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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the second phase of the replacement of certain “existing benefits” by universal credit, a new benefit established by the Welfare Reform (Northern Ireland) Order (“the Order” [S.I. 2015/2006 \(N.I. 1\)](#)). The existing benefits are income-based jobseeker’s allowance, income-related employment and support allowance, income support, housing benefit, working tax credit and child tax credit.

Part 2 of the Regulations makes provision about claimants who move from existing benefits to universal credit and, in particular, about how matters which are relevant to the award of an existing benefit are to have effect in relation to an award of universal credit.

Regulation 3 prevents a claimant who is entitled to universal credit from also being entitled to income support, housing benefit, tax credits or state pension credit (subject to limited exceptions). Provision to similar effect is made in relation to old style JSA and old style ESA by virtue of an order made under Article 2(2) of the Order, which bring into operation repeals of the legislation relating to those benefits. In these Regulations, references to old style JSA and old style ESA are to the versions of jobseeker’s allowance and employment and support allowance which include an income-based, or income-related allowance.

Universal credit claimants are excluded from claiming income support, housing benefit or tax credits by regulation 4, except in certain cases where notice of intention to claim has previously been given, or a defective claim has previously been made, and entitlement will run from a date before the claimant became entitled to universal credit. Again, similar provision is made in relation to old style JSA and old style ESA by virtue of an order made under Article 2(2) of the Order, which bring into operation repeals of the legislation relating to those benefits.

Under regulation 5, most awards of income support and housing benefit to a claimant who has formed a couple with a universal credit claimant will terminate on the day before the first date of entitlement to universal credit. Awards of tax credits will terminate in accordance with the Tax Credits Act 2002 ([c.21](#)) as a result of the claimant’s change of relationship status. Similar provision is made by regulation 6 in relation to other claimants, although in this case awards of tax credits also terminate, by virtue of regulation 6, on the day before the first date of entitlement to universal credit (or, where no award of universal credit is made, on the day before the first date on which the claimant would have been entitled to universal credit if all the applicable conditions had been met). Regulation 9 provides for a claimant to be treated as entitled to an award of a tax credit in certain cases, for the purposes of regulations 5 and 6. Entitlement to old style JSA and old style ESA will similarly terminate (in so far as the awards are of an income-based or income-related allowance) by virtue of an order made under Article 2(2) of the Order.

Regulation 7 provides, in certain cases, for entitlement to some welfare benefits to be disregarded for the purposes of the benefit cap during the claimant’s first assessment period for universal credit. This will apply where a claimant is entitled to universal credit from a date before the date on which they made a claim, or were treated as making a claim, and they were previously entitled to housing benefit (which may already have been subject to the benefit cap). Overpayments of existing benefits (other than tax credits or joint-claim jobseeker’s allowance) which may arise on transition to universal credit will be off-set against entitlement to universal credit, under regulation 8.

Where a claim for universal credit is made by a claimant who was previously entitled to a tax credit, regulation 10 provides for the Tax Credits Act 2002 to apply to that claimant with certain

modifications, so that any overpayments of tax credits may be treated as overpayments of universal credit and appropriate time limits apply in relation to the imposition of penalties.

Regulation 11 provides for the amount of a tax credit claim to which a claimant is entitled to be finalised before the end of the tax year in which the award terminates, if the claimant has claimed universal credit during the tax year. Normally entitlement to tax credits is finalised after the end of the tax year in question, Regulation 11(1) and (2), along with the Schedule to these Regulations, provide for the modification of the Tax Credits Act 2002 (c. 21) and regulations made under that Act, to allow for in-year finalisation. Regulation 11(3) gives a discretion to the Commissioners for Her Majesty's Revenue and Customs to finalise entitlement to a tax credit after the end of the tax year in any case, or category of cases, where they consider that it is not reasonably practicable to apply the modified legislation.

Regulation 12 deals with appeals which are determined, and decisions about existing benefits which are revised or superseded, after the appellant has become entitled to universal credit. Entitlement to income support, housing benefit or a tax credit arising from an appeal, revision or supersession will terminate in accordance with regulation 5 or 6 and a decision made about entitlement to universal credit may be revised to take account of any findings of fact by the appeal body. Regulation 13 relates to the situation where a claimant successfully appeals a decision that they are not entitled to universal credit, or such a decision is revised, after the claimant has become entitled to income support, housing benefit or a tax credit. In this case, the award of the existing benefit terminates at the beginning of the first day of entitlement if there would otherwise be an overlap with the award of universal credit.

Where a claim for universal credit is made by a claimant who was previously entitled to an existing benefit, regulation 14 modifies the application of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2016 (S.R. 2016 No. 220) in relation to the claimant. The effect is that the time for claiming universal credit may be extended by up to one month, if the claimant was not given advance notice of termination of the award of existing benefit. Under regulation 15, a person who has been appointed to act on behalf of a claimant in relation to existing benefits may be treated as having been appointed to act on their behalf in relation to universal credit and vice versa.

Regulation 16 provides that claimants migrating from existing benefits to universal credit will not be required to serve the 7 waiting days. Waiting days apply to claims for universal credit where the claimant, or either of the joint claimants, on the first day of the period in respect of which they make the claim, is subject to all work-related requirements under Article 27 of the Order, or is not so subject only because they have limited capability for work.

Where a claim for universal credit is made by a claimant who was entitled to an existing benefit before they became entitled to universal credit, regulation 17 allows the claimant to apply for an advance payment of universal credit during their first assessment period. Repayment is by reduction of subsequent payments. Where certain deductions were made from an award of an existing benefit, regulation 18 allows deductions in respect of the same items to be made from an award of universal credit without the need for consents which might otherwise be required.

Regulation 19 provides that a claimant may be treated as having limited capability for work, or limited capability for work and work-related activity, for the purposes of an award of universal credit, if they were previously entitled to the work-related activity component, or the support component, of old style ESA. Where a claimant was in the process of assessment of their capability for work in connection with an award of old style ESA at the time that award terminated, the assessment period for universal credit will be adjusted accordingly, under regulation 20. Similar provision is made in regulation 22, in respect of claimants who were not entitled to old style ESA, but who were entitled to credits of contributions and earnings on the grounds of limited capability for work.

Where an award of universal credit immediately follows an award of jobseeker's allowance and the last day of that award was in an extended period of sickness, under regulation 21, the universal credit

award may include an element for limited capability for work or work-related activity only after a period of 13 weeks starting on the first day of that extended period of sickness.

Transition to universal credit from existing incapacity benefits is dealt with in regulations 23 to 26. Transition from income support awarded on the grounds of incapacity for work or disability is dealt with in regulation 23 and transition from incapacity benefit or severe disablement allowance is dealt with in regulations 24 to 26. In both cases, the limited capability for work or limited capability for work and work-related activity elements may be included in an award of universal credit with effect from the start of the first assessment period, if the claimant is subsequently assessed as having limited capability for work or, in the case of a claimant approaching pensionable age, is entitled to certain other benefits. Similar provision is made in regulations 25 and 26 in respect of claimants who were not entitled to an incapacity benefit, but who were entitled to credits of earnings under the Social Security (Credits) Regulations (Northern Ireland) 1975 (S.R. 1975 No. 113) on the grounds of incapacity for work.

Regulation 29 ensures that payments may not be made as part of an award of universal credit in respect of a young person who is entitled to existing benefits in their own right.

Where a universal credit claimant or their partner was previously entitled to old style JSA, old style ESA or income support, regulation 30 allows for any support for housing costs which was included in that award, or time spent waiting to qualify for such support, to be carried over to the award of universal credit, if the claimant is entitled to the universal credit housing element.

Regulations 31 to 35 deal with the treatment of any sanctions which have been imposed on awards of old style JSA and old style ESA, prior to transition to universal credit. Current sanctions will continue to have effect by way of deductions from the award of universal credit and past sanctions will be taken into account for the purposes of determining the sanction applicable to any future sanctionable failure. However, where there is a period of entitlement to an existing benefit between two periods of entitlement to universal credit, any sanctions arising prior to that intervening period will not be taken into account.

Where a claimant moves to universal credit within one month of the end of an award of an existing benefit and is subject to a loss of benefit penalty, regulations 36 and 37 provide that the penalty will in most cases continue on the basis of the rate applicable to the existing benefit for the remainder of the disqualification period. The usual rules relating to calculation of penalties within universal credit will not apply.

An assessment has been made of the impact of Universal Credit. Copies of the impact assessment may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London, SW1 9NA. It is also available alongside this instrument and the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).