

## **EXPLANATORY MEMORANDUM TO**

### **THE UNIVERSAL CREDIT REGULATIONS (NORTHERN IRELAND) 2016**

**2016 No. 216**

### **THE UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) REGULATIONS (NORTHERN IRELAND) 2016**

**2016 No. 226**

### **THE JOBSEEKER'S ALLOWANCE REGULATIONS (NORTHERN IRELAND) 2016**

**2016 No. 218**

### **THE EMPLOYMENT AND SUPPORT ALLOWANCE REGULATIONS (NORTHERN IRELAND) 2016**

**2016 No. 219**

#### **1. Introduction**

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

#### **2. Purpose of the instruments**

- 2.1 These instruments support the introduction of Universal Credit.
- 2.2 The Universal Credit Regulations (Northern Ireland) 2016 make provision for determining entitlement to, and calculation of, an award of Universal Credit.
- 2.3 The Jobseeker's Allowance Regulations (Northern Ireland) 2016 and Employment and Support Allowance Regulations (Northern Ireland) 2016 therefore make provision for a *new style* of JSA and ESA, which consists of a contributory element only and thus can be paid alongside Universal Credit. The rules for contributory entitlement are carried forward largely unchanged, but the regulations do make provision for new conditionality and sanctions regimes in these two benefits, so they are aligned with those for Universal Credit.
- 2.4 The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 provide for the introduction of Universal Credit and the introduction of *new style* JSA and ESA. The Universal Credit Programme is working with NISSA to develop a timetable for the introduction of Universal Credit in Northern Ireland. The current versions of JSA and ESA will continue to be available pending the introduction of Universal Credit.

#### **3. Matters of special interest to Parliament**

##### ***Matters of special interest to the Joint Committee on Statutory Instruments***

- 3.1 None.

- 3.2 These regulations follow the long established principle of parity of Northern Ireland Social Security legislation with Great Britain and reflect regulations already in force in Great Britain.

*Other matters of interest to the House of Commons*

- 3.3 As these instruments are subject to the negative resolution procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 [Section 87 of the Northern Ireland Act 1998](#) places a statutory duty on the Minister for Social Development and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for the United Kingdom. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.
- 4.2 Underpinning the parity principle is the argument that, as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain, they are entitled to the same rights and benefits paid at the same rates.
- 4.3 The [Welfare Reform Act 2012](#) introduced a number of reforms including Universal Credit, Personal Independence Payment, the Jobseeker’s Allowance Claimant Commitment and a cap on the amount of benefits working age people can receive.
- 4.4 On 17 November 2015 “[A Fresh Start: The Stormont Agreement and Implementation Plan](#)” was agreed by the main political parties in Northern Ireland. Included in this agreement was the approach agreed by the Executive and HM Government to implementing welfare reform in Northern Ireland. The Northern Ireland (Welfare Reform) Act 2015 provides a power for Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council may then confer power on the Secretary of State or a Northern Ireland department to make further provision regarding these matters by regulations or order. The [Welfare Reform \(Northern Ireland\) Order 2015](#) (the “2015 Order”) was made on 9 December 2015 and regulations stemming from the Order to implement the various welfare reforms set out in the Welfare Reform Act 2012 in Northern Ireland are now being brought forward.

**5. Extent and Territorial Application**

- 5.1 The extent of these instruments is Northern Ireland.
- 5.2 The territorial application of these instruments is Northern Ireland.
- 5.3 These regulations replicate for Northern Ireland the legislation that applies to Great Britain (with changes necessary to reflect Northern Ireland legislation).
- 5.4 The Universal Credit Regulations (Northern Ireland) 2016 correspond to the Universal Credit Regulations 2013 (S.I. 2013/376) made for Great Britain (as amended by S.I. 2013/376, 591, 630, 803, 1508 and 2828, S.I. 2014/147, 516, 597, 771, 884, 902, 1097, 2887 and 2888, 2015/30, 67, 89, 336, 345, 457, 478, 546, 1362, 1647, 1649 and 1754).
- 5.5 The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 correspond to the Universal Credit (Transitional Provisions) Regulations 2014 (S.I.

2014/1230) made for Great Britain (as amended by S.I. 2013/591, 2014/1626 and 2887, 2015/339, 1362, 1649 and 1780).

## **6. European Convention on Human Rights**

- 6.1 As these instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 The Welfare Reform (Northern Ireland) Order 2015 provides for the introduction in Northern Ireland of a new working age income-related social security benefit, Universal Credit, and the abolition of income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, and Child and Working Tax Credits. These instruments implement a number of provisions of that Order for Universal Credit, Jobseeker's Allowance and Employment and Support Allowance.
- 7.2 The current benefit system has become a significant barrier to work as a result of its inherent structural weaknesses. First, it can discourage individuals from work as a result of a swift withdrawal of benefits when taking a job, or working a few extra hours a week. Too many people have simply felt that work does not pay. Second, with the number of benefits available, the system has become incoherent and confusing. Stepping into the world of work appears too risky for the very people who have most to gain, because they may not know where they stand. Third, the complexity of the system has cost the taxpayer more than £5.5 billion every year in money wrongly paid out through fraud and error.
- 7.3 Universal Credit will help to remove the complexities of the current system. Instead of having Housing Benefit, Child Tax Credit, Income Support and Working Tax Credit as separate benefits, all of these, along with the income-based strand of Jobseeker's Allowance and the income-related strand of Employment and Support Allowance, will be replaced by a single means-tested benefit for people both in and out of work. Claims to Universal Credit will be made by single claimants or jointly by couples.
- 7.4 Universal Credit aims to encourage and support people to move into and stay in work. It has a maximum award for the household calculated by reference to an age-related standard allowance to which additional elements, for example for dependant children, housing costs and other needs, are added as appropriate. Deductions from the maximum award will then be made in respect of any earnings or other relevant income, as well as any reductions necessary to take account of the benefit cap. The reward may also be reduced by conditionality sanctions. People with capital assets in excess of £16,000 will not be entitled to Universal Credit.
- 7.5 Part 2 of the Welfare Reform (Northern Ireland) Order 2015 sets out the legislative framework for determining who is entitled to Universal Credit and how it is calculated. It also provides for the conditionality and sanctions regime under which claimants are to be subject to work-related requirements and may have their award reduced for failure to comply with those requirements.

- 7.6 The Universal Credit Regulations provide much of the detail in relation to the matters covered in Part 2 of the Order. Those Regulations also include provision for a benefit cap under Part 6 of the Order which reduces the amount of an award of Universal Credit in cases where it is applicable.
- 7.7 Part 2 of the Order also provides for the abolition of the income-related benefits that are to be replaced by Universal Credit.
- 7.8 Please note that Regulation 52 of these regulations incorporates the same changes to the definition of “service user” which were made by [The Social Security \(Miscellaneous Amendments\) Regulations 2014](#) SI 2014/591 and subsequently also by [The Social Security Benefit \(Computation of Earnings\) \(Amendment\) Regulations 2015](#) SI 2015/784. Following the JCSI’s reports on this point the amended wording was reviewed and DWP determined that the form of wording used in the above mentioned amending instruments was necessary and not duplicative, hence why it appears again in this instrument.
- 7.9 Amendments to the Jobseekers (Northern Ireland) Order 1995 and the Welfare Reform Act (Northern Ireland) 2007 to enable the conversion of Jobseeker’s Allowance and Employment and Support Allowance into contribution-based benefits only are found in Part 3 of the Order. Part 3 of the Order also provides the statutory framework for the conditionality and sanctions regime in relation to those benefits. The detailed provisions for entitlement to the benefits and the conditionality and sanctions regimes applicable to each benefit are set out in the Jobseeker’s Allowance Regulations (Northern Ireland) 2016 and the Employment and Support Allowance Regulations (Northern Ireland) 2016. These Regulations make the same changes to those benefit regimes as made by the Jobseeker’s Allowance Regulations 2013, as amended, and the Employment and Support Allowance Regulations 2013, as amended.
- 7.10 The provisions for the new conditionality regimes build on the changes to the existing Jobseeker’s Allowance and Employment and Support Allowance sanctions and conditionality regimes. The Jobseeker’s Allowance changes and the Employment and Support Allowance changes will be introduced at the same time as the Universal Credit sanctions model.
- 7.11 The Committee’s attention is drawn to the separate Explanatory Memorandum to the following instrument, which provides for decision making and appeals and related matters in relation to Universal Credit and the new contribution-based Jobseeker’s Allowance and Employment and Support Allowance:
- The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016.

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

- 7.12 The following section describes key aspects of Universal Credit, highlighting significant differences from arrangements in the existing benefits and tax credits system.

Entitlement

- 7.13 The basic conditions of entitlement to Universal Credit which must be met unless exceptions apply, is that the claimant must be 18 or over, be under state pension credit

age, be in Northern Ireland, not be in education and to have accepted a claimant commitment.

- 7.14 The exceptions to these basic entitlement conditions, including circumstances in which young people aged 16-17 may claim Universal Credit, or a claimant be in full-time education or temporarily absent from Northern Ireland.
- 7.15 The Regulations also deal with the situation where one member of the couple meets the basic conditions of entitlement but the other does not.
- 7.16 Claims to Universal Credit will mainly be made on-line, though there will be telephone and face-to-face services for the minority of people who are unable to manage their claims on-line.

#### Twice monthly award

- 7.17 At present, existing income-related benefits are assessed weekly and paid weekly, fortnightly or four weekly. A key difference with Universal Credit is that it will be assessed monthly and paid twice monthly to claimants in Northern Ireland. This approach, together with the collection of earnings details via Her Majesty's Revenue and Customs Real Time Information system, will help ensure that benefit assessments are accurate and reflect the current needs of the household.

#### Waiting days

- 7.18 In some cases, there is a waiting period of 7 days before the claimant can become entitled to Universal Credit. Waiting days are the days at the start of a period in respect of which entitlement to benefit is being decided, but in respect of which claimants (who otherwise satisfy the conditions of entitlement) are not entitled to benefit. Entitlement to benefit first starts from the day after the last waiting day. The waiting days will affect entitlement to the full Universal Credit award, including housing costs and child elements where relevant.

#### The Claimant Commitment

- 7.19 In the current system, benefit claimants are often not clear about their responsibilities. To qualify for Universal Credit, all claimants will be required to accept a Claimant Commitment, which will be personalised to the individual claimant and will record all activities they are required to undertake, including, where appropriate, doing all that can reasonably be expected of them to find work or prepare for work. The Claimant Commitment will be regularly revised to reflect a claimant's circumstances and they will be advised of the consequences of failing to meet the requirements. In exceptional circumstances, where a claimant is unable to accept a Claimant Commitment, for example where they lack capacity to do so, the requirement to accept the Commitment may be removed.
- 7.20 If a claimant disagrees with the work search or availability requirements imposed they can ask for these to be reconsidered. If a claimant refuses to accept their Claimant Commitment then they will not be entitled to Universal Credit. As Universal Credit is a household benefit, if either eligible adult in a couple refuses to accept their Claimant Commitment, the claim for the other eligible adult will also end. Where a claimant does refuse to accept their Claimant Commitment, a short 'cooling off' period will be allowed to give them the opportunity to reconsider their decision and the impact on the household claim.

- 7.21 Where there is dual entitlement to Universal Credit and *new-style* Employment and Support Allowance or Jobseeker’s Allowance, a Claimant Commitment is required for both benefits, but the claimant will be subject to Universal Credit conditionality and sanctions. This could be a combined Claimant Commitment that covers the requirements of both benefits.

Reclaim within 6 months of a previous award

- 7.22 Claimants who re-claim Universal Credit because their job has ended will only receive a payment of Universal Credit for their whole assessment period if a claim is made within 7 days of their job ending. Those who re-claim after 7 days and cannot show good reason for not doing so will only receive a payment of Universal Credit from the day they re-claimed Universal Credit to the end of their assessment period.

Standard Allowance

- 7.23 The standard allowance for ordinary daily living expenses will be similar to existing income-related benefits. However, it will be a monthly, not weekly, amount. The structure of the allowances will be simpler with a single rate for people aged under 25.

Child Elements

- 7.24 The child element will be similar to existing Child Tax Credit provision. It will comprise of two rates: one rate for the first or only child or qualifying young person and then a lower rate for any further children or qualifying young persons.
- 7.25 A ‘disabled child addition’ will be payable in addition to the Child Element for a dependant child who meets the definition of disability, with two rates payable depending upon the impact the disability has on their ability to lead active and independent lives.

Housing Costs

- 7.26 Support for housing costs for social sector tenants will be based upon their actual housing costs less any under-occupancy deduction. For private sector tenants, support will be the lower of actual costs or the Local Housing Allowance. For owner-occupiers, support will reflect a flat rate of interest applied to loans up to a set limit.
- 7.27 Under the size criteria rules social sector tenants will receive help towards their accommodation based on the need of their household. Those tenants whose accommodation is larger than they need may lose some of the money they get for housing costs. The reduction is 14% for one spare bedroom and 25% for 2 or more spare bedrooms.
- 7.28 There are a number of changes aimed at simplification such as:
- the “shared accommodation rate” which restricts the amount of rent which can be allowed for certain tenants in the private rented sector will apply only to single childless tenants aged under 35;
  - in calculating support for rent, flat-rate deductions will be applied in respect of non-dependants living in the claimant’s household;
  - income from boarders and lodgers will be disregarded;
  - the housing costs element can continue in payment for those expected to remain in prison for up to 6 months;
  - owner-occupiers will continue to serve a waiting period before support for mortgage costs is provided. From April 2016 the period will be 9 assessment

periods (39 weeks), but, unlike the current arrangements, claimants will reserve this waiting period where there is a break in their award. If the claimant or partner receives any earned income, support for their owner-occupier costs will cease.

#### Childcare Costs Element

- 7.29 For many parents, childcare is essential to support their return to work and their progression in work. Within Universal Credit, support for childcare is provided in the form of an additional childcare element. The element is to be available to all lone parents and couples where both members are in work (with certain exceptions), and is not dependent on a claimant working a specific number of hours.
- 7.30 Where a child is in registered childcare, families will be able to recover 85% of actual childcare costs in Universal Credit up to a limit set in the Regulations.

#### Carer Element

- 7.31 Universal Credit will include a carer element where an eligible adult in the household provides regular and substantial care for a person with a long-term health condition or disability. The element is awarded where that person satisfies the same conditions of entitlement as those that are applied to Carer's Allowance, or would do so but for their earnings exceeding the limit prescribed for receipt of an allowance. It is not necessary to claim Carer's Allowance in order to be eligible for the carer element. Only one person can be in receipt of the carer element as a result of caring for one severely disabled person.

#### Capability for Work

- 7.32 Universal Credit will simplify the existing health and disability-related premiums and additions into two elements: the limited capability for work (LCW) element and the limited capability for work and work-related activity (LCWRA) element. There will be a single assessment for these elements, called the Work Capability Assessment (WCA). This assessment already applies in Employment and Support Allowance. For Universal Credit, the WCA will apply to claimants who are either in or out of work.
- 7.33 Before these elements may be payable, there will normally be a three or four month period during which the claimant will provide medical evidence and may be required to participate in a WCA. This does not apply, for example, where the claimant is terminally ill and the LCWRA element can be paid straight away.

#### Work-related Requirements

- 7.34 In Universal Credit, all claimants will be allocated to one of four work-related conditionality groups, according to their individual circumstances:
- No work-related requirements: where claimants already have or exceed a specified level of earnings or are unable to meet any work-related requirements because of particular circumstances or capability;
  - Work-focused interviews only: for claimants who are expected to stay in touch with the labour market and begin thinking about a move into work, more work, or better paid work;
  - Work preparation: lone parents and nominated responsible carers with a youngest child aged 3 or 4 and some claimants who have limited capability for work (defined in Article 26 of the Order) will not be expected to look for or be available for work, but will be expected to prepare for a move into work, more

work, or better paid work by, for example, participating in a work placement, attending training courses or skills assessment; and

- All work-related requirements: for claimants expected to move into work, more work or better paid work.

- 7.35 A claimant's work-related requirements will be set according to the claimant's conditionality group. For example, work search and availability requirements can only be imposed on claimants in the all work-related requirements group. Any work-related requirements will be tailored according to the claimant's capability and circumstances, and recorded on the Claimant Commitment, which will clearly set out what is expected. In addition to supporting the personalisation of the requirements, the legislation is intended to provide for flexibility in how work requirements are applied. For example, the Regulations do not specify how frequently claimants should attend interviews; in certain circumstances claimants are allowed to have a work search requirement without a work availability requirement and vice versa.
- 7.36 Claimants in the all work-related requirements group may be temporarily exempt from work search and availability requirements. For example, sickness, a bereavement, or temporary childcare responsibilities.
- 7.37 At the launch of Universal Credit, the intention was that the full conditionality regime will apply to groups roughly equivalent to those subject to the current Jobseeker's Allowance conditionality regime. Therefore, it is not intended that those with earnings above a certain administrative threshold will be subject to an intensive conditionality regime.

#### Treatment of Earnings: The Work Allowance and Tapers

- 7.38 A key aim of Universal Credit is to make clear to people that they will be better off in work. A straightforward system of work allowances and a single taper rate will allow people in work to see clearly how much support they are able to receive and make sure that people considering a job can understand the financial advantages of work.
- 7.39 The Universal Credit work allowance is an earned income allowance, which works in a similar way to the personal tax allowance: people's earnings up to a certain level will be ignored when calculating how much Universal Credit a person should receive. Each household has only one work allowance. Once a household earns more than their work allowance, their Universal Credit is reduced by 65 per cent of the amount of earnings which exceed the work allowance. This means that 35 pence in every pound earned will be kept by the claimant, meaning that claimants will be £35 better off for every extra £100 of net earnings.
- 7.40 If a single claimant, or either claimant in a couple, does not have responsibility for a child or qualifying young person, or does not have limited capability for work, they will not be eligible for a work allowance. In any other case, one of two work allowances will apply. Claimants in receipt of housing support receive a higher award of Universal Credit than those with low or no housing support. In order to address this and target resources fairly, claimants who receive no support with their housing costs are allowed to keep more of their earnings without loss of benefit.

#### Self-employment

- 7.41 Universal Credit will provide support for people who are self-employed only where self-employment is the best route for them to become financially self-sufficient. Claimants who declare that they are self-employed will attend a Gateway interview,



so that an adviser can assess the plans and documentation they have in place to determine whether the activity they are undertaking is developed, organised and carried out in expectation of profit.

- 7.42 In most circumstances, where a claimant is treated as gainfully self-employed, they will be subject to the ‘Minimum Income Floor’, which sets a minimum level of assumed income from self-employment.
- 7.43 The Minimum Income Floor is designed to provide a fair incentive for the self-employed to increase their earnings and productivity and realise their financial potential. The earnings expectations of self-employed claimants under Universal Credit mirror those that would be expected of claimants, with similar circumstances, in employed work. For example, the level of the Minimum Income Floor for claimants expected to be able to work full-time will be equivalent to 35 hours per week as set out in the National Minimum Wage Regulations.
- 7.44 If claimants are within one year of starting out in self-employed activity, they will be eligible for a ‘Start-Up Period’. This is a one year period within which the Minimum Income Floor will not be applied. Claimants will be eligible for a ‘Start-Up Period’ once in every five years where they have ceased the previous activity and started a new business.

#### Unearned Income

- 7.45 The Universal Credit Regulations prescribe types of income other than earnings that will be taken fully into account in calculating an award of Universal Credit. Income that is not listed in the Regulations is disregarded. This is different to existing income-related benefits legislation which prescribes the income to be disregarded.
- 7.46 Where unearned income is paid for a period beginning or ending during an assessment period, the calculations will take into account an amount based on the actual number of days in the assessment period for which the income is paid, rather than being calculated as a monthly amount.

#### The benefit cap

- 7.47 The benefit cap which is being implemented initially by the Housing Executive through Housing Benefit from May 2016, as provided for in the Benefit Cap (Housing Benefit) Regulations (Northern Ireland) 2016, will be applied under these Regulations for households who claim Universal Credit or at the point their claim is transferred to Universal Credit.
- 7.48 The cap in Universal Credit will mirror that being introduced through Housing Benefit with the main differences being that the cap will be applied on a monthly basis and set at £2167 for lone parents and couples and £1517 for single people. These are the monthly equivalents of the £500 and £350 a week caps being established through Housing Benefit. The exemption for being in-work will no longer be based on entitlement to Working Tax Credit but be dependent instead on a household meeting an earnings threshold of £430 a month.
- 7.49 The definition of “exempt accommodation” has been expanded to “specified accommodation” and claimants in “specified accommodation” who are entitled to Universal Credit will have their housing costs met through Housing Benefit; the benefit cap will not apply to this amount.

#### Sanctions

- 7.50 Sanctions, which reduce the amount of the Universal Credit award for a fixed or variable period, play an important role in encouraging claimants to comply with requirements to move into or prepare for work.
- 7.51 The sanctions regime will incorporate a range of safeguards for claimants, including:
- Reasonable requirements: the requirements placed on claimants will be reasonable, taking into account their capability and circumstances, such as health conditions, disability and caring responsibilities. Ensuring that the requirements placed on claimants are reasonable will help to prevent sanctions being applied inappropriately.
  - Good reason: sanctions will not be applied if a claimant can show good reason for non-compliance.
  - Sanction cap: the total sanction period that can be applied to a claimant at any one time is to be capped at 18 months.
  - Appeal rights.
- 7.52 The Universal Credit sanctions regime will feature four levels of sanction according to the claimant's conditionality group and type of compliance failure.
- 7.53 Higher-level sanctions may be imposed on claimants subject to all work-related requirements for failure to meet the most important requirements for that conditionality group. This is where a claimant, for no good reason, fails to apply for a particular vacancy; take up an offer of paid work; or, by reason of misconduct, or voluntarily loses paid work or pay.
- 7.54 Higher-level sanctions will be for a fixed period:
- 91 days for a first failure (14 days for 16/17 year olds);
  - 182 days for a second failure committed within 365 days of the previous failure (28 days for 16/17 year olds); and
  - 546 days (18 months) for a third or subsequent failure committed within 365 days of a previous failure that resulted in a 182 or 546 day sanction.
- 7.55 Where a failure relates to cessation or non-take-up of work or losing pay or paid work and occurred before the claim for Universal Credit, the fixed period will be reduced by the period between the failure and the date of claim and, if appropriate, the duration of the employment that has been foregone.
- 7.56 Medium-level sanctions may be imposed on claimants subject to all work-related requirements who for no good reason fail to meet other important labour market requirements for that conditionality group: to take all reasonable work search action; and to be able and willing to take up work immediately (or more paid work or better paid work). These sanctions will be for a fixed period of 28 days (7 days for 16/17 year olds) for a first failure or 91 days (14 days for 16/17 year olds) for a second and subsequent failure within 365 days of the previous failure.
- 7.57 Low-level sanctions may be imposed on claimants in the work preparation conditionality group, as well as those subject to all work-related requirements. Failures at this sanction level include not complying with a work-focused interview requirement and failures to comply with a work search requirement to take a particular action or to comply with a requirement to, for example, come for an interview or provide information.

- 7.58 Low-level sanctions are open-ended and continue until a compliance condition is met. The compliance condition is either meeting the original requirement or an alternative agreed with an adviser. Once the compliance condition is met, for claimants over 18 there will be an additional fixed period of 7 days for a first failure, 14 days for a second failure at the same level within 365 days of a first and 28 days for a third or subsequent failure within 365 days of a previous failure which resulted in a 14 or 28 day sanction. The reduction period for 16/17 year olds will be the open-ended component for first failures and the open ended component plus a fixed 7 day period for second and subsequent failures within 365 days of the previous failure.
- 7.59 Lowest-level sanctions will apply to claimants subject to work-focused interview requirements only. They will be open-ended until the claimant meets the compliance condition.
- 7.60 Claimants subject to higher, medium and low-level sanctions will be sanctioned an amount equivalent to 100% (or 50% if a joint claimant) of their standard allowance amount for Universal Credit. Claimants subject to lowest level sanctions and 16/17 year olds will be sanctioned an amount equivalent to 40% (or 20% if a joint claimant) of their standard allowance. A sanction may be reduced from 100% if a claimant's circumstances change such that they move to the no work-related requirements conditionality group: to 40% if they now have responsibility for children or nil, if they have limited capability for work and work-related activity.

#### Hardship Payments

- 7.61 Claimants subject to a sanction can apply for hardship payments. To receive these, they must meet a number of conditions, including that they have complied with their labour market conditions (if applicable) and can show their household is unable to meet their immediate basic and essential accommodation, food, heating or hygiene needs, and the claimant's Universal Credit award has been subject to the 100% daily reduction rate. The claimant (or both joint claimants) must also accept that payments will be recoverable from future non-sanctioned benefit payments. Recovery of payments will cease where the claimant has been in paid work with an income at or above the level reasonably expected of them for a period of (or periods that add up to) 6 Assessment Periods.
- 7.62 A hardship payment is paid at a daily rate of 60% of the sanction reduction. It is paid for the number of days from the date the claimant meets the conditions to be in hardship to the day before their next Universal Credit payment is due.

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

- 7.63 These Regulations make provision for the introduction of Universal Credit in Northern Ireland.
- 7.64 The changes to Jobseeker's Allowance and Employment and Support Allowance will be introduced in parallel to the roll-out of Universal Credit. Claimants who meet the criteria for Universal Credit will be excluded from claiming income-based Jobseeker's Allowance or income-related Employment and Support Allowance, but may make a claim for the *new-style*, contributory-only, versions of these benefits.

#### Entitlement to other benefits

- 7.65 The Regulations provide that a claimant who is entitled to Universal Credit will not be able to claim income support, housing benefit or tax credits.

- 7.66 Where a claimant with no current Universal Credit entitlement makes a new claim to Universal Credit due to a decrease in their earnings or because of a change in circumstances, within six assessment periods of their previous claim ending, they will adopt their previous assessment period when they re-claim as long as they still meet the basic Universal Credit entitlement conditions.
- 7.67 However, claimants who re-claim Universal Credit because their job has ended, will only receive a payment of Universal Credit for their whole assessment period if a claim is made within 7 days of their job ending. Those who re-claim after 7 days will have to show ‘good reason’ for not doing so sooner in order to receive a payment for the whole assessment period. If they cannot, they will only receive a payment of Universal Credit from the day they re-claimed Universal Credit to the end of their assessment period.
- 7.68 A claim to Housing Benefit in respect of specified accommodation can be made and paid alongside Universal Credit. There is also provision for overlap of awards of Universal Credit and certain existing benefits during the first assessment period for Universal Credit, where this is necessary to protect the interests of a former partner of the Universal Credit claimant.
- 7.69 Where the claimant has previously notified their intention to make a claim for certain existing benefits, or has made a defective claim, and entitlement to the existing benefit would pre-date the date of entitlement to Universal Credit, the claim may now be completed, so that the claimant is not disadvantaged by the move to Universal Credit.
- 7.70 Where a Universal Credit claimant subsequently forms a couple with another person, an award of Universal Credit may be made to the couple jointly. If the new partner was previously claiming existing benefits, those awards will come to an end.
- 7.71 There is provision to cater for cases where a claimant has made a backdated Universal Credit claim or has formed a couple with a Universal Credit claimant i.e. become a new claimant partner and has previously been entitled to another welfare benefit (other than Universal Credit) and to Housing Benefit during the first Universal Credit assessment period. It allows for existing benefit entitlement to be disregarded for the purpose of calculating whether the benefit cap should be applied to the Universal Credit award. This is because the cap may already have been applied to the claimant’s (or new claimant partner’s, as appropriate) Housing Benefit award prior to that date.
- 7.72 Regulations allow overpayments of existing benefits that may arise on transition to Universal Credit to be offset as unearned income against the claimant’s entitlement to Universal Credit and not to be separately recovered under other legislation. This is because it will be recovered as unearned income from the Universal Credit award rather than as an overpayment under other legislation.
- 7.73 The Regulations provide for in-year finalisation of tax credits. This will allow tax credits awards to be finalised during the tax year (i.e. in-year) when a tax credit claimant makes the transition to Universal Credit, rather than after the end of the tax year.
- 7.74 Although the intention is that in-year finalisation of tax credits awards will be the default approach in the majority of cases, provision has been made to allow HMRC Commissioners to continue to finalise tax credits awards after the end of the tax year due to unforeseen operational or IT difficulties with the in-year finalisation process.

- 7.75 The Regulations allow for the outcome of an appeal or revision in respect of a previous income support, housing benefit or tax credit claim to be applied, where appropriate, to the Universal Credit award or Universal Credit conditionality regime, for all claimants rather than just new claimant partners.
- 7.76 There is provision to cover cases where a Universal Credit claimant appeals a decision that they are not entitled to Universal Credit and have had that original decision reversed following an appeal or revision, but in the meantime have claimed income support, housing benefit or a tax credit, has also been included, so any entitlement to these existing benefits (other than housing benefit in respect of specified accommodation) is terminated when an award of Universal Credit arises. If this was not the case there would be an overlap in benefit entitlement for this period.

#### Effect of transition to Universal Credit

- 7.77 Chapter 3 of the Regulations has a provision that modifies the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016 (the "2016 Claims and Payments Regulations") to ensure that claimants who were previously in receipt of an existing benefit are able to backdate a Universal Credit claim for up to a month, where they were not notified of expiry of entitlement to their existing benefit in advance. The intention is to ensure that the same rule applies to claimants making the transition to Universal Credit from existing benefits as will apply in relation to Universal Credit and other benefits after the transitional period.
- 7.78 Provision to allow for cases where a person has been appointed to act on behalf of an existing benefit or credit claimant has also been included so they can continue to do so, under the 2016 Claims and Payments Regulations, when an existing benefit or credit claimant makes the transition to Universal Credit. The provision also enables a person appointed under the 2016 Claims and Payments Regulations to be able to act for the claimant if they cease to be entitled to Universal Credit and claim an existing benefit or credit. In both cases this is especially relevant where claimants have mental health problems or where they suffer from conditions that make "communication" with the Department impossible. The aim is to make the process of transition between existing benefits and Universal Credit easier for claimants who are in this position.
- 7.79 Waiting days will apply with prescribed exceptions to new claims for Universal Credit. The waiting days affect entitlement to the full Universal Credit award, including housing costs and child elements where relevant.
- 7.80 Certain groups of vulnerable claimants that may be particularly affected by the introduction of waiting days will be exempt from the requirement to serve waiting days.
- 7.81 The Regulations ensure that the LCW or LCWRA elements of Universal Credit can be applied to a Universal Credit award, with retrospective effect in most cases, from the beginning of the assessment period where an Incapacity Benefit (IB), Severe Disablement Allowance (SDA), ESA or IS claimant makes or joins a Universal Credit claim, either:
- based on decisions resulting from a previous Work Capability Assessment (WCA) or one undertaken when the claimant is in receipt of Universal Credit; or

- as a result of a set of criteria which uses receipt of certain components or levels of other benefits where claimants are receiving IB or SDA and are approaching pension age.
- 7.82 Where an award of Universal Credit immediately follows an award of JSA and the last day of the award of JSA was in an extended period of sickness, the Universal Credit award may – subject to the outcome of the WCA - include an element for limited capability for work or for work-related activity only after a period of 13 weeks starting on the first day of that extended period of sickness.
- 7.83 Claimants with limited capability for work who are entitled to National Insurance credits only (but no benefit), are to be treated in line with existing provisions for claimants receiving ESA, IS on the grounds of incapacity, IB or SDA who transition to Universal Credit. That is, they may be entitled to the LCW or LCWRA element in Universal Credit from the start of the first assessment period, on the basis of a previous WCA, an assessment whilst the claimant is in receipt of Universal Credit, or (in the case of claimants who are approaching pension age) entitlement to certain other benefits.
- 7.84 Provision has also been included in the Regulations to ensure dual provision is not made where a young person is entitled to an existing benefit or credit in their own right. In this case such persons cannot be “claimed” for by a parent or carer for the purposes of the Universal Credit Regulations (Northern Ireland) 2016.
- 7.85 To ensure a smooth transition to Universal Credit there is provision to ensure that all claimants do not have to re-qualify or start their qualification period from scratch to receive Support for Mortgage Interest (SMI) payments if they meet the Universal Credit eligibility criteria.
- 7.86 Where a Universal Credit award is terminated and a claimant was subject to a Universal Credit sanction, provision ensures the outstanding period of the Universal Credit sanction ceases where a claimant becomes entitled to old style JSA, old style ESA or IS.
- 7.87 There is provision for the transfer of “loss of benefit” penalties for fraudulent offences to a Universal Credit award. This applies to all legacy benefits, with the exception of tax credits. In cases where penalties are transferred from joint-claim JSA awards to an award of Universal Credit, the amount of the penalty applied to the Universal Credit award is reduced by 60%, if only one of the joint JSA claimants is subject to a penalty. This reflects the position in JSA where the member of the joint-claim couple who is not the benefit fraud offender can be paid JSA at the single person’s rate.
- 7.88 Where a Working Tax Credit (WTC) claimant has a fraud penalty applied to their WTC award, the fraud penalty will be applied to the Universal Credit standard allowance, for the remaining period of that penalty. Where the claimant has been in receipt of WTC and another existing benefit (e.g. Housing Benefit) and both awards have had a fraud penalty applied to them, the combination of these penalties will not exceed the Universal Credit standard allowance in any assessment period.

***The Jobseeker’s Allowance Regulations (Northern Ireland) 2016***

- 7.89 Jobseeker’s Allowance is payable to people who are out of work and seeking employment. Under the current Jobseeker’s Allowance Regulations (Northern Ireland) 1996, there are two elements of Jobseeker’s Allowance: a contribution-based element and an income-based element. The first of those elements is for claimants who have

paid sufficient National Insurance contributions. The second is for those who have not paid enough National Insurance contributions and/ or have low or no other income.

- 7.90 The 2016 Regulations will work alongside Universal Credit and make provision for an award of Jobseeker's Allowance based only on National Insurance contributions (*new style* JSA). The Regulations do not include references to the income-based element of Jobseeker's Allowance. Claimants who are out of work, seeking employment and who wish to claim an income-based benefit will instead claim Universal Credit.
- 7.91 With the exception of the conditionality and sanctions regime, the rules for the new Jobseeker's Allowance will be very similar to the existing rules for contribution-based Jobseeker's Allowance, made under the 1996 Regulations.
- 7.92 Jobseeker's Allowance for claimants under these Regulations will be paid either alone or along with Universal Credit. As Universal Credit is rolled out, the income-based element of Jobseeker's Allowance will be phased out.
- 7.93 The work-related requirements set out in the Universal Credit Regulations will apply to awards of Jobseeker's Allowance where both benefits are in payment; the work-related requirements in this instrument only apply where there is no Universal Credit award. The work-related requirements and sanctions in this instrument are similar to those in Universal Credit with differences reflecting the different circumstances of people who claim Jobseeker's Allowance, for example, there are no "lowest level" sanctions.
- 7.94 Jobseeker's Allowance claimants are expected to be available for full time work immediately (depending upon their commitments and capabilities) and to demonstrate that they are normally spending 35 hours per week to find work. These requirements can be adjusted in a wide range of circumstances, for example, if the claimant is a carer or disabled or has recently been a victim of domestic violence. The requirements are intended to be flexible in recognition of the difficulties some claimants may face.
- 7.95 The Regulations provide new claimant responsibilities, sanctions for failure to comply with the conditionality regime and disapplication of sanctions in Jobseeker's Allowance where sanctions are applied to a claimant who is also awarded Universal Credit. The Jobseeker's Allowance sanctions regime features three levels of sanctions (high, medium and low level) which broadly work in the same way as the equivalent sanctions for the Universal Credit all work-related requirements group. The requirements placed on Jobseeker's Allowance claimants are broadly equivalent to those placed on claimants in the Universal Credit all work-related requirements group. In cases of dual entitlement to Jobseeker's Allowance and Universal Credit the sanction will be applied to Universal Credit.

***The Employment and Support Allowance Regulations (Northern Ireland) 2016***

- 7.96 Employment and Support Allowance is payable to those who claim benefit on the basis that they have, or are treated as having, a health condition or disability which affect their ability to work.
- 7.97 Under the current Employment and Support Allowance Regulations (Northern Ireland) 2008<sup>1</sup>, Employment and Support Allowance has, like Jobseeker's allowance, two elements: a contributory element and an income-related element. The first of those elements is for claimants who have paid sufficient National Insurance

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<sup>1</sup> S.R. 2008 No. 280

contributions; the second is for those who have low or no other income. Universal Credit replaces the income-related element of Employment and Support Allowance, and this element will be phased out as Universal Credit is rolled out, leaving Employment and Support Allowance payable only to claimants who have paid sufficient National Insurance contributions.

- 7.98 The Employment and Support Allowance Regulations 2016 will work alongside those for Universal Credit (*new style* ESA). The Regulations omit any reference to income-related provision, as claimants who want an income-based benefit will claim Universal Credit. Awards made under the Regulations will be paid either alone or together with Universal Credit.
- 7.99 The rules for the new Employment and Support Allowance will be very similar to the existing rules for the contributory element of Employment and Support Allowance under the 2008 Regulations.
- 7.100 The Regulations provide new claimant responsibilities, sanctions for failure to comply with the conditionality regime and disapplication of sanctions in Employment and Support Allowance where sanctions are applied to a claimant who is also claiming Universal Credit. The Employment and Support Allowance sanctions regime is based on the Universal Credit sanctions model, though there are some significant differences that reflect the circumstances of people who claim Employment and Support Allowance as it features only two levels of sanctions, low and lowest, so does not include medium or higher level sanctions. This will allow claimants to move more easily between the different benefits and to understand the conditionality and sanctions provisions that apply to them across the aligned regimes.
- 7.101 The requirements placed on Employment and Support Allowance claimants are also based on the Universal Credit model, with some significant differences as claimants can be required to prepare for work and attend work-focused interviews, but are not required to look for work or be available for work where as in Universal Credit, within time limits, claimants may be required to look for or be available for work that they are capable of. The requirements to prepare for work and attend interviews are broadly equivalent to those requirements placed on claimants in the Universal Credit work preparation and work focused interview only groups.

### ***Consolidation***

- 7.102 These instruments are the product of an exercise to rewrite around 1,000 pages of existing regulations. In relation to the Universal Credit regulations, the approach has been, wherever possible, to replace detailed provisions with general principles supported by guidance. This should reduce the need for frequent amendments of the regulations.
- 7.103 The Employment and Support Allowance and the Jobseeker's Allowance Regulations are themselves both a consolidation and rewrite of the existing regulations. Opportunities have been taken wherever appropriate to make simplifications and improvements.
- 7.104 These instruments will be provided in due course in the 'Law Relating to Social Security' (referred to as "The Blue Volumes") which are regularly updated and are available to the public at no cost via the internet at:

<https://www.dsdni.gov.uk/services/law-relating-social-security>



## **8. Consultation outcome**

- 8.1 The Department for Social Development consulted extensively about the implications of the wider reforms in the Welfare Reform Bill (Northern Ireland) consultation process, and has also discussed informally with stakeholders to ensure that the operational implications are fully understood and that processes are in place to ensure that the changes are implemented correctly in Northern Ireland.

## **9. Guidance**

- 9.1 Detailed guidance on both regulatory and operational changes, similar to the guidance produced in GB, will be provided to Jobs and Benefit Office or Social Security Office staff and decision makers in administering Universal Credit, including for claimants on new Jobseeker's Allowance or Employment and Support Allowance.
- 9.2 Prior to the implementation of these regulations, changes will also be made to the Decision Makers Guide (DMG) which is also available free on the DSD internet at: <https://www.dsdni.gov.uk/articles/decision-makers-guide>. The relevant guidance will be available before this rule comes into force.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There are costs to the public sector of implementing Universal Credit as this represents a significant change to the working age benefits system. Much of the technical infrastructure relating to digital delivery is aligned with GB systems, and therefore is considered integral to that. Where benefits are restructured there will be savings to the exchequer in some areas and additional costs in others.
- 10.3 An Impact Assessment is submitted with this memorandum and published alongside it on the legislation.gov.uk website. Anyone who would have received an out of work benefit, tax credits and /or housing benefit will be affected by this change. There are an estimated 310,000 households who will receive Universal Credit, and the impact of these changes will depend on their underlying circumstances and needs. Universal Credit strengthens work incentives increasing the amount households retain from earnings, where currently some households have little or no incentive to work as benefits are reduced by almost the same amount.
- 10.4 Universal Credit simplifies the system by replacing many benefits with just one that supports those both in and out of work, easing the administrative burden, making it easier for claimants to understand what they are entitled to and leaving less scope for fraud and error. It will also ensure that appropriate conditions of entitlement are applied to claimants
- 10.5 As Universal Credit is dependent only on the level of income and other family circumstances, those working 16 or more hours will no longer need to claim different benefits, further reducing the burden on claimants. Furthermore, additional support for childcare will increase the entitlement for working families on Universal Credit having up to 85% of eligible childcare costs covered.
- 10.6 Universal Credit will refocus support on those most in need, not extending support to those who earn above median earnings, as is the case in tax credits, making sure that incentives to progress in work remain. Also introducing a capital limit on support and a minimum income floor so those in unprofitable self-employment seek additional or

paid work. This refocusing also encompasses the disability benefits, ensuring that those who may be capable for some work are supported and encouraged. Those with limited capability for work and work related activity (LCWRA) are not required to search for work or prepare for work.

## **11. Regulating small business**

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

## **12. Monitoring & review**

- 12.1 The Department is firmly committed to evaluating and monitoring the impact and effects of Universal Credit and the new Jobseeker's Allowance and Employment and Support Allowance.
- 12.2 Universal Credit marks a fundamental change to the way in which people engage with the welfare system and access in-work financial support. Universal Credit design, implementation and delivery will span a number of years. Evaluation plans will therefore reflect both the long timescale and complexity of reform. This has involved developing a wide-ranging evaluation strategy which will employ a number of different approaches over the lifetime of the policy, including ongoing monitoring, "live running reviews" of implementation and delivery, and longer term analysis of the outcomes and impacts for different groups of claimants, from implementation through to 2020 and beyond. A [high level evaluation strategy](#) was published by the Department for Work and Pensions in December 2012 and a revised strategy will be published in Summer 2016. The evaluation has already published a number of reports: on the [employment impacts on Universal Credit claimants who claimed during the Pathfinder stage](#); on the experiences of claiming [Universal Credit for these claimants gained from survey research](#); and on [survey and qualitative research into the experiences of those who claimed after Universal Credit was rolled out to include those with more complex claims](#).
- 12.3 An independently peer reviewed impact analysis, "[Evaluating the early labour market impacts of Universal Credit](#)", has shown that Universal Credit claimants are more likely to be in work compared to JSA counterparts. 113 Universal Credit claimants find work for every 100 JSA claimants who do so, and they also undertake 50% more job search activity."
- ## **13. Contact**
- 13.1 Anne McCleary at the Department of Social Development Telephone: 02890819984 or email: [anne.mccleary@dsdni.gov.uk](mailto:anne.mccleary@dsdni.gov.uk) can answer any queries regarding the instrument.