

EXPLANATORY MEMORANDUM TO
THE UNIVERSAL CREDIT (BENEFIT CAP EARNINGS EXCEPTION)
AMENDMENT REGULATIONS (NORTHERN IRELAND) 2017

2017 No. 145

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities (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 instrument

- 2.1 This instrument amends the Universal Credit Regulations (Northern Ireland) 2016 ([S.R. 2016 No. 216](#)) to replace the existing earnings threshold in the exception to the application of the benefit cap to a Universal Credit award. The instrument replaces the fixed threshold of £430 with a new threshold calculated by a formula based on earnings from 16 hours per week at the national living wage.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As these Regulations 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](#) (“the 1998 Act”) places a statutory duty on the Minister for Communities 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 rate.
- 4.3 The [Welfare Reform Act 2012](#) (“the 2012 Act”) introduced a number of reforms which included the introduction of Universal Credit, Personal Independence Payment and a cap on the amount of benefits working age people can receive. This was to restrict the total amount of money a non-working household can receive to broadly the level of the average earned income of working households after tax and national insurance contributions are deducted.
- 4.4 The [Welfare Reform and Work Act 2016](#) (“the 2016 Act”) provided for the introduction of further reforms in Great Britain, including tiered reductions to the level of the benefit cap depending on where in Great Britain claimants lived, changes

to the child element of Universal Credit and Child Tax Credits and the removal of the work-related activity component in Employment and Support Allowance and the Limited Capability for Work element in Universal Credit.

- 4.5 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 making provision corresponding to the 2012 Act. [The Welfare Reform and Work \(Northern Ireland\) Order 2016](#) (“the 2016 Order”) was made on 12th October 2016 making provision corresponding to the social security provisions of the 2016 Act, and regulations stemming from the 2016 Order are now being brought forward.
- 4.6 In order to maintain parity, these regulations implement for Northern Ireland the changes brought about in the equivalent GB regulations, The Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017 ([S.I.2017/138](#)) which came into force on 1 April 2017.

5. Extent and Territorial Application

- 5.1 The extent of these Regulations is Northern Ireland.
- 5.2 The territorial application of these Regulations is Northern Ireland.

6. European Convention on Human Rights

- 6.1 As these Regulations 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 2015 Order introduced a cap on the total amount of benefits that workless working-age households can receive. Receipt of certain benefits, such as disability benefits, results in exception from the cap (amongst other exceptions). The cap was amended by the 2016 Order (which introduced a new lower cap), and The Benefit Cap (Housing Benefit and Universal Credit) (Amendment) Regulations (Northern Ireland) 2016 ([S.R. 2016 No. 375](#)) which introduced two new exemptions from the benefit cap.
- 7.2 In Universal Credit, claimants are exempt from the benefit cap when the individual or a couple jointly, earns £430 or more per monthly assessment period, regardless of household type (the “earnings exception threshold”). This is to encourage claimants to move into work or increase their work hours. A fixed value was originally chosen because it was thought easier for claimants and staff to understand. The £430 earnings exception threshold was based on gross monthly earnings from 16 hours of work per week paid at the highest national minimum wage rate using the 2012 rate for those aged 21 years or older. This threshold was not subsequently updated to reflect

increases to minimum wage rates, and the introduction of the higher national living wage in April 2016 has meant that the fixed threshold is no longer aligned with the highest minimum wage rate in force and needed to be updated in order to maintain policy intent.

- 7.3 The benefit cap aims to strengthen work incentives, achieve fairness for taxpayers and ensure there is a reasonable safety net of support for the most vulnerable. The Government is committed to building on the successful outcomes of the cap by linking the earnings exception threshold to the national living wage. This rule amends the Universal Credit Regulations (Northern Ireland) 2016 so that the new earnings exception threshold is indexed to the national living wage and it will update each year in April when the national living wage changes without the need for further regulation change. A threshold based on a formula using the national living wage will be linked to the rates set out in regulation 4 of the National Minimum Wage Regulations 2015 ([S.I. 2015/621](#), as amended by [S.I. 2016/68](#)) and therefore will change automatically with any change to the national living wage rate. The threshold will continue to be the same for single claimants and couples.
- 7.4 The amended threshold provided for by this instrument ensures that the policy intention continues to be achieved, as it realigns the earnings exception threshold with the highest minimum wage rate currently in force, the national living wage.
- 7.5 Aligning the earnings exception threshold with the national living wage strengthens the rewards of work in the benefit system, as it ensures that it will not become easier for claimants to exempt themselves from the cap as the national minimum wage rates rise. This was the case with the fixed £430 earnings exception threshold, where increases to minimum wage rates each year enabled claimants to become exempt from the benefit cap on the basis of fewer and fewer hours worked, and they therefore may have been choosing to work fewer hours.
- 7.6 These Regulations provide that when the amount for the benefit cap earnings exception threshold is calculated, it should be rounded down to the nearest pound. This is to make the threshold easier to apply and understand.
- 7.7 The new Regulations will come into force immediately after the coming into operation of the Universal Credit Regulations (Northern Ireland) 2016 ([S.R. 2016 No. 216](#)).

Consolidation

- 7.8 This rule will be informally consolidated in the Law Relating to Social Security Northern Ireland (or “Blue Volumes”). It will be available to the public at no cost via the internet at: <https://www.communities-ni.gov.uk/services/law-relating-social-security>.

8. Consultation outcome

- 8.1 There has been no formal consultation specifically in relation to this instrument. This is because the policy to provide an earnings exception threshold has not changed, but it has been decided to align it with the national living wage for the reasons set out above.
- 8.2 In Great Britain the equivalent instrument The Universal Credit (Benefit Cap Earnings Exemption) Amendment Regulations 2017 ([S.I.2017/138](#)) was referred to the Social Security Advisory Committee (SSAC) and was discussed at the meeting on 14

December 2016. SSAC decided to take the regulations on formal reference and the Department for Work and Pensions' response is laid before Parliament alongside the regulations.

- 8.3 The Department for Work and Pensions did not accept SSAC's recommendation that the earnings exception policy needed to make allowances for apprentices who are paid the apprentice minimum wage. It was felt that the complexity for claimants and staff of having multiple thresholds would be disproportionate and that very few apprentices would be affected by the new earnings exception threshold.

9. Guidance

- 9.1 The appropriate guidance will be amended for staff and Decision Makers in advance of this instrument becoming operational.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 An Impact Assessment has not been prepared for this instrument. An impact assessment was prepared for the Great Britain regulations, this saw only a small impact (initially negligible, increasing to around £1m per year 2021 in GB), we would therefore only expect a fraction of this in Northern Ireland. Broadly the impacts across groups would reflect the analysis presented in GB.

11. Regulating small business

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

12. Contact

- 12.1 Anne McCleary at the Department for Communities can answer any queries regarding the rule Telephone: 028 90823332 or email: anne.mccleary@communities-ni.gov.uk.