

EXPLANATORY MEMORANDUM TO

**THE UNIVERSAL CREDIT AND JOBSEEKER’S ALLOWANCE
(MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND)
2018**

2018 No. 187

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities 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 The purpose of this instrument is principally, to amend The Universal Credit Regulations (Northern Ireland) 2016 (S.R. 2016 No. 216), to allow all 18-21 year olds to be eligible for support with their housing costs and to extend the existing support for children who would otherwise be likely to be in local authority care. The instrument also amends the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 to apply an extended disregard for arrears as a result of error on a point of law during the period of migration of legacy benefit claimants to Universal Credit, thereby ensuring consistency of approach across the benefits. The instrument also amends an unintended defect in the Jobseeker’s Allowance Regulations (Northern Ireland) 1996.

2.2 The instrument makes other miscellaneous amendments to a number of existing statutory instruments relating to Universal Credit and related benefits, as follows:

- [The Universal Credit Regulations \(Northern Ireland\) 2016 \(S.R. 2016 No. 216\) \(“the Universal Credit Regulations NI”\)](#);
- [The Universal Credit \(Housing Costs Element for claimants aged 18 to 21\) \(Amendment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017 No. 142\)](#);
- [The Jobseeker’s Allowance Regulations \(Northern Ireland\) 1996 \(S.R. 1996 No. 198\) \(“the Jobseeker’s Allowance Regulations NI”\)](#);
- [The Social Security \(Restrictions on Amounts for Children and Qualifying Young Persons \(Amendment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017 No. 79\)](#); and
- [The Universal Credit \(Transitional Provisions\) Regulations \(Northern Ireland\) 2016. \(S. R. 2016 No. 226\) \(“the UC Transitional Regulations NI”\)](#).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument also corrects unintended defects in:

- The Jobseeker’s Allowance Regulations NI
- The Universal Credit Regulations NI ; and
- The UC Transitional Regulations NI.

As such it is being issued free of charge to all known recipients. (See section 7.2 of this explanatory memorandum for further information).

- 3.2 The following additional information is provided in order to address matters raised by the Joint Committee on Statutory Instruments relating to the [Social Security \(Treatment of Arrears of Benefit\) Regulations 2018 \(S.I. 2018/932\)](#).
- 3.3 Regulation 4(3) inserts new regulation 8A in the UC Transitional Regulations NI to provide an extended disregard in the calculation of a claimant's capital, where a claimant receives a payment for arrears of benefit of £5,000 or more, and that arrears payment is received either, during an "earlier award" of an existing benefit which ended within one month of start date of the "current award" of Universal Credit, or during the "current award" of Universal Credit itself.
- 3.4 In regulation 8A, a payment is received "during the current award" if it is received after the award of Universal Credit begins and before the award terminates. Similarly, a payment is received "during the award of an existing benefit" if it is received after an award of existing benefit begins and before the award of existing benefit ends. "Existing benefit" is defined in regulation 2 of the UC Transitional Regulations NI.
- 3.5 Regulation 48 of, and paragraph 18 of Schedule 10 to, the Universal Credit Regulations NI set out the general rule for disregarding arrears of benefit in Universal Credit. This rule provides that arrears will be disregarded for a 12 month period from receipt. New regulation 8A(2) applies a special rule for the disregard of payments of arrears, which takes precedence over the general rule, if the conditions in regulation 8A(1) are met. This provides that the disregard will apply until the end of entitlement to the Universal Credit award (if later than 12 months from the date of receipt of the arrears).

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)

- 3.6 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 extent of this instrument is Northern Ireland.
- 4.2 The territorial application of this instrument is 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 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.

- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 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](#) provided a time-limited 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 12 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.

7. Policy background

What is being done and why?

- 7.1 The policies contained in this instrument are:

Placing awards of disability premium or higher pensioner premium within income-based Jobseeker’s Allowance to recipients of Personal Independence Payment or Armed Forces Independence Payment on a statutory footing

- 7.2 This instrument rectifies a defect in the Jobseeker’s Allowance Regulations (Northern Ireland) 1996 and puts awards of the higher pensioner premium and disability premium within income-based Jobseeker’s Allowance - where paid on the sole basis that the claimant has an award of either Personal Independence Payment or Armed Forces Independence Payment - on a statutory footing.
- 7.3 Within income-based Jobseeker’s Allowance a longstanding qualifying condition for the award both of higher pensioner premium and disability premium has been that the claimant or their partner is in receipt of Disability Living Allowance. From 8 April 2013, Armed Forces Independence Payment was introduced for seriously injured

Service and ex-Service personnel. From 20 June 2016, Personal Independence Payment replaced Disability Living Allowance for people who are aged 16 to 64.

- 7.4 The policy intention was, and remains, that the qualifying conditions for the award of higher pensioner premium and disability premium under income-based Jobseeker's Allowance should be extended to accommodate cases where the claimant or their partner has been awarded either Personal Independence Payment or Armed Forces Independence Payment, and appropriate instructions to operational decision makers were issued accordingly. The computer system supporting Jobseeker's Allowance was also changed to reflect the policy intent. The Department have recently identified that, in drafting the Personal Independence Payment/Armed Forces Independence Payment consequential legislation, some of the legislative cross-references necessary to support the change where the claimant has an award of either Personal Independence Payment or Armed Forces Independence Payment were unintentionally omitted.

Reinstating housing support for 18-21 year olds

- 7.5 Under the provisions of this amendment, all 18-21 year old claimants will become entitled to claim financial support towards their rent through Universal Credit. In July 2017, the Universal Credit (Housing Costs Element for claimants aged 18 to 21) (Amendment) Regulations (Northern Ireland) 2017 withdrew entitlement to claim housing costs for certain 18-21 year olds in Universal Credit. Since then 18-21 year old claimants who are single, subject to all work-related requirements, and who do not fall within one of a range of exemption categories were expected to remain in, or return to, the family home or to move into work.
- 7.6 This policy change means that young people on benefits will be assured that, if they secure a tenancy, they will have support towards their housing costs in the normal way.

Extending the existing support within Universal Credit for households with children who would otherwise be likely to be in local authority care

- 7.7 These changes are in recognition of the immense value of the care provided by adoptive parents and non-parental carers in keeping children out of local authority care and will have a positive impact for non-parental carers and parents who adopt. Under the existing rules, a payment is only made for third and subsequent children who benefit from an exception even if the first or second child in that household meet the criteria for the adoption or non-parental caring arrangement exceptions. This change will mean that, children who are adopted or in non-parental caring arrangements will be disregarded when determining the order of children. Therefore, a parent or carer will be able to receive a child element for any children in these arrangements, plus the first and second child in their household (under the new ordering provision), as well as for any other children who qualify for the other exceptions (non-consensual conception or multiple birth).
- 7.8 This instrument also amends regulations 4 and 5 of the Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) (Amendment) Regulations (Northern Ireland) 2017 to ensure that the changes made to the Universal Credit Regulations NI will apply equally to any awards of Income Support and Jobseeker's Allowance that, exceptionally, continue to include an amount for a child or qualifying young person.

- 7.9 Corresponding legislation changes will also be made to Child Tax Credit legislation to ensure the policy is mirrored across both benefits. These changes will be taken forward by HMRC and HMT.
- 7.10 These changes are in response to the judgment of the High Court of England and Wales of 20 April 2018, which found the policy to be lawful overall, but that the ordering provision as applied to non-parental carers were irrational. This irrationality was due to the fact that the policy aimed to incentivise, or at least not to discourage, these arrangements from forming as they are in the best interests of the child. Following this judgment, the Secretary of State for Work and Pensions announced on 27 April 2018 that the ordering provisions would no longer apply to children in non-parental caring arrangements or who were adopted from local authority care. This instrument therefore makes corresponding changes for Northern Ireland, in line with the parity principle.

Updating a reference to relevant tax law in order to maintain the current alignment between tax and Universal Credit

- 7.11 Regulation 3(7) amending regulation 77(5) of the Universal Credit Regulations NI is a consequential amendment which will update the reference to the relevant tax law to ensure that the Universal Credit Regulations NI remain aligned with the Tax Regulations and maintain the existing policy such that these public sector off-payroll workers will be treated as employees under Universal Credit, as they are in the tax system. It also clarifies that where a claimant combines off-payroll work with genuine self-employment, whichever is their main employment will determine how they are treated under Universal Credit. The concept of main employment is already part of Universal Credit's test of gainful self-employment.

Adding Foster Carers to the list of exemptions to the Shared Accommodation Rate

- 7.12 Regulation 3(8)(c) which amends paragraph 28 of Schedule 4 to the Universal Credit Regulations NI is a minor change that will bring the legislation into line with current policy. Under existing policy, all claimants with housing costs who are foster carers can qualify for an additional bedroom to be awarded when applying the relevant Local Housing Allowance rate to their housing costs element. However, we have identified that the current regulations do not reflect this position for single claimants aged under 35 with no dependent children who live in the private rented sector and there is no statutory authority to support such awards. This amendment would place these awards on a statutory footing.

Treatment of Arrears of Benefit

- 7.13 Regulation 4(3) amends the UC Transitional Regulations NI to provide consistency in the treatment of arrears of benefit paid due to an error on a point of law. The Social Security (Treatment of Arrears of Benefit) Regulations (Northern Ireland) 2018 (S.R. 2018 No. 150) has expanded the existing capital disregards in legacy income-related benefits that currently apply to benefit arrears amounting to £5,000 or more which are paid as a result of official error, to apply equally where the arrears are paid as a result of an error on a point of law. This means that the arrears in question could be disregarded for the life of the benefit award rather than the current maximum of 52 weeks.

- 7.14 Universal Credit has a 12 month disregard for all benefit arrears regardless of the basis for payment of the arrears. This could mean that when claimants migrate from a legacy benefit to Universal Credit, the treatment of any arrears payment would change, and they could be worse off than people who did not migrate. This amendment provides the same capital disregard in Universal Credit in respect of arrears relating to benefit entitlement that begins before migration to Universal Credit is complete.
- 7.15 The instrument amends the UC Transitional Regulations NI to disregard, when calculating an award of Universal Credit, any benefit arrears payments, or payments to compensate for arrears due to the non-payment of benefit, of £5,000 or more for 12 months from receipt of the payment, or until the end of the current Universal Credit award (if later), where:
- a. The payment is received during the current Universal Credit award and it would have been disregarded from the calculation of the claimant's capital if the claimant were entitled to an existing benefit (i.e. income-based JSA, income-related ESA, income support, housing benefit, child tax credit or working tax credit); or
 - b. the payment is received during an award of an existing benefit and is disregarded from the calculation of the claimant's capital; the claimant then moves to Universal Credit within one month of the end of their existing benefit award.
- 7.16 This provision applies to arrears due to official error and error on a point of law. It will only apply to arrears relating to benefit entitlement which began before migration of the legacy benefits to Universal Credit is complete.
- 7.17 The requirement to move from an existing benefit to Universal Credit following termination of the existing benefit award within one month, in order to benefit from the extended disregard, ensures that those who naturally migrate to Universal Credit will benefit, i.e. those with an existing benefit award who are required to make a claim for Universal Credit as a result of a change in their circumstances. In such circumstances there may be a delay in the claimant making a claim for Universal Credit and it would be unfair to treat such individuals differently from those whose migration to Universal Credit is managed.

Minor amendments

- 7.18 Regulation 3(5) and (6) make minor amendments to the Universal Credit Regulations NI to correct unintended errors.
- 7.19 Regulation 3(5) amends regulation 53 of the Universal Credit Regulations NI to provide that where a person has failed to report information in relation to earned income and the Department makes a determination as to an amount of earned income in that assessment period, the determination may be based on an estimate of the amounts received or expected to be received in that assessment period. Regulation 3(6) amends regulation 54 of the Universal Credit Regulations NI to change the date after which the last day of an award must fall in order for it to be an "old award" for the purpose of that regulation.
- 7.20 Regulation 4(2) rectifies an unintended defect in the UC Transitional Regulations NI to restore the policy intent. It amends regulation 3A to provide that where a claimant has an award of universal credit and in the same assessment period is also entitled to housing benefit for temporary accommodation but the award of universal credit does not include an amount for housing costs, regulation 23(2) of the Universal Credit

Regulations NI is to apply in relation to that assessment period as if the award did include an amount for housing costs.

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 statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument 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: [Search for SSPLD Blue Volumes](#).

10. Consultation outcome

- 10.1 This measure has not been subject to public consultation.

11. Guidance

- 11.1 The appropriate guidance will be amended for staff and decision makers in advance of this instrument becoming operational.

12. Impact

- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 Extending the existing support within Universal Credit for households with children who might otherwise be in local authority care will have a positive impact upon women as parents/carers of children in non-parental caring arrangements or adopted from local authority care. Since the majority of lone parents/carers are women, this change will disproportionately affect women as compared to men.
- 12.3 Reinstating housing support for 18-21 year will provide parity between 18-21 year olds and other age groups in eligibility for housing costs, ensuring no age group are disproportionately unable to claim housing support.
- 12.4 Applying an extended disregard for arrears as a result of error on a point of law will mean that such arrears could be disregarded for the life of the benefit award rather than the current maximum of 52 weeks. This will mean that when claimants receive large payments of benefit arrears, the payments will not affect current claims
- 12.5 An Impact Assessment has not been prepared for this instrument because there are no businesses affected by the measures in the instrument.

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 operation of the regulations will continue to be reviewed through the normal avenues of guidance enquiries received from the Department for Communities’ offices and correspondence from members of the public.

15. Contact

- 15.1 Anne McCleary at the Department for Communities can be contacted with any queries regarding the instrument: Telephone: 028 90823332 or email: annemccleary@communities-ni.gov.uk.
- 15.2 Anne McCleary, Director of Social Security Policy & Legislation Division, at the Department for Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Justin Tomlinson, Parliamentary Under-Secretary of State for Family Support, Housing and Child Maintenance at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.