), new Regulations have been introduced for both benefits. These provide for a contributory element only, thereby allowing them to be paid alongside Universal Credit, where appropriate. The modified benefits are referred to as "new style" Employment and Support Allowance and "new style" Jobseeker's Allowance, to make the distinction clear. The Department is introducing this new set of Decisions and Appeals Regulations to ensure that the decision-making and appeals framework which currently applies to all social security benefits applies to the new benefits introduced by the 2015 Order.
- 7.2 Many of the provisions in the existing framework have been carried forward in these Regulations. They are tried and tested and provide a credible basis for decision-making in the new regime. Where appropriate, relevant provisions of the 1999 Regulations will apply, in particular, in relation to appeal Tribunal procedures etc.

General Provisions

- 7.3 These Regulations provide the legal framework for the manner of administering and changing decisions. They make provision about decision-making and appeals in relation to:
- Universal Credit and Personal Independence Payment, as introduced by [the 2015 Order](#);
 - and for both new style Employment and Support Allowance and new style Jobseeker's Allowance, as those benefits have effect as amended by provisions of the 2015 Order.
- 7.4 The Regulations detail the circumstances in which the Department may revise (Part 2) or supersede (Part 3) decisions including in respect of official error or mistake, and change of circumstances. The provisions also apply to decisions in respect of advance awards, sanctions, loss of benefit and contributions cases. Parts 2 and 3 and Schedule 1 also provide for when such decisions take effect and related procedural matters.
- 7.5 The Regulations also contain miscellaneous provisions relating to decisions of the Department including the correction of accidental errors, determinations on incomplete evidence and additional cases where no superseding decision needs to be made such as in the case of alterations affecting universal credit (Part 4).
- 7.6 The Regulations also set out the circumstances whereby the Department may suspend payment of benefit (Part 5), and Part 6 deals with termination of benefit for both those cases where a claimant fails to provide information or evidence within a requisite time period, and occasions where a claimant is entitled to an alternative benefit.

- 7.7 In addition the Regulations make provision for additional persons to have a right of appeal; including those appointed to make a claim on behalf of another person, those claiming Personal Independence Payment on behalf of someone with a terminal illness, and an individual making a claim on behalf of someone who has subsequently died (regulation 48). Part 7 also allows for decisions (additional to those listed in the [Social Security \(Northern Ireland\) Order 1998 No. 1506 \(N.I.10\)](#)) against which there is or is not a right of appeal. There is also provision made in relation to appeals of decisions involving issues that arise on appeal in other cases.

Mandatory reconsideration – new for all benefits

- 7.8 A key change in approach is being made consequent on Article 107 of the 2015 Order so that claimants must first apply for a disputed decision to be reconsidered by a decision maker (i.e. revised) before they can appeal against it. The purpose of this “mandatory reconsideration” process is to get disputes resolved internally wherever possible, without the need for an appeal (regulation 7). This follows the principle that issues should be resolved, and errors should be identified and corrected, at the earliest possible opportunity. . If, following reconsideration, the decision maker does not revise (i.e. change) the decision, the person will retain the right of appeal against the new outcome decision.
- 7.9 Evidence from Great Britain suggests that “mandatory reconsideration” is having the intended effect of reducing appeals, with 82% fewer appeals for ESA decisions in 2014/15 relative to the previous year and 92% fewer JSA appeals. The length of time waited by claimants who are appealing has also reduced since 2014, though the measure is not directly comparable over this time, indicatively this is a reduction of 4 weeks. It is unknown whether this improvement will be replicated exactly in Northern Ireland, but the intent is to ensure that disputes relating to benefit eligibility are resolved as quickly as possible so as to ensure that claimants receive their proper entitlement and the support that best meets their needs.

Universal Credit

- 7.10 As Universal Credit is being designed as primarily an online benefit the intention is that claimants should notify the Department of changes of circumstance, and be notified of decisions relating to their Universal Credit award, through the online channel in the majority of cases. There will continue to be other options where needed, for example, reporting changes by telephone.
- 7.11 In the main, Universal Credit will follow existing policy on appeal rights, and which decisions do or do not carry the right of appeal (Schedule 2 and 3 to the [1998 Order](#) and the 1999 Regulations refer). This is to ensure that, where possible, claimants are treated consistently and that the Regulations are compatible with claimants’ Convention rights. In NI, determinations on rental areas, applicable local housing allowance etc. are made by the NI Housing Executive rather than rent officers and this is reflected at regulations 19(2) and 30 etc.

Personal Independence Payment

- 7.12 The entitlement criteria for Personal Independence Payment will be different from the criteria for Disability Living Allowance. In the majority of cases there will be a face to face assessment with a Health Care Professional as part of the PIP application process, as well as regular reviews, and so much fuller engagement with the claimant within the evidence-gathering process. The policy intention is that decision notices

will, much more than they do now, fully explain why a decision was made, allowing claimants to make informed decisions about their next step without first having to contact the Department.

Employment and Support Allowance and Jobseeker's Allowance

- 7.13 For the most part, the decisions and appeals policy for the new style of Jobseeker's Allowance and Employment and Support Allowance remain unchanged as, although the two benefits will be entirely based on contributions, most of the rules that give rise to changes that could occur during an award will be carried forward from the 1999 Decisions and Appeals Regulations.

Consolidation

- 7.14 This instrument will be informally consolidated in the NI equivalent of the GB Law Relating to Social Security (or "Blue Volumes"), as the legislation applies only to Northern Ireland. It will be available to the public at no cost via the internet at: <https://www.dsdni.gov.uk/services/law-relating-social-security>

8. Consultation outcome

- 8.1 The Department consulted on the implications of the wider reforms as part of the Welfare Reform Bill consultation process, including a public consultation on the equality impact assessment. The Department has also discussed informally with stakeholders to ensure that the operational implications are fully understood and that processes are in place to ensure that the change is implemented correctly in Northern Ireland.

9. Guidance

- 9.1 Before these Regulations come into force detailed guidance on both regulatory and operational changes will be provided to staff and decision makers within the Northern Ireland Social Security Agency (NISSA). Procedures will be updated, staff trained and notification letters amended before these regulations are brought into operation.
- 9.2 After these regulations are laid changes will be made to the Decision Makers Guide (DMG) which is also available free on the DSD internet at: <https://www.dsdni.gov.uk/articles/decision-makers-guide>

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector relates to any administrative costs of this change, which are deemed minimal. This measure is part of the welfare reform package that will restore parity with the rest of the UK and contribute toward sustainable finances for the Executive. This suite of policy changes are designed to improve work incentives and enhance fairness, whilst ensuring support for the most vulnerable. These were implemented in Great Britain in 2012 and the package of reforms has proved to be successful in increasing moves into employment by those affected.
- 10.3 An Impact Assessment has not been prepared for this instrument. The change enables current arrangements to continue under the new benefit regime, therefore there is no impact of this change, but would be were this not to go ahead.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The operation of the Regulations will continue to be reviewed through the normal avenues of guidance enquiries received from the Department's offices and correspondence from members of the public.

12.2 In addition the Welfare Reform (Northern Ireland) Order 2015 makes specific provision for a duty on the Department to conduct and publish a report on the operation of the Order. This must be produced within 3 years of the making of the Order. The Department is required to lay the report before the Northern Ireland Assembly.

13. Contact

13.1 Anne McCleary at the Department for Social Development can direct any queries regarding the instrument. Telephone: 028 90819973 or email: caroline.banks@dndni.gov.uk.