

EXPLANATORY MEMORANDUM TO
THE UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) (SDP GATEWAY)
AMENDMENT REGULATIONS

2019 No. 10

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The regulations amend the Universal Credit (Transitional Provisions) Regulations 2014¹ ('the 2014 Regulations') and make some amendments to orders commencing provisions in the Welfare Reform Act 2012.² These amendments make provision to:
- introduce a 'Gateway Condition' so that claimants who are receiving income-related Employment and Support Allowance (ESA(IR)), income-based Jobseeker's Allowance (JSA(IB)), Income Support (IS) or Housing Benefit (HB) with a Severe Disability Premium (SDP) included in their award will not claim UC if they need to make a new claim for support, but will remain on existing benefits until they are moved to Universal Credit as part of the Department's managed migration process.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee

- 3.1 These regulations previously formed part of the draft Universal Credit (Managed Migration) Regulations 2018 (laid before Parliament on 5 November 2018), which have now been withdrawn and replaced with the current regulations, entitled The Universal Credit (Transitional Provisions) (SDP Gateway) Amendment Regulations 2019, and the draft Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019.

The draft Universal Credit (Managed Migration) Regulations 2018 proposed a coming into force date of 16 January for the introduction of the Severe Disability Premium Gateway. This was in order to meet the Government's commitment to put in place protection by that date for claimants receiving the Severe Disability Premium. The current regulations retain that date, for the same reason, which breaches the 21-day rule. The Government believes that this breach is justifiable in the circumstances, given the intention of protecting claimants, and the fact that both Houses have already had the opportunity to scrutinise the substance of the current Regulations, which are unchanged.

¹ <http://www.legislation.gov.uk/uksi/2014/1230/contents/made>

² <http://www.legislation.gov.uk/ukpga/2012/5/contents/enacted>

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.
- 4.3 Corresponding legislation for Northern Ireland will be produced and led by the Department for Communities in Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Welfare Reform Act 2012 provides for the introduction in Great Britain of a new working age income-related social security benefit, Universal Credit(UC), and the abolition of JSA(IB), ESA(IR), IS, HB, Working Tax Credit and Child Tax Credit.
- 6.2 The UC (Transitional Provisions) Regulations 2013³ came into force on 29 April 2013 and provided for the introduction of UC to limited categories of claimant. A series of Commencement Orders also brought into force provisions relating to UC, and repealed the legislation relating to JSA and ESA for UC claimants in specified postcodes.
- 6.3 The 2014 Regulations came into force on 16 June 2014 and revoked and replaced the 2013 Regulations, subject to certain savings, as part of DWP's reconfiguration of the legislation relating to the rollout of UC. They deal with the effects of transition from existing benefits to UC.
- 6.4 The UC (Transitional Provisions) (SDP Gateway) Amendment Regulations 2019 add provision to the UC (Transitional Provisions) Regulations 2014 to introduce a 'Gateway Condition' so that claimants who are receiving income-related Employment and Support Allowance (ESA(IR)), income-based Jobseeker's Allowance (JSA(IB), Income Support (IS) or Housing Benefit (HB) with a Severe Disability Premium (SDP) included in their award will not claim UC if they need to make a new claim for support, but will remain on existing benefits until they are moved to Universal Credit as part of the Department's managed migration process.

7. Policy background

What is being done and why?

Claimants in receipt of Severe Disability Premium (SDP)

- 7.1 The regulations support the transition for those individuals who are in receipt of the SDP in JSA(IB), IS, HB or ESA(IR). The legacy's system's complex mix of disability

³ <http://www.legislation.gov.uk/ukdsi/2013/9780111531549/contents>

elements have been simplified in Universal Credit and has allow the funding to be better targeted. UC has two disability elements for adults, and its funding has been targeted differently from the existing benefits, with more money targeted at the most severely disabled. The Limited Capability for Work and Work Related Activity Element, which is paid to those on UC who are more severely disabled, is awarded at a considerably higher rate than the Support Component which was the corresponding element of Employment and Support Allowance. As part of this simplification the SDP has not been carried forward into Universal Credit. Those in receipt of SDP who are moved to Universal Credit through managed migration will be eligible for Transitional Protection.

7.2 The regulations provide that these claimants will no longer naturally migrate to UC, but will remain on their existing benefits or be able to claim another existing benefit instead until such time as they are moved to Universal Credit as part of the Department's managed migration process.

7.3 The Government intends to introduce additional support through the award of transitional payments', for those who have already naturally migrated to Universal Credit having been in receipt of the Severe Disability Premium. This will be contained in the draft Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019, which are being laid at the same time as this Statutory Instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the state requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Informal consolidated text of instruments is available to the public free of charge via the 'National Archive' website: www.legislation.gov.uk

10. Consultation outcome

10.1 The Department (DWP) undertook a consultation on the Universal Credit (Managed Migration) Regulations 2018, of which these regulations previously formed a part, with the Local Authority Associations (LAs) between 22 June and 3 August 2018. By the end of this consultation period, the DWP had received responses from Glasgow Local Authority, Convention of Scottish Local Authorities (COSLA), Welsh Local Government Association (WLGA) and London Councils. No comments were made on the SDP gateway provisions.

Social Security Advisory Committee Recommendations

10.2 These regulations previously formed part of the Universal Credit (Managed Migration) Regulations 2018, a draft of which the Department presented to the Social Security Advisory Committee (SSAC). The Committee took the regulations on formal reference, and undertook a public consultation on these proposals between 22 June and 20 August 2018. The Committee provided its report on the consultation on 5 October 2018. The recommendations did not refer to the provision not to migrate claimants in receipt of the Severe Disability Premium (SDP) if they had a change of circumstances. The Government laid its response to the Committee's report before

Parliament alongside the Universal Credit (Managed Migration) Regulations 2018 on 5 November 2018. The Committee's report was also published on this date.

All the documentation regarding the SSAC consultation and the Government's response can be found at:

<https://www.gov.uk/government/publications/draft-universal-credit-managed-migration-regulations-2018-ssac-report-and-government-statement>

Social Security Advisory Committee Considerations

- 10.3 Although not part of the Committee's formal recommendations, it did comment on a number of other aspects of DWP's proposals which they thought merited further consideration. In this additional commentary, SSAC welcomed the decision not to migrate claimants in receipt of the SDP if they had a change of circumstances.

Stakeholder engagement

- 10.4 The Department has representation from Local Government on its Programme Board. Their role on the board is to represent the services provided by Local Authorities, and ensure these are factored into any decisions; escalate risks, ensure that the design of Universal Credit is workable from a Local Authorities perspective and ensure the interests of Local Authorities are properly represented and impacted.
- 10.5 The Department has held engagement events with Local Authorities on Natural Migration to support roll out. In addition, the Department holds quarterly Local Authority engagement events on Universal Credit.
- 10.6 It has existing consultation forums with the Local Authority Associations and Local Authorities to consider Universal Credit and its impact on Local Authorities as delivery partners for Housing Benefit. There are three key groups that meet every six weeks, which cover the strategic, operational and financial aspects respectively.
- 10.7 In addition to the above, the Department has three bespoke groups for landlords to discuss Universal Credit and related issues, these meet quarterly - one for Social Rented Sector landlords, one for Private Rented Sector landlords and one for Scottish Social Rented Sector landlords, both the of the Social Rented Sector meetings include Housing Associations.
- 10.8 The Department runs a number of forums which have wide representation from external organisations. The Department's Ministers have also held a number of Universal Credit roundtables with stakeholders and employers. These forums and roundtables are used to share with stakeholders the details of new changes to ensure we have considered all the impacts.

11. Guidance

- 11.1 Comprehensive guidance is under development to support advisers and decision makers and will be published on the DWP website before changes are implemented.

12. Impact

- 12.1 There is no significant, impact on business, charities or voluntary bodies.
- 12.1 The costs to the public sector of this instrument are part of a broader package of

expenditure on support for particular groups of claimants, totalling £995million. We estimate that 35,000 claimants receiving SDP in ESA(IR), JSA(IB), IS and HB who would otherwise migrate naturally to UC will benefit from the SDP gateway.

- 12.2 An Impact assessment has not been prepared for this instrument because it has no direct impact on business.
- 12.3 The Department has concluded that no benefit recipient with a protected characteristic will be affected because there are no adverse or disproportionate negative impact on equality and the Decision Makers are content that the need to advance equality has been considered appropriately.
- 12.4 A full assessment was made of the impact of the introduction of UC and was published in 2011.⁴ This also covers information concerning DWP's obligations regarding its Equality Duty. On 7 June 2018, recent analysis was published in 'Universal Credit Programme Full Business Case summary', which sets out the rationale for Universal Credit and outlines the expected employment impacts, economic case, and the value for money assessment.⁵

13. Regulating small business

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

14. Monitoring & review

- 14.1 The effect of the changes will be closely monitored.

15. Contact

- 15.1 Nina Young at the Department for Work and Pensions Telephone: 020 7449 5351 or email: Nina.Young@dwp.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 James Bolton, Deputy Director for Universal Credit, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Alok Sharma MP – Minister of State for Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220177/universal-credit-wr2011-ia.pdf

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725477/uc-business-case-summary.pdf