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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 226**

**The Universal Credit (Transitional Provisions)  
Regulations (Northern Ireland) 2016**

**PART 2**

**CHAPTER 1**

**ENTITLEMENT TO OTHER BENEFITS**

**Exclusion of entitlement to certain benefits**

- 3.**—(1) Except as provided in paragraph (2), a claimant is not entitled to—
- (a) income support;
  - (b) housing benefit;
  - (c) a tax credit; or
  - (d) state pension credit under the State Pension Credit Act (Northern Ireland) 2002(1),
- in respect of any period when the claimant is entitled to universal credit(2).
- (2) Entitlement to universal credit does not preclude the claimant from entitlement—
- (a) to housing benefit in respect of specified accommodation; or
  - (b) during the first assessment period for universal credit, where the claimant is a new claimant partner, to—
    - (i) income support, where an award to which the new claimant partner is entitled terminates, in accordance with regulation 5(4), after the first date of entitlement to universal credit,
    - (ii) housing benefit, where regulation 5(5)(b) applies and an award of housing benefit to which the new claimant partner is entitled terminates after the first date of entitlement to universal credit, or
    - (iii) a tax credit, where an award to which the new claimant partner is entitled terminates, in accordance with the Tax Credits Act 2002, after the first date of entitlement to universal credit.

**Exclusion of claims for certain existing benefits**

- 4.**—(1) Except as provided in paragraphs (5) to (9) a universal credit claimant may not make a claim for income support, housing benefit or tax credit.
- (2) For the purposes of this regulation, a person is a universal credit claimant if—

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(1) 2002 c.14 (N.I.).

(2) A person who is entitled to universal credit is not entitled to old style JSA or old style ESA (other than in certain circumstances where the person is a member of a couple at the time of entitlement), by virtue of orders made under Article 2 of the Order, which brings into operation repeals of the legislation relating to those benefits.

- (a) the person is entitled to universal credit;
  - (b) the person has made a claim for universal credit, a decision has not yet been made on that claim and the person has not been informed (in accordance with an order made under Article 2(2) of the Order) that he or she is not entitled to claim universal credit;
  - (c) the person was previously entitled to a joint award of universal credit which terminated because the person ceased to be a member of a couple, he or she is not exempt (by virtue of regulation 8(6) of the Claims and Payments Regulations (claims for universal credit by members of a couple)) from the condition of entitlement to universal credit that he or she makes a claim for it and the period of one month, starting with the date on which the person notified the Department that he or she ceased to be a member of a couple, has not expired;
  - (d) the person may be entitled to an award of universal credit in circumstances where, by virtue of regulation 8(6), (7) or (10) of the Claims and Payments Regulations, it is not a condition of entitlement that he or she makes a claim for it, but no decision has yet been made as to the person's entitlement;
  - (e) the person is treated, under the Claims and Payments Regulations as having made a claim for universal credit, but no decision has yet been made as to the person's entitlement; and
  - (f) a decision has been made that the person is not entitled to universal credit and—
    - (i) the Department is considering whether to revise that decision under Article 10 of the Social Security Order 1998, whether on an application made for that purpose, or on its own initiative, or
    - (ii) the person has appealed against that decision to the Appeal Tribunal and that appeal and any subsequent appeal to the Commissioner or to a court has not been finally determined.
- (3) For the purposes of paragraph (1)—
- (a) a universal credit claimant makes a claim for benefit mentioned in that paragraph if the claimant takes any action which results in a decision on a claim being required under the relevant Regulations; and
  - (b) except as provided in paragraphs (5) to (7), it is irrelevant that the effect of any provision of the relevant Regulations is that, for the purposes of those Regulations, the claim is made or treated as made at a time when the claimant was not a universal credit claimant.
- (4) The relevant Regulations are—
- (a) in relation to a claim for income support, the Claims and Payments Regulations 1987;
  - (b) in relation to a claim for housing benefit, the Housing Benefit Regulations or as the case may be, the Housing Benefit (State Pension Credit) Regulations; and
  - (c) in relation to a claim for tax credit, the Tax Credits (Claims and Notifications) Regulations 2002(3).
- (5) A universal credit claimant is not precluded from making a claim for income support if—
- (a) first notification of the claimant's intention to make that claim was made, or deemed to be made, for the purposes of regulations 6(1A)(c) or 6A of the Claims and Payments Regulations 1987(4), before the date on which the claim for universal credit was made or treated as made; and
  - (b) in accordance with the Claims and Payments Regulations 1987, the claimant's entitlement to income support in connection with the claim will (if the claimant is entitled to income support) pre-date—

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(3) [S.I. 2002/2014](#).

(4) Regulation 6(1A) was inserted by regulation 3(4)(b) of [S.R. 1997 No. 156](#) and regulation 6A was inserted by paragraph 4 of Schedule 3 to [S.R. 2001 No. 176](#).

- (i) the date, or anticipated date, of the claimant's entitlement to universal credit in connection, with the current award or claim, or
  - (ii) where the claimant is a new claimant partner and regulation 5(4) would apply to the award, the date on which it would terminate in accordance with that provision.
- (6) A universal credit claimant is not precluded from making a claim for housing benefit if—
- (a) first notification of the claimant's intention to make that claim was given (within the meaning of regulation 81(5)(d) of the Housing Benefit Regulations<sup>(5)</sup> or, as the case may be, regulation 62(6)(d) of the Housing Benefit (State Pension Credit) Regulations<sup>(6)</sup>) before the date on which the claim for universal credit was made or treated as made; and
  - (b) in accordance with the Housing Benefit Regulations or, as the case may be, the Housing Benefit (State Pension Credit) Regulations, the claimant's entitlement to housing benefit in connection with the claim will (if the claimant is entitled to housing benefit) pre-date—
    - (i) the date, or anticipated date, of the claimant's entitlement to universal credit in connection with the current award or claim, or
    - (ii) where the claimant is a new claimant partner and regulation 5(5)(b) would apply to the award, the date on which it would terminate in accordance with the Housing Benefit Regulations or, as the case may be, the Housing Benefit (State Pension Credit) Regulations.
- (7) A universal credit claimant is not precluded from correcting or completing a claim for housing benefit which was defective within the meaning of the Housing Benefit Regulations or the Housing Benefit (State Pension Credit) Regulations if—
- (a) the defective claim was made before the date on which the claim for universal credit was made or treated as made; and
  - (b) in accordance with the Housing Benefit Regulations or, as the case may be, the Housing Benefit (State Pension Credit) Regulations, the claimant's entitlement to housing benefit in connection with the claim will (if the claimant is entitled to housing benefit) pre-date—
    - (i) the date, or anticipated date, of the claimant's entitlement to universal credit in connection with the current award or claim, or
    - (ii) where the claimant is a new claimant partner and regulation 5(5)(b) would apply to the award, the date on which it would terminate in accordance with the Housing Benefit Regulations or, as the case may be, the Housing Benefit (State Pension Credit) Regulations.
- (8) A universal credit claimant is not precluded from making a claim for housing benefit in respect of specified accommodation.
- (9) A universal credit claimant is not precluded from making a claim for a tax credit which the claimant is treated as having made by virtue of regulation 5(7) or 6(4)(a).

#### **Termination of awards of certain existing benefits: new claimant partners**

- 5.—(1) This regulation applies where—
- (a) a person (“A”) who was previously entitled to universal credit ceases to be so entitled on becoming a member of a couple;
  - (b) the other member of the couple (“the new claimant partner”) was not entitled to universal credit immediately before formation of the couple;

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(5) Regulation 81(5)(d) was substituted by regulation 2(2)(j) of [S.R. 2008 No.371](#).

(6) Regulation 62(6)(d) was substituted by regulation 3(2)(j) of [S.R. 2008 No.371](#).

- (c) the couple is treated, in accordance with regulation 8(8) of the Claims and Payments Regulations, as having made a claim for universal credit; and
  - (d) the Department is satisfied that the claimants meet the basic conditions specified in Article 9(1)(a) to (d) of the Order (other than any of those conditions which they are not required to meet by virtue of regulations made under Article 9(2) of the Order).
- (2) Subject to paragraphs (4) and (5), where this regulation applies, all awards of income support or housing benefit to which the new claimant partner would (were it not for the effect of these Regulations) have been entitled during the relevant period are to terminate, by virtue of this regulation—
- (a) on the day before the first date on which the joint claimants are entitled to universal credit in connection with the claim; or
  - (b) if the joint claimants are not entitled to universal credit, on the day before the first date on which they would have been so entitled, if all of the basic and financial conditions applicable to them had been met; or
  - (c) if the new claimant partner became entitled to an award after the date on which it would otherwise terminate under sub-paragraph (a) or (b) at the beginning of the first day of entitlement to that award.
- (3) For the purposes of this regulation, “the relevant period” is the period starting with the first day of assessment period (in relation to A’s award of universal credit) during which A and the new claimant partner formed a couple and ending with the date of formation of the couple.
- (4) Where the new claimant partner was entitled during the relevant period to income support, he or she was at that time a member of a couple and the award included an amount in respect of the new claimant partner and their partner at that time (“P”), the award of income support terminates, by virtue of this regulation, on the date on which the new claimant partner and P ceased to be a couple for the purposes of the Income Support (General) Regulations (Northern Ireland) 1987(7), unless it terminates on that date in accordance with other legislative provision, or terminated on an earlier date.
- (5) An award of housing benefit to which the new claimant partner is entitled does not terminate by virtue of this regulation where—
- (a) the award is in respect of specified accommodation; or
  - (b) the new claimant partner leaves the accommodation in respect of which housing benefit was paid, in order to live with A(8).
- (6) Where an award terminates by virtue of this regulation, any legislative provision under which the award terminates on a later date does not apply.
- (7) Where the new claimant partner was, immediately before forming a couple with A, treated by regulation 9 (ongoing awards of tax credits) as being entitled to a tax credit, the new claimant partner is to be treated, for the purposes of the Tax Credits Act 2002, as having made a claim for the tax credit in question for the current tax year.

### **Termination of awards of certain existing benefits: other claimants**

- 6.—(1) This regulation applies where—
- (a) a claim for universal credit (other than a claim which is treated, in accordance with regulation 8(8) of the Claims and Payments Regulations, as having been made) is made; and

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(7) [S.R. 1987 No. 459](#).

(8) In which case, *see* regulation 77 of the 2006 Regulations as amended and regulation 57 of the 2006 (SPC) Regulations as amended.

- (b) the Department is satisfied that the claimant meets the basic conditions specified in Article 9(1)(a) to (d) of the Order (other than any of those conditions which they are not required to meet by virtue of regulations under Article 9(2) of the Order).
- (2) Subject to paragraph (3), where this paragraph applies, all awards of income support, housing benefit or a tax credit to which the claimant (or, in the case of joint claimants, either of them) is entitled on the date on which the claim is made are to terminate, by virtue of this regulation—
  - (a) on the day before the first date on which the claimant is entitled to universal credit in connection with the claim; or
  - (b) if the claimant is not entitled to universal credit, on the day before the first date on which they would have been so entitled, if all of the basic and financial conditions applicable to the claimant had been met.
- (3) An award of housing benefit to which a claimant is entitled in respect of specified accommodation does not terminate by virtue of this regulation.
- (4) Where this regulation applies and the claimant (or, in the case of joint claimants, either of them) is treated by regulation 9 (ongoing awards of tax credits) as being entitled to a tax credit—
  - (a) the claimant (or, as the case may be, the relevant claimant) is to be treated, for the purposes of the Tax Credits Act 2002 and this regulation, as having made a claim for the tax credit in question for the current year; and
  - (b) if the claimant (or the relevant claimant) is entitled on the date on which the claim for universal credit was made to an award of a tax credit which is made in respect of a claim which is treated as having been made by virtue of sub-paragraph (a), that award is to terminate, by virtue of this regulation—
    - (i) on the day before the first date on which the claimant is entitled to universal credit, or
    - (ii) if the claimant is not entitled to universal credit, on the day before the first date on which he or she would have been so entitled, if all of the basic and financial conditions applicable to the claimant had been met.
- (5) Where an award terminates by virtue of this regulation, any legislative provision under which the award terminates on a later date does not apply.

**Treatment of ongoing entitlement to certain benefits: benefit cap**

- 7.—(1) This regulation applies where a claimant who is a new claimant partner, or who has (in accordance with regulation 27 of the Universal Credit Regulations) been awarded universal credit in respect of a period preceding the date on which the claim for universal credit was made or treated as made—
- (a) is entitled, in respect of the whole or part of the first assessment period for universal credit, or a welfare benefit (other than universal credit) mentioned in regulation 79(4) of the Universal Credit Regulations (circumstances where the benefit cap applies); and
  - (b) is entitled to housing benefit at any time during the first assessment period for universal credit, or would be so entitled were it not for the effect of these Regulations.
- (2) Where this regulation applies, regulation 79 of the Universal Credit Regulations applies, in relation to the claimant, as if the benefit in question was not included in the list of welfare benefits in paragraph (4) of that regulation.

**Treatment of overpayments**

- 8.—(1) This regulation applies where—

- (a) an award of universal credit is made to a claimant who was previously entitled to an existing benefit other than a tax credit or a joint-claim jobseeker's allowance; and
  - (b) a payment of the existing benefit is made which includes payment ("the overpayment") in respect of a period—
    - (i) during which the claimant is not entitled to that benefit (including non-entitlement which arises from termination of an award by virtue of an order made under Article 2(2) of the Order or regulation 5, 6 or 13), and
    - (ii) which falls within an assessment period for universal credit.
- (2) Where this regulation applies, for the purposes of calculating the amount of an award of universal credit in respect of an assessment period—
- (a) regulation 66 of the Universal Credit Regulations (what is included in unearned income?) applies as if the overpayment which was made in respect of that assessment period were added to the descriptions of unearned income in paragraph (1)(b) of that regulation; and
  - (b) regulation 73 of the Universal Credit Regulations (unearned income calculated monthly) does not apply to the overpayment.
- (3) In so far as any overpayment is taken into account in calculating the amount of an award of universal credit in accordance with this regulation, that payment may not be recovered as an overpayment under—
- (a) the Social Security (Payments on Account, Overpayments and Recovery) Regulations (Northern Ireland) 1988(9);
  - (b) regulations 96 to 104 of the Housing Benefit Regulations;
  - (c) regulations 77 to 85 of the Housing Benefit (State Pension Credit) Regulations.

### **Ongoing awards of tax credits**

- 9.—(1) For the purposes of regulations 5(7) and 6(4)—
- (a) a person is to be treated as being entitled to working tax credit with effect from the start of the current tax year even though a decision has not been made under section 14 of the Tax Credits Act 2002 in respect of a claim for that tax credit for that tax year, if the person was entitled to working tax credit for the previous tax year and any of the cases specified in paragraph (2) applies; and
  - (b) a person is to be treated as being entitled to child tax credit with effect from the start of the current tax year even though a decision has not been made under section 14 of the Tax Credits Act 2002 in respect of a claim for that tax credit for that tax year, if the person was entitled to child tax credit for the previous tax year and any of the cases specified in paragraph (2) applies.
- (2) The cases are—
- (a) a final notice has not been given to a person under section 17 of the Tax Credits Act 2002 in respect of the previous tax year;
  - (b) a final notice has been given, which includes provision by virtue of subsection (2) or (4) of section 17, or a combination of those subsections and subsection (6) of the Tax Credits Act 2002 and—
    - (i) the date specified in the notice for the purposes of section 17(2) and (4) of the Tax Credits Act 2002 or, where different dates are specified, the later of them, has not yet passed and no claim for a tax credit for the current tax year has been made, or treated as made, or

- (ii) a claim for a tax credit has been made, or treated as made, on or before the date mentioned in sub-paragraph (i), but no decision has been made in relation to that claim under section 14(1) of the Tax Credits Act 2002;
- (c) a final notice has been given, no claim for a tax credit for the current year has been made or treated as made, and no decision has been made under section 18(1) of the Tax Credits Act 2002 in respect of entitlement to a tax credit for the previous year; or
- (d) a final notice has been given and—
  - (i) the person did not make a declaration in response to provision included in that notice by virtue of section 17(2)(a), (4)(a) or (6)(a) of the Tax Credits Act 2002, or any combination of those provisions, by the date specified in the notice,
  - (ii) the person was given due notice that payments of tax credit under section 24(4) of the Tax Credits Act 2002 had ceased due to his or her failure to make the declaration, and
  - (iii) the person's claim for universal credit is made during the period of 30 days starting with the date on the notice referred to in sub-paragraph (ii) or, where the person is a new claimant partner, notification of formation of a couple with a person entitled to universal credit is given to the Department during that period.

#### **Modification of tax credits legislation: overpayments and penalties**

- 10.**—(1) This regulation applies where—
- (a) a claim for universal credit is made, or is treated as having been made;
  - (b) the claimant is, or was at any time during the tax year in which the claim is made or treated as made, entitled to a tax credit; and
  - (c) the Department is satisfied that the claimant meets the basic conditions specified in Article 9(1)(a) to (d) of the Order (other than any of those conditions which the claimant is not required to meet by virtue of regulations under Article 9(2) of the Order).
- (2) Where this regulation applies the Tax Credits Act 2002 applies in relation to the claimant with the following modifications.
- (3) In section 28 —
- (a) In subsection (1)—
    - (i) after “tax year” in both places where it occurs, insert “or part tax year”,
    - (ii) at the end insert “or treated as an overpayment of universal credit”;
  - (b) in subsections (3) and (4) after “repaid” insert “to the Board or, as the case may be to the Department”;
  - (c) omit subsection (5);
  - (d) in subsection (6) omit “(apart from subsection(5))”.
- (4) Where a notice states that this subsection applies in relation to an amount (or part of an amount), it may be recovered—
- (a) Subject to provision made by regulations, by deduction from payments of any tax credit under an award made for any period to the person, or either or both of the persons, to whom the notice was given; or
  - (b) Subject to regulation made by the Department for Social Development under the Social Security (Northern Ireland) Act 1992(10)

- (i) by deductions under section 69ZC of that Act(**11**) (deduction from benefit)
  - (ii) by deductions under section 69ZD of that Act(**12**) (deduction from earnings); or
  - (iii) as set out in section 69ZE of that Act(**13**) (court action etc).
- (5) In section 48 after the definition of “overpayment” insert—
- ““part tax year” means a period of less than a year beginning with 6th April and ending with the date on which the award of tax credit terminated,”.
- (6) In paragraph 6(1)(a) and (c) and (2)(a) of Schedule 2 after “for the tax year” insert “or part tax year”.

### **Modification of tax credits legislation: finalisation of tax credits**

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

- (a) a claim for universal credit is made, or is treated as having been made;
- (b) the claimant is, or was at any time during the tax year in which the claim is made or treated as made, entitled to a tax credit; and
- (c) the Department is satisfied that the claimant meets the basic conditions specified in Article 9(1)(a) to (d) of the Order (other than any of those conditions which the claimant is not required to meet by virtue of regulations under Article 9(2) of the Order).

(2) Subject to paragraph (3), where this regulation applies, the amount of the tax credit to which the person is entitled is to be calculated in accordance with the Tax Credits Act 2002 and regulations made under that Act, as modified by the Schedule to these Regulations (“the modified legislation”).

(3) Where, in the opinion of the Commissioners for Her Majesty’s Revenue and Customs, it is not reasonably practicable to apply the modified legislation in relation to any case or category of cases, the Tax Credits Act 2002 and regulations made under that Act are to apply without modification in that case or category of cases.

### **Appeals etc relating to certain existing benefits**

**12.**—(1) This regulation applies where, after an award of universal credit has been made to a claimant—

- (a) an appeal against a decision relating to the entitlement of the claimant to income support, housing benefit or a tax credit (a “relevant benefit”) is finally determined;
- (b) a decision relating to the claimant’s entitlement to income support is revised under Article 10 of the Social Security Order 1998 or superseded under Article 11 of that Order;
- (c) a decision relating to the claimant’s entitlement to housing benefit is revised or superseded under Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**14**); or
- (d) a decision relating to the claimant’s entitlement to tax credit is revised under section 19 or 20 of the Tax Credits Act 2002, or regulations made under section 21 of that Act, or is varied or cancelled under section 21A of that Act(**15**).

(2) Where the claimant is a new claimant partner and, as a result of determination of the appeal or, as the case may be, revision or supersession of the decision the claimant would (were it not for the effect of these Regulations) be entitled to income support or housing benefit during the relevant

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(11) section 69ZC was inserted by Article 109 of the Order.

(12) section 69ZD was inserted by Article 109 of the Order.

(13) section 69ZE was inserted by Article 109 of the Order.

(14) 2000 c.4 (N.I.).

(15) Section 21A was inserted by S.I. 2014/886.



period mentioned in regulation 5(3), awards of those benefits are to terminate in accordance with regulation 5.

(3) Where the claimant is a not a new claimant partner and, as a result of determination of the appeal or, as the case may be, revision or supersession, variation or cancellation of the decision, the claimant would (were it not for the effect of these Regulations) be entitled to a relevant benefit on the date on which the claim for universal credit was made, awards of relevant benefits are to terminate in accordance with regulation 6.

(4) The Department is to consider whether it is appropriate to revise under Article 10 of the Social Security Order 1998 the decision in relation to entitlement to universal credit or, if that decision has been superseded under Article 11 of that Order, the decision as so superseded (in either case, “the UC decision”).

(5) Where it appears to the Department to be appropriate to revise the UC decision, it is to be revised in such manner as appears to the Department to be necessary to take account of—

- (a) the decision of the Appeal Tribunal, the Commissioner or court, or as the case may be the decision relating to entitlement to a relevant benefit, as revised, superseded, varied or cancelled; and
- (b) any finding of fact by the Appeal Tribunal, Commissioner or court.

#### **Appeals etc relating to universal credit**

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

- (a) a decision is made that a claimant is not entitled to universal credit (“the UC decision”);
- (b) the claimant becomes entitled to income support, housing benefit or a tax credit (a “relevant benefit”);
- (c) an appeal against the UC decision is finally determined, or the decision is revised under Article 10 of the Social Security Order 1998;
- (d) an award of universal credit is made to the claimant in consequence of entitlement arising from the appeal, or from the decision as revised; and
- (e) the claimant would (were it not for the effect of regulation 3 and this regulation) be entitled to both universal credit and a relevant benefit in respect of the same period.

(2) Subject to paragraph (3), where this regulation applies—

- (a) all awards of a relevant benefit to which the claimant would (were it not for the effect of these Regulations) be entitled are to terminate, by virtue of this regulation, at the beginning of the first day of entitlement to that award; and
- (b) any legislative provision under which an award would otherwise terminate on a later date does not apply.

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

## **CHAPTER 2**

### **EFFECT OF TRANSITION TO UNIVERSAL CREDIT**

#### **Modification of Claims and Payments Regulations in relation to universal credit claimants**

**14.**—(1) Where a claim for universal credit is made by a person who was previously entitled to an existing benefit, regulation 25 of the Claims and Payments Regulations (time within which a claim for universal credit is to be made) applies in relation to that claim with the modification specified in paragraph (2).

(2) After regulation 25(3)(a) insert—

- “(aa) the claimant was previously in receipt of an existing benefit (as defined in the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016) and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that the claimant’s entitlement expired;”.

### **Persons Unable to act**

15.—(1) Paragraph (2) applies where—

- (a) a person (“P2”) has been appointed, or treated as appointed, under regulation 33(1) of the Claims and Payments Regulations 1987 (persons unable to act) to exercise rights and to receive and deal with sums payable on behalf of a person who is unable to act (“P1”); or
- (b) a person (“P2”) has been appointed under regulation 18(3) of the Tax Credits (Claims and Notifications) Regulations 2002 (circumstances where one person may act for another in making a claim – other appointed persons) to act for a person who is unable to act (“P1”) in making a claim for a tax credit.

(2) Where this paragraph applies and P1 is, or may be, entitled to universal credit, the Department may, if P2 agrees, treat the appointment of P2 as if it were made under regulation 52(1) of the Claims and Payments Regulations (persons unable to act) and P2 may carry out the functions set out in regulation 52(4) of those Regulations in relation to P1.

(3) Paragraph (4) applies where a person (“P2”) was appointed, or treated as appointed, under regulation 52(1) of the Claims and Payments Regulations to carry out functions in relation to a person who is unable to act (“P1”) and who was, or might have been, entitled to universal credit, but who has ceased to be so entitled, or was not in fact so entitled.

(4) Where this paragraph applies—

- (a) the Department may, if P2 agrees, treat the appointment of P2 as if it were made under regulation 33(1) of the Claims and Payments Regulations 1987 and P2 may exercise rights and receive and deal with sums payable in respect of existing benefits on behalf of P1; and
- (b) the Board (within the meaning of the Tax Credits (Claims and Notifications) Regulations 2002) may, if P2 agrees, treat the appointment of P2 as if it were made under regulation 18(3) of those Regulations and P2 may act for P1 in making a claim for a tax credit.

### **Waiting days**

16.—(1) This regulation applies where a claimant (or, in the case of joint claimants, either of them)—

- (a) was entitled to old style JSA, old style ESA or income support at any time during the period of 3 months ending with the first day of the period in respect of which the claimant makes a claim for universal credit and ceased to be so entitled on starting paid work; or
- (b) does not fall within sub-paragraph (a) and was entitled to an existing benefit at any time during the period of one month ending on that day.

(2) Where this regulation applies, regulation 20(3)(b) of the Universal Credit Regulations (waiting days) applies with the following modifications—

- (a) at the end of sub-paragraph (v) omit “or”; and
- (b) after sub-paragraph (vi) insert—

“(vii) was entitled to a benefit mentioned in regulation 16(1)(a) of the Universal Credit (Transitional Provision) Regulations (Northern Ireland) 2016 at any

- time during the period of 3 months ending on the relevant date and ceased to be so entitled on starting paid work; or
- (viii) does not fall within sub-paragraph (vii) and was entitled to a benefit mentioned in regulation 16(1)(b) of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 at any time during the period of one month ending on the relevant date.”.

### **Advance payments of universal credit**

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

- (a) the Department is deciding a claim for universal credit, other than a claim which is treated as having been made, in accordance with regulation 8(8) of the Claims and Payments Regulations;
- (b) the claimant is, or was previously, entitled to an existing benefit (“the earlier award”); and
- (c) if the earlier award terminated before the date on which the claim for universal credit was made, the claim for universal credit was made during the period of one month starting with the date of termination.

(2) Where this regulation applies—

- (a) a single claimant may request an advance payment of universal credit; and
- (b) joint claimants may jointly request such a payment,

at any time during the first assessment period for universal credit.

(3) Where a request has been made in accordance with this regulation, the Department may make an advance payment to the claimant, or joint claimants, of such amount in respect of universal credit as it considers appropriate.

(4) After an advance payment has been made under this regulation, payments of any award of universal credit to the claimant or, in the case of joint claimants, to either or both of them, may be reduced until the amount of the advance payment is repaid.

(5) In this regulation “single claimant”, in relation to universal credit, has the same meaning as in Part 2 of the Order;

### **Deductions from benefits**

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

- (a) an award of universal credit is made to a claimant who—
  - (i) was entitled to income-based jobseeker’s allowance, income-related employment and support allowance or income support (a “relevant award”) on the date on which the claim for universal credit was made or treated as made,
  - (ii) is a new claimant partner who was, immediately before forming a couple with a person entitled to universal credit, the partner of a person (“P”) who was at that time entitled to a relevant award, or
  - (iii) is not a new claimant partner and was, immediately before making a claim for universal credit, the partner of a person (“P”) who was at that time entitled to a relevant award, where the award of universal credit is not a joint award to the claimant and P; and

- (b) on the relevant date, deductions in respect of fuel costs or water charges were being made under regulation 34A of the Claims and Payments Regulations 1987, in accordance with Schedule 8A to those Regulations<sup>(16)</sup>.
- (2) In this regulation, the “relevant date” means—
  - (a) where paragraph (1)(a)(i) applies and the claimant is not a new claimant partner, the date on which the claim for universal credit was made;
  - (b) where paragraph (1)(a)(i) applies and the claimant is a new claimant partner, the date on which the claim for universal credit was treated as made; or
  - (c) where paragraph (1)(a)(ii) or (iii) applies, the date on which the claimant ceased to be the partner of P.
- (3) Where this regulation applies, deductions in respect of fuel costs or, as the case may be, water charges, may be made from the award of universal credit in accordance with Schedule 5 to the Claims and Payments Regulations, without the need for any consent which would otherwise be required under paragraph 3(3) of that Schedule.
- (4) For the purposes of this regulation a deduction is to be taken into account even if the relevant award subsequently terminated by virtue of an order made under Article 2(2) of the Order, regulation 5 or as the case may be, regulation 6, before the date on which the deduction was first applied.

### **Transition from old style ESA**

- 19.—(1) This regulation applies where—
  - (a) an award of universal credit is made to a claimant who was entitled to old style ESA on the date on which the claim for universal credit was made or treated as made (“the relevant date”); and
  - (b) on or before the relevant date it had been determined that the claimant was entitled to the work-related activity component or to the support component.
- (2) Where, on or before the relevant date, it had been determined that the claimant was entitled to the work-related activity component—
  - (a) regulation 28(3) of the Universal Credit Regulations (award to include LCW and LCWRA elements) does not apply; and
  - (b) the claimant is to be treated as having limited capability for work for the purposes of regulation 28(1)(a) of those regulations and Article 26(1)(a) of the Order.
- (3) Unless the assessment phase applied and had not ended at the relevant date<sup>(17)</sup>, in relation to a claimant who is treated as having limited capability for work under paragraph (2)—
  - (a) regulation 29 of the Universal Credit Regulations (period for which the LCW or LCWRA element is not to be included) does not apply; and
  - (b) the LCW element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award with effect from the beginning of the first assessment period.
- (4) Where, on or before the relevant date, it had been determined that the claimant was entitled to the support component—
  - (a) regulation 28(3) of the Universal Credit Regulations does not apply; and

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<sup>(16)</sup> Regulation 34A was inserted by regulation 2(2) of S.R. 1988 No. 67 and amended by regulation 7(b) of S.R. 1988 No. 141, regulation 3(7) of S.R. 1988 No. 369, regulation 3 of S.R. 1992 No. 271 and regulation 2(2) of S.R. 2001 No. 22. Schedule 8A was inserted by regulation 2(3) of S.R. 1988 No. 67.

<sup>(17)</sup> In which case *see* regulation 20.

- (b) the claimant is to be treated as having limited capability for work and work-related activity for the purposes of regulation 28(1)(b) of those Regulations and Article 24(2)(a) of the Order.
- (5) Unless the assessment phase applied and had not ended at the relevant date, in relation to a claimant who is treated as having limited capability for work and work-related activity under paragraph(4)(b)—
- (a) regulation 29 of the Universal Credit Regulations does not apply; and
- (b) the LCWRA element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period.
- (6) For the purposes of this regulation, a determination that the claimant was entitled to the work-related activity component or, as the case may be, the support component, is to be taken into account even if the award of old style ESA subsequently terminated (in so far as it was an award of income-related employment and support allowance) before the date on which that determination was made, by virtue of an order made under Article 2(2) of the Order.
- (7) Where a claimant is treated, by virtue of this regulation, as having limited capability for work or, as the case may be, limited capability for work and work-related activity, the Department may at any time make a fresh determination as to these matters, in accordance with the Universal Credit Regulations.
- (8) In this regulation and in regulations 20 to 28—
- “assessment phase”, “support component” and “work-related activity component” have the same meanings as in sections 2, 4 and 24(2) of the 2007 Act,
- “incapacity benefit” and “severe disablement allowance” have the same meanings as in Schedule 4 to the 2007 Act;
- “LCW element” and “LCWRA element” have the same meanings as in regulation 28 of the Universal Credit Regulations.
- (9) For the purposes of this regulation and regulation 20, references to cases in which the assessment phase applied are references to cases in which sections 2(2)(a), 2(3)(a), 4(4)(a) and 4(5)(a) of the 2007 Act applied and references to cases in which the assessment phase did not apply are references to cases in which those sections did not apply(18).

### **Transition from old style ESA before the end of the assessment phase**

- 20.**—(1) This regulation applies where—
- (a) an award of universal credit is made to a claimant who was entitled to old style ESA on the date on which the claim for universal credit was made or treated as made (“the relevant date”); and
- (b) on the relevant date, the assessment phase in relation to the claimant applied and had lasted for less than 13 weeks.
- (2) Where this regulation applies—
- (a) regulation 29(2) of the Universal Credit Regulations (period for which the LCW or LCWRA element is not to be included) does not apply; and
- (b) for the purposes of regulation 29 of those regulations, the relevant period is—
- (i) the period of 13 weeks starting with the first day of the assessment phase, or

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(18) For cases where those sections do not apply, see Regulation 7 of the 2008 Regulations as amended.

- (ii) where regulation 5 of the ESA Regulations 2008 (the assessment phase – previous claimants) applied to the claimant, the period which ends when the sum of the periods for which the claimant was previously entitled to old style ESA and the period for which the claimant is entitled to universal credit is 13 weeks.

(3) Where, on the relevant date, the assessment phase in relation to the claimant applied and had not ended and had lasted for more than 13 weeks—

- (a) regulation 29 of the Universal Credit Regulations does not apply;
- (b) if it is subsequently determined in accordance with Part 5 of those Regulations that the claimant has limited capability for work the LCW element is (subject to the provisions of Part 4 of those regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period; and
- (c) if it is subsequently determined in accordance with Part 5 of the Universal Credit Regulations that the claimant has limited capability for work and work-related activity the LCWRA element is (subject to the provisions of Part 4 of those Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period.

(4) For the purposes of this regulation, the fact that an assessment phase applied in relation to a claimant on the relevant date is to be taken into account even if the award of old style ESA subsequently terminated (in so far as it was an award of income-related employment and support allowance) before that date by virtue of an order made under Article 2(2) of the Order.

#### **Transition from jobseeker’s allowance following an extended period of sickness**

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

- (a) the claimant’s first day of entitlement to universal credit (“the relevant date”), immediately follows the claimant’s last day of entitlement to a jobseeker’s allowance; and
- (b) immediately before the relevant date the claimant was treated as capable of work or as not having limited capability for work under regulation 55ZA of the JSA Regulations 1996<sup>(19)</sup> or regulation 16 of the Jobseeker’s Allowance Regulations (Northern Ireland) 2016<sup>(20)</sup> (extended period of sickness).

(2) Where this regulation applies—

- (a) regulation 29(2) of the Universal Credit Regulations (period for which LCW or LCWRA element is not to be included) does not apply; and
- (b) for the purposes of regulation 29 of those Regulations, the relevant period is the period starting with the first day of the period for which the claimant was treated as capable of work or as not having limited capability for work as specified in paragraph (1)(b).

#### **Other claimants with limited capability for work: credits only cases**

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

- (a) an award of universal credit is made to a claimant who was entitled to be credited with earnings equal to the lower earnings limit then in force under regulation 8B(2)(iv),(iva) or (v) of the Social Security (Credits) Regulations (Northern Ireland) 1975<sup>(21)</sup> on the date on which the claim for universal credit was made or treated as made (the “relevant date”); and

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<sup>(19)</sup> Regulation 55ZA was inserted by regulation 2(5) of [S.R. 2015 No. 138](#).

<sup>(20)</sup> [S.R. 2016 No. 218](#).

<sup>(21)</sup> [S.R. 1975 No. 113](#); Regulation 8B was inserted by regulation 2(6) of [S.R. 1996 No. 430](#) and amended by regulation 3 of [2000 No. 404](#), regulation 2(2)(b) of [S.R. 2003 No. 151](#), regulation 7(6)(a) of [S.R. 2008 No. 286](#) and regulation 2(2) of [S.R. 2010 No. 109](#). Sub-paragraph (a)(iva) was inserted by regulation 2 of [S.R. 2016 No. 175](#).

- (b) neither regulation 19 nor regulation 20 applies to that claimant (whether or not, in the case of joint claimants, either of those regulations apply to the other claimant).
- (2) Where, on or before the relevant date, it had been determined that the claimant would have limited capability for work (within the meaning of Part 1 of the 2007 Act) if he or she was entitled to old style ESA—
  - (a) regulation 28(3) of the Universal Credit Regulations does not apply; and
  - (b) the claimant is to be treated as having limited capability for work for the purposes of regulation 28(1)(a) of those Regulations and Article 26(1)(a) of the Order.
- (3) Unless the notional assessment phase has applied and had lasted for less than 13 weeks at the relevant date<sup>(22)</sup>, in relation to a claimant who is treated as having limited capability for work under paragraph (2)—
  - (a) regulation 29 of the Universal Credit Regulations does not apply; and
  - (b) the LCW element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award with effect from the beginning of the first assessment period.
- (4) Where, on or before the relevant date, it had been determined that the claimant would have limited capability for work-related activity (within the meaning of Part 1 of the 2007 Act) if he or she was entitled to old style ESA—
  - (a) regulation 28(3) of the Universal Credit Regulations does not apply; and
  - (b) the claimant is to be treated as having limited capability for work and work-related activity for the purposes of regulation 28(1)(b) of those Regulations and Article 24(2)(a) of the Order.
- (5) Unless the notional assessment phase applied and had lasted for less than 13 weeks at the relevant date, in relation to a claimant who is treated as having limited capability for work and work-related activity under paragraph (4)—
  - (a) regulation 29 of the Universal Credit Regulations does not apply; and
  - (b) the LCWRA element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period.
- (6) Where, on the relevant date, the notional assessment phase in relation to the claimant to whom the award was made applied and had lasted for less than 13 weeks—
  - (a) regulation 29(2) of the Universal Credit Regulations does not apply; and
  - (b) for the purposes of regulation 29 of those Regulations, the relevant period is the period of 13 weeks starting with the first day of the notional assessment phase.
- (7) Where, on the relevant date, the notional assessment phase in relation to the claimant applied and had not ended and had lasted for more than 13 weeks—
  - (a) regulation 29 of the Universal Credit Regulations does not apply;
  - (b) if it is subsequently determined in accordance with Part 5 of those Regulations that the claimant has limited capability for work, the LCW element is (subject to the provisions of Part 4 of those Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period;
  - (c) if it is subsequently determined in accordance with Part 5 of those Regulations that the claimant has limited capability for work and work-related activity, the LCWRA element is (subject to the provisions of Part 4 of those Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period.

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(22) In which case *see* paragraph (6).

(8) Where a claimant is treated, by virtue of this regulation, as having limited capability for work or, as the case may be, limited capability for work and work-related activity, the Department may at any time make a fresh determination as to these matters, in accordance with the Universal Credit Regulations.

(9) For the purposes of this regulation—

- (a) a determination that the claimant would have limited capability for work or, as the case may be, limited capability for work-related activity, if the claimant was entitled to old style ESA is to be taken into account even if the claimant subsequently ceased to be entitled as mentioned in paragraph (1)(a) before the date on which that determination was made because he or she became entitled to universal credit;
- (b) the fact that a notional assessment phase applied in relation to a claimant on the relevant date is to be taken into account even if the claimant subsequently ceased to be entitled as mentioned in paragraph (1)(a) before that date because the claimant became entitled to Universal Credit;
- (c) references to a determination that the claimant would have limited capability for work if the claimant was entitled to old style ESA do not include a determination made under regulation 30 of the ESA Regulations 2008<sup>(23)</sup> (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made);
- (d) references to cases in which the notional assessment phase applied are references to cases in which sections 2(2)(a), 2(3)(a), 4(4)(a) and 4(5)(a) of the 2007 Act would have applied to the claimant if he or she had been entitled to old style ESA in addition to the entitlement mentioned in paragraph (1)(a), but do not include cases in which the claimant is entitled as mentioned in paragraph (1)(a) under regulation 8B(2)(iva) of the Social Security (Credits) Regulations (Northern Ireland) 1975;
- (e) subject to sub-paragraph (e), the “notional assessment phase” is the period of 13 weeks starting on the day on which the assessment phase would have started in relation to the claimant, if he or she had been entitled to old style ESA and sections 2(2)(a), 2(3)(a), 4(4)(a) and 4(5)(a) of the 2007 Act had applied; and
- (f) the notional assessment phase has not ended if, at the end of the 13 week period referred to in sub-paragraph (e), no determination has been made as to whether a claimant would have limited capability for work (within the meaning of Part 1 of the 2007 Act) if the claimant was entitled to old style ESA.

### **Transition from income support payable on the grounds of incapacity for work or disability and other incapacity benefits**

**23.—**(1) This regulation applies where an award of universal credit is made to a claimant (other than a claimant to whom regulation 24 or 25 applies) who was entitled to income support on the grounds of incapacity for work or disability on the date on which the claim for universal credit was made or treated as made or is entitled to incapacity benefit or severe disablement allowance.

(2) Where this regulation applies—

- (a) if it is determined in accordance with Part 5 of the Universal Credit Regulations that the claimant has limited capability for work—
  - (i) the claimant is to be treated as having had limited capability for work for the purposes of regulation 28(1)(a) of the Universal Credit Regulations (award to include LCW and LCWRA elements) from the beginning of the first assessment period,

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(23) Regulation 30 was amended by regulation 9(8) of S.R. 2010 No. 200.



- (ii) regulation 29 of those Regulations (period for which the LCW or LCWRA element is not to be included) does not apply, and
  - (iii) the LCW element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award with effect from the beginning of the first assessment period;
- (b) if it is determined in accordance with Part 5 of the Universal Credit Regulations that the claimant has limited capability for work and work-related activity—
  - (i) the claimant is to be treated as having had limited capability for work and work-related activity for the purposes of regulation 28(1)(b) of the Universal Credit Regulations from the beginning of the first assessment period,
  - (ii) regulation 29 of those Regulations does not apply, and
  - (iii) the LCWRA element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period.
- (3) In this regulation—

“income support on the grounds of incapacity for work or disability” means an award of income support which is an “existing award” within the meaning of Schedule 4 to the 2007 Act.

**Transition from other incapacity benefits: assessment under the ESA (Transitional Provisions) Regulations 2010**

- 24.—(1) This regulation applies where—
- (a) an award of universal credit is made to a claimant who is entitled to incapacity benefit or severe disablement allowance (“the relevant award”); and
  - (b) on or before the date on which the claim for universal credit is made or treated as made, a notice has been issued to the claimant under regulation 4 of the ESA (Transitional Provisions) Regulations 2010 (notice commencing the conversion phase).
- (2) Where this regulation applies, regulation 28(3) (award to include LCW and LCWRA elements) and Part 5 (determination of limited capability for work and work related activity) of the Universal Credit Regulations do not apply and the question whether a claimant has limited capability for work and work related activity, is to be determined for the purposes of the Order and the Universal Credit Regulations, in accordance with this regulation.
- (3) Where it is determined in accordance with the ESA (Transitional Provisions) Regulations 2010 that the relevant award qualifies for conversion into an award in accordance with regulation 7 of those regulations (qualifying for conversion) and that award includes the work-related activity component—
- (a) the claimant is to be treated as having had limited capability for work for the purposes of regulation 28(1)(a) of the Universal Credit Regulations from the beginning of the first assessment period;
  - (b) regulation 29(1) of those Regulations (period for which LCW or LCWRA element is not to be included) does not apply;
  - (c) the LCW element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period; and
  - (d) the claimant is to be treated as having limited capability for work for the purposes of Article 26(1)(a) of the Order.

(4) Where it is determined in accordance with the ESA (Transitional Provisions) Regulations 2010 that the relevant award qualifies for conversion into an award in accordance with regulation 7 of those Regulations and that award includes the support component—

- (a) the claimant is to be treated as having had limited capability for work and work-related activity for the purposes of regulation 28(1)(b) of the Universal Credit Regulations from the beginning of the first assessment period;
- (b) regulation 29(1) of those Regulations does not apply;
- (c) the LCWRA element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period; and
- (d) the claimant is to be treated as having limited capability for work and work-related activity for the purposes of Article 24(2)(a) of the Order.

**Transition from other incapacity benefits: claimants approaching pensionable age**

25.—(1) This paragraph applies where—

- (a) an award of universal credit is made to a claimant who is entitled to incapacity benefit or severe disablement allowance;
- (b) no notice has been issued to the claimant under regulation 4 of the ESA (Transitional Provisions) Regulations 2010 (notice commencing the conversion phase);
- (c) the claimant will reach pensionable age (within the meaning in regulation 2(1) of the ESA (Transitional Provisions) Regulations 2010) within the period of one year; and
- (d) the claimant is also entitled to—
  - (i) personal independence payment, where neither the daily living component nor the mobility component is payable at the enhanced rate<sup>(24)</sup>,
  - (ii) disability living allowance under section 71 of the 1992 Act, where the care component is payable at the middle rate within the meaning of section 72(4) of that Act or the mobility component is payable at the lower rate within the meaning of section 73(11) of that Act (or both components are payable at those rates),
  - (iii) attendance allowance under section 64 of the 1992 Act, where the allowance is payable at the lower rate in accordance with section 65 of that Act,
  - (iv) an increase in the weekly rate of disablement pension under section 104 of the 1992 Act (increase where constant attendance needed), where the increase is of an amount which is equal to or less than the amount specified in paragraph 2(a) of Part V of Schedule 4 to that Act, or
  - (v) any payment based on the need for attendance which is paid as an addition to a war disablement pension (which means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003<sup>(25)</sup>) where the amount of that payment is equal to or less than the amount specified in paragraph 2(a) of Part V of Schedule 4 to the 1992 Act.

(2) Where paragraph (1) applies and paragraph (3) does not apply—

- (a) regulation 28(3) of the Universal Credit Regulations (award to include LCW and LCWRA elements) does not apply;

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<sup>(24)</sup> See Articles 83-85 of the Order.

<sup>(25)</sup> 2001 c. 1.

- (b) the claimant is to be treated as having limited capability for work for the purposes of regulation 28(1)(a) of those Regulations from the beginning of the first assessment period;
  - (c) regulation 29(1) of the Universal Credit Regulations (period for which LCW or LCWRA element is not to be included) does not apply;
  - (d) the LCW element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period; and
  - (e) the claimant is to be treated as having limited capability for work for the purposes of Article 26(1)(a) of the Order.
- (3) This paragraph applies where—
- (a) an award of universal credit is made to a claimant who is entitled to incapacity benefit or severe disablement allowance;
  - (b) no notice has been issued to the claimant under regulation 4 of the ESA (Transitional Provisions) Regulations 2010;
  - (c) the claimant will reach pensionable age (within the meaning in regulation 2(1) of the ESA (Transitional Provisions) Regulations 2010) within the period of one year; and
  - (d) the claimant is also entitled to—
    - (i) personal independence payment, where either the daily living component or the mobility component is (or both components are) payable at the enhanced rate,
    - (ii) disability living allowance under section 71 of the 1992 Act, where the care component is payable at the highest rate within the meaning of section 72(4) of that Act or the mobility component is payable at the higher rate within the meaning of section 73(11) of that Act (or both components are payable at those rates),
    - (iii) attendance allowance under section 64 of the 1992 Act, where the allowance is payable at the higher rate in accordance with section 65 of that Act,
    - (iv) armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(26),
    - (v) an increase in the weekly rate of disablement pension under section 104 of the 1992 Act, where the increase is of an amount which is greater than the amount specified in paragraph 2(a) of Part V of Schedule 4 to that Act, or
    - (vi) any payment based on the need for attendance which is paid as an addition to a war disablement pension (which means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 where the amount of that payment is greater than the amount specified in paragraph 2(a) of Part V of Schedule 4 to the 1992 Act).
- (4) Where paragraph (3) applies (whether or not paragraph (1) also applies)—
- (a) regulation 28(3) of the Universal Credit Regulations does not apply;
  - (b) the claimant is to be treated as having limited capability for work and work-related activity for the purposes of regulation 28(1)(b) of those Regulations from the beginning of the first assessment period;
  - (c) regulation 29(1) of the Universal Credit Regulations does not apply;
  - (d) the LCWRA element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period; and

- (e) the claimant is to be treated as having limited capability for work and work-related activity for the purposes of Article 26(2)(a) of the Order.

(5) In this regulation—

“the 1992 Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(27).

#### **Transition from other incapacity benefits: supplementary**

26.—(1) Where an award of universal credit is made to a claimant who is entitled to incapacity benefit or severe disablement allowance, regulation 66 of the Universal Credit Regulations (what is included in unearned income?) applies to the claimant as if incapacity benefit or, as the case may be, severe disablement allowance were added to the descriptions of unearned income in paragraph (1) (b) of that regulation.

(2) For the purposes of regulations 24 and 25 and this regulation only, incapacity benefit and severe disablement allowance are prescribed benefits under paragraph 1(2)(b) of Schedule 6 to the Order.

#### **Other claimants with incapacity for work: credits only cases where claimant is approaching pensionable age**

27.—(1) This regulation applies where—

- (a) an award of universal credit is made to a claimant who was entitled to be credited with earnings equal to the lower earnings limit then in operation under regulation 8B(2)(a)(i), (ii) or (iii) of the Social Security (Credits) Regulations (Northern Ireland) 1975 on the date on which the claim for universal credit was made or treated as made;
- (b) the claimant will reach pensionable age within the meaning of the ESA (Transitional Provisions) Regulations 2010 within the period of one year; and
- (c) none of regulations 23, 24 or 25 apply to that claimant (whether or not, in the case of joint claimants, any of those regulations apply to the other claimant).

(2) Where the claimant is entitled to a payment, allowance or increased rate of pension specified in regulation 25(1)(d) and is not entitled to a payment, allowance or increased rate of pension specified in regulation 25(3)(d)—

- (a) regulation 28(3) of the Universal Credit Regulations (award to include LCW and LCWRA elements) does not apply;
- (b) the claimant is to be treated as having limited capability for work for the purposes of regulation 28(1)(a) of those Regulations from the beginning of the first assessment period;
- (c) regulation 29(1) of the Universal Credit Regulations (period for which the LCW or LCWRA element is not to be included) does not apply;
- (d) the LCW element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period; and
- (e) the claimant is to be treated as having limited capability for work for the purposes of Article 26(1)(a) of the Order.

(3) Where the claimant is entitled to a payment, allowance or increased rate of pension specified in regulation 25(3)(d) (whether or not the claimant is also entitled to a payment, allowance or increased rate of pension specified in regulation 25(1)(d))—

- (a) regulation 28(3) of the Universal Credit Regulations does not apply;

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(27) 1992 c. 7 (N.I.).

- (b) the claimant is to be treated as having limited capability for work and work-related activity for the purposes of regulation 28(1)(b) of those Regulations from the beginning of the first assessment period;
  - (c) regulation 29(1) of the Universal Credit Regulations does not apply;
  - (d) the LCWRA element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period; and
  - (e) the claimant is to be treated as having limited capability for work and work-related activity for the purposes of Article 24(2)(a) of the Order.
- (4) Where the claimant is not entitled to a payment, allowance or increased rate of pension specified in either regulation 25(1)(d) or regulation 25(3)(d)—
- (a) if it is determined in accordance with Part 5 of the Universal Credit Regulations that the claimant has limited capability for work—
    - (i) the claimant is to be treated as having had limited capability for work for the purposes of regulation 28(1)(a) of the Universal Credit Regulations from the beginning of the first assessment period,
    - (ii) regulation 29 of the Universal Credit Regulations does not apply, and
    - (iii) the LCW element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award with effect from the beginning of the first assessment period; and
  - (b) if it is determined in accordance with Part 5 of the Universal Credit Regulations that the claimant has limited capability for work and work-related activity—
    - (i) the claimant is to be treated as having had limited capability for work and work-related activity for the purposes of regulation 28(1)(b) of the Universal Credit Regulations from the beginning of the first assessment period,
    - (ii) regulation 29 of the Universal Credit Regulations does not apply, and
    - (iii) the LCWRA element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period.

#### **Other claimants with incapacity for work: credits only cases**

- 28.—(1) This regulation applies where—
- (a) an award of universal credit is made to a claimant who was entitled to be credited with earnings equal to the lower earnings limit then in force under regulation 8B(2)(a)(i), (ii) or (iii) of the Social Security (Credits) Regulations (Northern Ireland) 1975 on the date on which the claim for universal credit was made or treated as made; and
  - (b) none of regulations 23, 24, 25 or 27 apply to that claimant (whether or not, in the case of joint claimants, any of those Regulations apply to the other claimant).
- (2) Where this regulation applies—
- (a) if it is determined in accordance with Part 5 of the Universal Credit Regulations that the claimant has limited capability for work—
    - (i) the claimant is to be treated as having had limited capability for work for the purposes of regulation 28(1)(a) of the Universal Credit Regulations (award to include LCW and LCWRA elements) from the beginning of the first assessment period,
    - (ii) regulation 29 of the Universal Credit Regulations (period for which the LCW or LCWRA element is not to be included) does not apply, and

- (iii) the LCW element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award with effect from the beginning of the first assessment period; and
- (b) if it is determined in accordance with Part 5 of the Universal Credit Regulations that the claimant has limited capability for work and work-related activity—
  - (i) the claimant is to be treated as having had limited capability for work and work-related activity for the purposes of regulation 28(1)(b) of the Universal Credit Regulations from the beginning of the first assessment period,
  - (ii) regulation 29 of the Universal Credit Regulations does not apply, and
  - (iii) the LCWRA element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period.

### **Meaning of “qualifying young person”**

**29.** Where a person who would (apart from the provision made by this regulation) be a “qualifying young person” within the meaning of regulation 6 of the Universal Credit Regulations is entitled to an existing benefit—

- (a) that person is not a qualifying young person for the purposes of the Universal Credit Regulations; and
- (b) regulation 6(5) of those Regulations applies as if, after “a person who is receiving” there were inserted “an existing benefit (within the meaning of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016),”.

### **Support for housing costs**

**30.—**(1) Paragraph (3) applies where—

- (a) an award of universal credit is made to a claimant who—
  - (i) was entitled to income-based jobseeker’s allowance, income-related employment and support allowance or income support (a “relevant award”) at any time during the period of one month ending with the day on which the claim for universal credit was made or treated as made (or would have been so entitled were it not for termination of that award by virtue of an order made under Article 2(2) of the Order or the effect of these Regulations), or
  - (ii) was at any time during the period of one month ending with the day on which the claim for universal credit was made or treated as made, the partner of a person (“P”) who was at that time entitled to a relevant award, where the award of universal credit is not a joint award to the claimant and P; and
- (b) on the relevant date, the relevant award included an amount in respect of housing costs under—
  - (i) paragraphs 14 to 16 of Schedule 2 to the JSA Regulations 1996~~(28)~~,
  - (ii) paragraphs 16 to 18 of Schedule 6 to the ESA Regulations 2008~~(29)~~, or, as the case may be,

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~~(28)~~ Schedule 2 is modified in relation to certain persons by [S.R. 2008 No. 503](#), as amended by [S.R. 2009 No. 426](#). Paragraph 15 was amended by regulation 4(8)(c) of [S.R. 2008 No. 428](#). Paragraph 16 was amended by regulation 5 of [S.R. 2006 No. 407](#).

~~(29)~~ Schedule 6 is modified in relation to certain persons by [S.R. 2008 No. 503](#), as amended by [S.R. 2009 No. 426](#)

(iii) paragraphs 15 to 17 of Schedule 3 to the Income Support (General) Regulations (Northern Ireland) 1987**(30)**.

(2) In this regulation the “relevant date” means—

- (a) where paragraph (1)(a)(i) applies and the claimant was not entitled to the relevant award on the date on which the claim for universal credit was made or treated as made, the date on which the relevant award terminated;
- (b) where paragraph (1)(a)(i) applies, the claimant is not a new claimant partner and he or she was entitled to the relevant award on the date on which the claim for universal credit was made, that date;
- (c) where paragraph (1)(a)(i) applies, the claimant is a new claimant partner and he or she was entitled to the relevant award on the date on which the claim for universal credit was treated as made, that date; and
- (d) where paragraph (1)(a)(ii) applies, the date on which the claimant ceased to be the partner of P or, if earlier, the date on which the relevant award terminated.

(3) Where this paragraph applies, paragraph 5 of Schedule 5 to the Universal Credit Regulations (no housing costs element under this Schedule for qualifying period) does not apply.

(4) Paragraph (5) applies where paragraph (1)(a) applies, but the relevant award did not include an amount in respect of housing costs because the claimant’s entitlement (or, as the case may be, P’s entitlement) was nil by virtue of—

- (a) paragraph 6(1)(c) or 7(1)(b) of Schedule 2 to the JSA Regulations 1996;
- (b) paragraph 8(1)(c) or 9(1)(b) of Schedule 6 to the ESA Regulations 2008; or, as the case may be,
- (c) paragraph 6(1)(c) or 8(1)(b) of Schedule 3 to the Income Support (General) Regulations (Northern Ireland) 1987.

(5) Where this paragraph applies—

- (a) paragraph 5(2) of Schedule 5 to the Universal Credit Regulations does not apply; and
- (b) the “qualifying period” referred to in paragraph 5 of that Schedule is the period of 273 days starting with the first day on which the claimant (or, as the case may be, P) was entitled to the relevant award, taking into account any period which was treated as a period of continuing entitlement under—
  - (i) paragraph 13 of Schedule 2 to the JSA Regulations 1996**(31)**;
  - (ii) paragraph 15 of Schedule 6 to the ESA Regulations 2008**(32)**; or, as the case may be,
  - (iii) paragraph 14 of Schedule 3 to the Income Support (General) Regulations (Northern Ireland) 1987**(33)**,

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**(30)** S.R. 1987 No. 459; Schedule 3 is modified in relation to certain persons by S.R. 2008 No. 503, as amended by S.R. 2009 No. 426. Paragraph 16 was amended by regulation 2(8)(c) of S.R. 2008 No. 248; Paragraph 17 was amended by regulation 5 of S.R. 2006 No. 407.

**(31)** Paragraph 13 was amended by regulation 29(5) of S.R. 1996 No. 358, regulation 2(18)(a) of S.R. 1996 No. 503, regulation 7(2) of S.R. 1997 No. 165, regulation 13(3) of S.R. 1997 No. 541, regulation 11(4) of S.R. 1998 No. 324, regulation 2(6) of S.R. 1999 No. 107, regulation 2(2) of S.R. 1999 No. 315, Article 9(17)(b) of S.R. 1999 No. 428 (C. 32), paragraph 54(8) (b), (c), (d) and (e) of S.R. 2000 No. 350, regulation 12(b) of S.R. 2001 No. 78, regulation 9(b)(ii)(bb) and (iii) of S.R. 2001 No. 151, regulation 5 of S.R. 2002 No. 128, regulation 32(b) of S.R. 2003 No. 191, regulation 4(7) of S.R. 2005 No. 424, regulation 13(12)(b) of S.R. 2006 No. 359, regulation 4(14) of S.R. 2008 No. 112, regulation 19(25)(e) of S.R. 2008 No. 286, regulation 3(5) of S.R. 2008 No. 290, regulation 4(8)(b) of S.R. 2008 No. 428, regulation 2(10) of S.R. 2009 No. 141, regulation 7(8) of S.R. 2011 No. 135 and regulation 10(11)(b) of S.R. 2011 No. 357.

**(32)** Paragraph 15 was amended by regulation 3(30)(d) of S.R. 2008 No. 413, regulation 14(10)(b), (c) and (d) of S.R. 2011 No. 135, regulation 21(15) of S.R. 2011 No. 357 and regulation 5(7) of S.R. 2011 No. 368.

**(33)** Paragraph 14 was amended by regulation 2(3)(i) of S.R. 1995 No. 434, regulation 24(b) of S.R. 1996 No. 199, regulation 5(10) (b) of S.R. 1996 No. 405, regulation 16(3) of S.R. 1997 No. 541, regulation 3(5) of S.R. 1998 No. 182, regulation 8(4)(b) of S.R. 1998 No. 324, regulation 3 of S.R. 1999 No. 107, regulation 2(1) of S.R. 1999 No. 315, Article 7(11)(b)(i) and (ii) of

provided that, throughout that part of the qualifying period after the award of universal credit is made, receipt of universal credit is continuous and the claimant otherwise qualifies for the inclusion of an amount calculated under Schedule 5 to the Universal Credit Regulations in their award.

- (6) For the purposes of—
- (a) paragraph (1)(b) of this regulation, inclusion of an amount in respect of housing costs in a relevant award is to be taken into account even if the relevant award subsequently terminated by virtue of an order made under Article 2(2) of the Order, regulation 5 or, as the case may be, regulation 6, before the date on which that amount was included in the award;
  - (b) paragraph (5)(b) of this regulation, entitlement to a relevant award is to be treated as having continued until the relevant date even if the award subsequently terminated by virtue of an order made under Article 2(2) of the Order, regulation 5 or, as the case may be, regulation 6, before that date.

### **Sanctions: transition from old style ESA**

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

- (a) an award of universal credit is made to a claimant who was previously entitled to old style ESA (“the ESA award”); and
- (b) on the relevant date, payments in respect of the ESA award were reduced under regulation 63 of the ESA Regulations 2008<sup>(34)</sup>.

(2) In this regulation the “relevant date” means—

- (a) where the claimant was not entitled to old style ESA on the date on which the claim for universal credit was made or treated as made, the date on which the ESA award terminated;
- (b) where the claimant is not a new claimant partner and was entitled to old style ESA on the date on which the claim for universal credit was made, that date;
- (c) where the claimant is a new claimant partner and was entitled to old style ESA on the date on which the claim for universal credit was treated as made, that date.

(3) Where this regulation applies—

- (a) the failure which led to reduction of the ESA award (“the ESA failure”) is to be treated, for the purposes of the Universal Credit Regulations, as a failure which is sanctionable under Article 32 of the Order;
- (b) the award of universal credit is to be reduced in relation to the ESA failure, in accordance with the provisions of this regulation and Chapter 2 of Part 8 of the Universal Credit Regulations (sanctions), as modified by this regulation; and
- (c) the reduction is to be treated, for the purposes of the Universal Credit Regulations, as a reduction under Article 32 of the Order.

(4) The reduction period for the purposes of regulation 98(1) of the Universal Credit Regulations is a period of the number of days which is equivalent to the length of the fixed period applicable to the person under regulation 63(7) of the ESA Regulations 2008 in relation to the ESA failure, minus—

- (a) the number of days (if any) in that period in respect of which the amount of old style ESA was reduced; and

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S.R. 1999 No. 472 (C. 36), regulation 3(5) of S.R. 2000 No. 241, regulation 6 of S.R. 2001 No. 78, regulation 12(b)(ii)(bb) and (iv), regulation 5 of S.R. 2002 No. 128, regulation 24(6)(d) of S.R. 2003 No. 191, regulation 2(7) of S.R. 2005 No. 424, regulation 5(6)(b) of S.R. 2006 No. 359, regulation 2(9)(b)(ii) and (15) of S.R. 2008 No. 112, regulation 2(8)(b) of S.R. 2008 No. 248, regulation 12(11)(f) of S.R. 2008 No. 286 and regulation 3(7) of S.R. 2011 No. 135.

(34) Regulation 63 was amended by regulation 10(8) of S.R. 2011 No. 265.



- (b) if the ESA award terminated before the first date of entitlement to universal credit in connection with the current award, the number of days (if any) in the period after termination of that award, before the start of the universal credit award.

(5) Accordingly, regulation 98 of the Universal Credit Regulations (general principles for calculating reduction periods) applies in relation to the ESA failure as if—

- (a) in paragraph (1) for “in accordance with regulations 99 to 102”; and
- (b) in paragraph (3) for “in accordance with regulations 100 to 102”,

there were substituted “in accordance with regulation 31 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016”.

(6) For the purposes of this regulation, a determination that payments in respect of the ESA award are to be reduced under regulation 63 of the ESA Regulations 2008 is to be taken into account even if the ESA award subsequently terminated (in so far as it was an award of income-related employment and support allowance) on a date before the date on which that determination was made, by virtue of an order made under Article 2(2) of the Order.

### **Escalation of sanctions: transition from old style ESA**

**32.**—(1) This regulation applies where an award of universal credit is made to a claimant who was at any time previously entitled to old style ESA.

(2) Where this regulation applies, for the purposes of determining the reduction period under regulation 101 of the Universal Credit Regulations (low-level sanction) in relation to a sanctionable failure by the claimant, other than a failure which is treated as sanctionable by virtue of regulation 31—

- (a) a reduction of universal credit in accordance with regulation 31; and
- (b) any reduction of old style ESA under the ESA Regulations 2008 which did not result in a reduction under regulation 31,

is, subject to paragraph (3), to be treated as arising from a sanctionable failure for which the reduction period which applies is the number of days which is equivalent to the length of the fixed period which applied under regulation 63 of the ESA Regulations 2008.

(3) In determining a reduction period under regulation 101 of the Universal Credit Regulations in accordance with paragraph (2), no account is to be taken of—

- (a) a reduction of universal credit in accordance with regulation 31 if, at any time after that reduction, the claimant was entitled to an existing benefit; and
- (b) a reduction of old style ESA under the ESA Regulations 2008 if, at any time after that reduction, the claimant was entitled to universal credit, new style ESA or new style JSA, and was subsequently entitled to an existing benefit.

### **Sanctions: transition from old style JSA**

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

- (a) an award of universal credit is made to a claimant who was previously entitled to old style JSA (“the JSA award”);
- (b) on the relevant date, payments in respect of the JSA award were reduced under Article 21 (as it applied either before or after substitution by Article 52 of the Order) or Article 21A of the Jobseekers Order 1995; and
- (c) if the JSA award was made to a joint-claim couple within the meaning of the Jobseekers Order 1995 and the reduction related to—

- (i) in the case of a reduction under Article 21 of the Jobseekers Order 1995 as it applied before substitution by the Order, circumstances relating to only one member of the couple, or
  - (ii) in the case of a reduction under Article 21 of the Jobseekers Order 1995 as it applied after substitution by the Order, a sanctionable failure by only one member of the couple,
- the award of universal credit was made to that person.
- (2) In this regulation the “relevant date” means—
- (a) where the claimant was not entitled to old style JSA on the date on which the claim for universal credit was made or treated as made, the date on which the JSA award terminated;
  - (b) where the claimant is not a new claimant partner and was entitled to old style JSA on the date on which the claim for universal credit was made, that date; and
  - (c) where the claimant is a new claimant partner and was entitled to old style JSA on the date on which the claim for universal credit was treated as made, that date.
- (3) Where this regulation applies—
- (a) the circumstances or failure which led to reduction of the JSA award (in either case, “the JSA failure”) is to be treated, for the purposes of the Universal Credit Regulations, as—
    - (i) a failure which is sanctionable under Article 31 of the Order, where the reduction was under Article 21 of the Jobseekers Order 1995, or
    - (ii) a failure which is sanctionable under Article 32 of the Order, where the reduction was under Article 21A of the Jobseekers Order;
  - (b) the award of universal credit is to be reduced in relation to the JSA failure, in accordance with the provisions of this regulation and Chapter 2 of Part 8 of the Universal Credit Regulations (sanctions), as modified by this regulation; and
  - (c) the reduction is to be treated, for the purposes of the Universal Credit Regulations, as a reduction under Article 31 or, as the case may be, Article 32 of the Order.

### **Escalation of sanctions: transition from old style JSA**

**34.**—(1) This regulation applies where an award of universal credit is made to a claimant who was at any time previously entitled to old style JSA.

(2) Where this regulation applies, for the purposes of determining the applicable reduction period under regulation 99 (higher-level sanction), 100 (medium-level sanction) or 101 (low-level sanction) of the Universal Credit Regulations in relation to a sanctionable failure by the person, other than a failure which is treated as sanctionable by virtue of regulation 33—

- (a) a reduction of universal credit in accordance with regulation 33; and
- (b) any reduction of old style JSA under Article 21 or Article 21A of the Jobseekers Order 1995 which did not result in a reduction under regulation 33,

is, subject to paragraph (3), to be treated as arising from a sanctionable failure for which the reduction period is the number of days which is equivalent to the length of the period which applied under regulation 69 of the JSA Regulations 1996.

(3) In determining a reduction period under regulation 99, 100 or 101 of the Universal Credit Regulations in accordance with paragraph (2), no account is to be taken of—

- (a) a reduction of universal credit in accordance with regulation 33 if, at any time after that reduction, the claimant was entitled to an existing benefit; and

- (b) a reduction of old style JSA under Article 21 or Article 21A of the Jobseekers Order 1995 if, at any time after that reduction, the claimant was entitled to universal credit, new style ESA or new style JSA, and was subsequently entitled to an existing benefit.

**Sanctions: temporary return to certain existing benefits**

**35.** If an award of universal credit terminates while there is an outstanding reduction period (within the meaning of regulation 104 of the Universal Credit Regulations (reduction period to continue where award terminates)) and the claimant becomes entitled to old style JSA, old style ESA or income support (“the relevant benefit”) during that period—

- (a) regulation 104 of the Universal Credit Regulations ceases to apply; and
- (b) the reduction period is to terminate on the first date of entitlement to the relevant benefit.

**Loss of benefit penalties: transition from existing benefits other than tax credits**

**36.**—(1) Subject to paragraph (6), this regulation applies in the cases set out in paragraphs (2) to (4).

(2) The first case is where—

- (a) an award of universal credit is made to a claimant who is an offender;
- (b) the claimant was entitled to old style JSA, old style ESA, income support or housing benefit (“the earlier award”) at any time during the period of one month ending with the date on which the claim for universal credit was made or treated as made (or would have been so entitled were it not for termination of that award by virtue of an order made under Article 2(2) of the Order or, as the case may be, the effect of these Regulations); and
- (c) payments in respect of the earlier award were, on the relevant date, subject to a restriction under section 5B (loss of benefit in case of conviction, penalty or caution for benefit offence), 6 (repeated benefit fraud) or 7 (effect of offence on joint-claim jobseeker’s allowance) of the Fraud Act 2001.

(3) The second case is where—

- (a) an award of universal credit is made to a claimant who is an offender;
- (b) another person who was the offender’s family member (but is no longer their family member) was entitled to old style JSA, old style ESA, income support or housing benefit (“the earlier award”) at any time during the period of one month ending with the date on which the claim for universal credit was made or treated as made; and
- (c) payments in respect of the earlier award were, on the relevant date, subject to a restriction under section 8 (effect of offence on benefits for members of offender’s family) of the Fraud Act 2001.

(4) The third case is where—

- (a) an award of universal credit is made to a claimant who is an offender’s family member;
- (b) the offender, or the claimant, was entitled to old style JSA, old style ESA, income support or housing benefit (“the earlier award”) at any time during the period of one month ending with the date on which the claim for universal credit was made or treated as made; and
- (c) payments in respect of the earlier award were, on the relevant date, subject to a restriction under section 5B, 6, 7 or, as the case may be, 8 of the Fraud Act 2001.

(5) Where this regulation applies—

- (a) any subsequent payment of universal credit to the claimant in respect of an assessment period which falls wholly or partly within the remainder of the disqualification period applicable to the offender is to be reduced in accordance with regulation 37; and

- (b) regulation 3ZB of the Loss of Benefit Regulations 2002<sup>(35)</sup> does not apply.
- (6) This regulation does not apply if the earlier award was a joint-claim jobseeker's allowance and—
- (a) payments in respect of the award were, on the relevant date, subject to a restriction under section 7(2) of the Fraud Act 2001; or
  - (b) the award of universal credit is not made to joint claimants who were, on the relevant date, both entitled to the joint-claim jobseeker's allowance.
- (7) In this regulation and in regulation 37—
- “the Fraud Act 2001” means the Social Security Fraud Act (Northern Ireland) 2001<sup>(36)</sup>;
- “the Loss of Benefit Regulations 2002” means the Social Security (Loss of Benefit) Regulations (Northern Ireland) 2002<sup>(37)</sup>;
- “disqualification period” has the meaning given in section 5B and 6 of the Fraud Act 2001, interpreted in accordance with regulations 1A and 2 of the Loss of Benefit Regulations 2002<sup>(38)</sup>;
- “earlier award” is to be interpreted in accordance with paragraph (2)(b), (3)(b) or, as the case may be, (4)(b) and, for the purposes of regulation 37, where there is more than one earlier award, the term refers to the award to which the claimant became entitled most recently;
- “offender” means an offender within the meaning of sections 5B(1), 6(1), and 8(2)(c) of the Fraud Act 2001;
- “offender's family member” has the same meaning as in section 8(2)(a) of the Fraud Act 2001;
- “the relevant date” means—
- (a) in relation to the first case—
    - (i) where the claimant was not entitled to the earlier award on the date on which the claim for universal credit was made or treated as made, the date on which the earlier award terminated,
    - (ii) where the claimant is not a new claimant partner and was entitled to the earlier award on the date on which the claim for universal credit was made, that date,
    - (iii) where the claimant is a new claimant partner and was entitled to the earlier award on the date on which the claim for universal credit was treated as made, that date;
  - (b) in relation to the second case, the date on which the person entitled to the earlier award ceased to be the offender's family member or, if the award terminated before that date, the date on which the earlier award terminated;
  - (c) in relation to the third case—
    - (i) where the claimant was entitled to the earlier award but that entitlement terminated before the date on which the claim for universal credit was made or treated as made, the date on which the earlier award terminated,
    - (ii) where the claimant is not a new claimant partner and was entitled to the earlier award on the date on which the claim for universal credit was made, that date,
    - (iii) where the claimant is a new claimant partner and was entitled to the earlier award on the date on which the claim for universal credit was treated as made, that date,

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<sup>(35)</sup> Regulation 3ZB was inserted by regulation 9 of S.R. 2016 No. 225.

<sup>(36)</sup> 2001 c.17 (N.I.).

<sup>(37)</sup> S.R. 2002 No. 79.

<sup>(38)</sup> Regulation 1A was inserted and regulation 2 was substituted by regulation 2(3) of S.R. 2011 No. 291.

- (iv) where the offender's family member was entitled to the earlier award, the date on which that person ceased to be the offender's family member or, if earlier, the date on which the earlier award terminated.

(8) For the purposes of this regulation, the fact that payments in respect of an earlier award were subject to a restriction is to be taken into account, even if the earlier award subsequently terminated before the date on which payments became subject to a restriction by virtue of an order made under Article 2(3) of the Order (in so far as it was an award of income-based jobseeker's allowance or income-related employment and support allowance), regulation 5 or, as the case may be, regulation 6.

### **Loss of benefit penalties: reduction of universal credit**

**37.**—(1) Subject to paragraph (6) and to regulation 39, where regulation 36 applies, the amount of a reduction of universal credit in respect of an assessment period is to be calculated by multiplying the daily reduction rate by the number of days in the assessment period, unless paragraph (2) applies.

(2) Where the disqualification period ends during an assessment period, the amount of the reduction for that assessment period is (subject to paragraph (6)) to be calculated by multiplying the daily reduction rate by the number of days in the assessment period which are within the disqualification period.

(3) Subject to paragraphs (4) and (5), the daily reduction rate where regulation 36 applies is an amount which is equal to—

- (a) the monetary amount by which payments in respect of the earlier award were reduced in accordance with section 5B or 6 of the Fraud Act 2001 or, as the case may be, regulation 3, 3ZA(39) or 17 of the Loss of Benefit Regulations 2002 in respect of the last complete week before the relevant date (within the meaning of regulation 36);
- (b) multiplied by 52;
- (c) divided by 365; and
- (d) rounded down to the nearest 10 pence.

(4) Where the monetary amount by which payments in respect of the earlier award would have been reduced would, if the claimant had remained entitled to the earlier award, have changed during the disqualification period because of an order made under section 132 of the Social Security Administration (Northern Ireland) Act 1992 (annual up-rating of benefits)—

- (a) the daily reduction rate is to be calculated in accordance with paragraph (3), but on the basis of the new amount by which payments would have been reduced; and
- (b) any adjustment to the reduction of universal credit is to take effect from the first day of the first assessment period to start after the date of the change.

(5) Where the earlier award was a joint-claim jobseeker's allowance, the daily reduction rate is an amount which is equal to—

- (a) the amount of the standard allowance(40) applicable to the joint claimants under regulation 38 of the Universal Credit Regulations (table showing amounts of elements);
- (b) multiplied by 12;
- (c) divided by 365;
- (d) reduced by 60%; and
- (e) rounded down to the nearest 10 pence.

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(39) Regulation 3ZA was inserted by regulation 8 of S.R. 2016 No. 225.

(40) See Article 14 of the Order.

(6) The amount of the reduction under this regulation in respect of any assessment period is not to exceed the amount of the standard allowance which is applicable to the claimant in respect of that period.

#### **Loss of benefit penalties transition from working tax credit**

**38.**—(1) This regulation applies where an award of universal credit is made to a claimant who—

- (a) was previously entitled to working tax credit; and
- (b) is an offender, within the meaning of sections 36A or 36C of the Tax Credits Act 2002<sup>(41)</sup>.

(2) Where this regulation applies, the Social Security (Loss of Benefit) Regulations (Northern Ireland) 2002 apply as if in regulation 3ZB of those Regulations—

- (a) in paragraph (1) at the beginning there were inserted “Subject to regulation 39 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016,”;
- (b) “disqualification period” includes a disqualification period within the meaning of sections 36A(6) and 36C(5) of the Tax Credits Act 2002;
- (c) “offender” includes an offender within the meaning of the Tax Credits Act 2002; and
- (d) “offender’s family member” includes a person who is a member of the family (within the meaning of section 133(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(42)</sup>) of a person who is an offender within the meaning of the Tax Credits Act 2002.

#### **Loss of benefits penalties maximum total reduction**

**39.** Where regulations 36 and 38 both apply to a claimant, the total amount of a reduction of universal credit in respect of any assessment period under—

- (a) regulation 37; and
- (b) regulation 3ZB of the Social Security (Loss of Benefit) Regulations (Northern Ireland) 2002,

must not exceed the amount of the standard allowance<sup>(43)</sup> which is applicable to the claimant in respect of that period.

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<sup>(41)</sup> Sections 36A and 36C were inserted by section 120 of the Welfare Reform Act 2012 (c. 5).

<sup>(42)</sup> 1992 c. 4; The definition of “family” was amended by paragraph 46 of Schedule 24 to the Civil Partnership Act 2004 (c.33)

<sup>(43)</sup> See Article 14 of the Order