

**EXPLANATORY MEMORANDUM TO**

**THE UNIVERSAL CREDIT (MANAGED MIGRATION AND MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2019**

**2019 No. 152**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Communities (DfC) on behalf of 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 and the Secondary Legislation Scrutiny Committee.

**2. Purpose of the instrument**

- 2.1 The regulations make provision to:
  - introduce the process that existing benefit<sup>1</sup> claimants will follow when they are managed migrated to Universal Credit (UC) by the Department;
  - allow for a transitional element to be considered, calculated, paid and administered to provide protection for existing benefit claimants who, upon managed migration, would have a lower entitlement to UC than their total existing benefit awards;
  - introduce, from July 2019, Discretionary Hardship Payments that can be made to those who have gone through the managed migration process and appear to be in hardship as a result of the termination of their existing benefits or if any other issues related to managed migration have resulted in hardship.
  - introduce, from July 2020, a two-week run-on of Income Support (IS), income-based Jobseeker's Allowance (JSA(IB)) and income-related Employment and Support Allowance (ESA(IR)) for those whose existing benefit awards have terminated as a result of their claim for UC.
  - provide for a 12-month period when the Minimum Income Floor (MIF) will not apply to self-employed claimants who are managed migrated and, from September 2020, also not apply to those who are naturally migrated in self-employment and all those existing UC claimants who become new gainfully self-employed.
  - make provision so claimants who are receiving an existing benefit and are also in education, are considered to meet the UC entitlement conditions when they are managed migrated to UC;
  - introduce 'transitional payments' for those eligible claimants who were in receipt of the Severe Disability Premium (SDP) as part of their award of JSA(IB), ESA(IR) or IS and have already moved to UC following a relevant change in their circumstances. These payments will comprise:

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<sup>1</sup> Income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit and tax credits.

- an ongoing monthly payment where they are eligible for it;
- an additional lump-sum payment to cover the period since they moved;
- the conversion of the monthly payment into a transitional element at a date to be determined by the Department so that it can be administered and ended in the same way as for those claimants who are receiving transitional protection.
- Abolish, from January 2021, the SDP Gateway that prevents claimants entitled to the SDP from making a claim to UC if they have a relevant change of circumstances. Once the Gateway is removed claimants will move to UC if they have a change of circumstances and may be eligible to be considered for transitional payments.

### **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 largely replicate the Universal Credit (Managed Migration Pilot and Miscellaneous) Regulations 2019.<sup>2</sup> However, the provision in those Regulations for a pilot of the managed migration process, limited in Great Britain to 10,000 awards of UC, has not been included in the current instrument. This is because DfC is not undertaking a separate pilot but will carefully consider the outcome of the DWP pilot. The coming into force date of this instrument is 24<sup>th</sup> July 2019.
- 3.2 These Regulations contain provisions to remove the SDP Gateway and increase transitional payment amounts to be paid to claimants previously entitled to SDP. A recent High Court Judgement<sup>3</sup> found that the differential treatment between SDP claimants who have already moved to UC, and those who are prevented from doing so because of the SDP gateway, is not justified. These regulations remedy that differential treatment. The Department is conscious that the present timetable for the laying and coming into force of these Regulations will breach the 21-day rule, which allows for the Committees to scrutinise the instrument. Following careful consideration, and particularly the delay engendered by amending the text of the Regulations to address the issues in the judgment, it was decided that the primary concern should be to pay the former SDP claimants the transitional payment as quickly as possible.
- 3.3 The Committees and both Houses will still have the usual period to consider the Regulations, and to raise any matters they feel necessary.
- 3.4 The provisions for transitional payments to former SDP recipients who have moved to UC via natural migration are included within these regulations. This is because these transitional payments will be converted into a Transitional Element and therefore form part of the wider transitional protection framework.

#### ***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)***

<sup>2</sup> <http://www.legislation.gov.uk/ukdsi/2019/9780111178317/contents>

<sup>3</sup> [https://www.matrixlaw.co.uk/wp-content/uploads/2019/05/TP-AR-CSX-SSWP-Judgment-Final-2May19\\_.pdf](https://www.matrixlaw.co.uk/wp-content/uploads/2019/05/TP-AR-CSX-SSWP-Judgment-Final-2May19_.pdf)

3.5 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 this instrument is subject to the negative resolution procedure, and does not amend primary legislation, no statement 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 provides for the introduction of a new working age income-related social security benefit, UC, and the abolition of JSA(IB), ESA(IR), IS, Housing Benefit (HB), Working Tax Credit and Child Tax Credit (CTC).

6.4 On 17<sup>th</sup> 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 could 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 2015 Order was made on 9 December 2015 making provision corresponding to the Welfare Reform Act 2012. [The Welfare Reform and Work \(Northern Ireland\) Order 2016](#) was made on 12 October 2016 making provision corresponding to the social security provisions of the Welfare Reform and Work Act 2016.

6.5 The 2016 Regulations, which were made in exercise of powers in the 2015 Order, made provision for the introduction of UC for new claims in Northern Ireland and the abolition of certain existing benefits. A series of Commencement Orders brought into force provisions relating to UC in specified postcodes and the abolition of JSA(IB) and ESA(IR).

6.6 This new set of regulations amends the 2016 Regulations to add provision to provide for the planned migration of all existing benefits claimants to UC. It also revokes the

UC (Transitional Provisions) (SDP Gateway) Regulations (Northern Ireland) 2019<sup>4</sup> from January 2021.

- 6.7 Although certain provisions in the regulations come into force on the 24<sup>th</sup> July 2019, the migration of claimants to UC from existing benefits will not begin until after the GB pilot has ended and the readiness for the full managed migration to all existing benefits claimants has been considered in relation to the GB pilot. This is so lessons can be learned from the GB pilot and implemented within Northern Ireland.

## 7. Policy background

*What is being done and why?*

### *Migration Process*

- 7.1 Managed migration means that people who are currently in receipt of various working age benefits will be moved to UC as part of a carefully managed process.
- 7.2 The regulations make provision to notify claimants who are receiving existing benefits (referred to in paragraph 6.3) that they will need to make a new UC claim by a specific deadline in order to begin the managed migration process to move to UC. The regulations give a minimum period of three months for the claimant to make a new UC claim, permitting this period to be extended if analysis shows that certain claimants require more time, e.g., someone who is vulnerable or has complex needs.
- 7.3 Although the notification will give a deadline day to make a new UC claim, this can be extended if claimants contact the Department before that day and demonstrate good reason for their request, e.g., because they have gone into hospital. As well as allowing claimants to request an extension to the deadline day, the regulations also allow Departmental staff to extend it. For example, staff may identify that a claimant needs extra support to make a new UC claim, or the claimant may have requested an extension, but there is insufficient evidence to decide straight away whether the claimant has good reason. The decision to allow, or not allow, an extension is not appealable.
- 7.4 Provided that existing benefit claimants (and their partner, if they have one) make the UC claim by the deadline day specified in the notification, existing benefits will be paid up until the day before they made their UC claim and Transitional Protection will be considered. If they do not make a new UC claim by the deadline day, their existing benefits will end and will be paid up until the day before that day.
- 7.5 If claimants contact the Department after the deadline date but within one month of their existing benefits ending, their UC claim will automatically be backdated to the deadline date and Transitional Protection can be applied to the UC award. If a claimant does not contact the Department until after a month after the deadline date they were given, their claim will not be considered as a managed migration claim. This means that their claim will be assessed under the UC regulations<sup>5</sup> without the consideration or award of Transitional Protection.
- 7.6 Claimants in receipt of existing benefits who are treated as a couple or as members of a polygamous marriage when the notification is sent may need to claim UC

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<sup>4</sup> <http://www.legislation.gov.uk/nisr/2019/2/contents/made>

<sup>5</sup> <http://www.legislation.gov.uk/nisr/2016/216/contents/made>

separately either as single persons or a different couple. This may be because of a change of circumstances. It may also be because UC and existing benefits have different definitions of what constitutes a couple. This means that some claimants who are in receipt of an existing benefit as a couple will be treated as single claimants in UC.<sup>6</sup>

- 7.7 This will always be the case where a claimant has been claiming the existing benefits and has been a member of a polygamous marriage (i.e., a unit of three or more) because UC does not recognise polygamous marriages and so in UC there are only joint and single claims. In these cases, the existing benefit awards will end on the day before the day that the first member of the couple claims UC, or on the day before the deadline date if no UC claim is made. Therefore, provided that the UC claim is made on or before the deadline date, or after the deadline date and the UC claim date has been ‘backdated’, the UC claim made by the other member of the couple will start on the same day.
- 7.8 The regulations allow for the notification to be cancelled if: it was issued in error; UC claims are no longer being accepted in an area or category of case in order to safeguard the efficient administration of UC; or if it is in the interests of any claimant or group of claimant.
- 7.9 HB claimants moving to UC under the managed migration process will be eligible to receive a two-week Transitional Housing Payment, in line with those claimants who migrate to UC because of a change of circumstances. The regulations also make new provision for a two-week “run on” for claimants in receipt of JSA(IB), ESA(IR) or IS from 22<sup>nd</sup> July 2020.
- 7.10 Like the Transitional Housing Payment, the amount of these “run-ons” will be fixed according to the amount of the award payable immediately before claiming UC. These payments are disregarded as unearned income for UC purposes so would not reduce the first UC payment. This will provide claimants with additional financial support until they receive their first payment of UC. The “run-ons” will also apply where the existing benefits are brought to an end because the claimant has failed to comply with the managed migration process by their given deadline and there has been no extension to it.
- 7.11 The JSA(IB), ESA(IR) or IS “run-ons” will also apply to claimants who naturally migrate to UC because they have a change in their circumstances and the claim to UC terminates their existing benefits award.
- 7.12 Managed migrating claimants will also be treated as entitled to an award of a tax credit during the tax credits renewal period at the start of a new tax year, when the new tax credits award has not yet been determined. This is required so that HMRC can finalise and terminate the tax credits award if the claimant moves to UC during that time.
- 7.13 Provision is included to allow the start day of a UC award to be deferred for up to one month from the day it was made. This has been included to delay the start date of UC claims if the number of claims that need to be assessed would put pressure on operational capacity to the point of threatening service delivery to claimants.

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<sup>6</sup> See regulation 3 of the UC Regulations <http://www.legislation.gov.uk/nisr/2016/216/contents/made>

### ***Transitional Protection – transitional element***

- 7.14 The regulations provide that claimants who have formed a couple or separated at the point that they make a new UC claim, or are a member of a polygamous marriage and thus treated as a single claimant under UC legislation, do not qualify for Transitional Protection.
- 7.15 Transitional protection will be provided in the form of a transitional element. This will be calculated by comparing the total amount of all existing benefits that the claimant has been awarded with the total amount of UC that they would be entitled to when calculated according to the circumstances on which the claimant's existing benefit awards were based. The UC amount calculated in this way is the "indicative UC amount". This method of calculation has been designed to provide a balanced, like-for-like comparison of entitlement under the two regimes.
- 7.16 As UC is paid monthly, the total monthly amount of existing benefits to which the claimant is entitled on migration day needs to be calculated so that a comparison can be made. To do so:
- the daily rate of the tax credits award (as determined by HMRC) is converted to a monthly figure by multiplying it by 365 and dividing it by 12;
  - the weekly rate of IS, ESA(IR) or JSA(IB) is converted to a monthly figure by multiplying it by 52 and dividing by 12;
  - the weekly rate of HB is converted to a monthly figure by multiplying the total amount of HB by 52 and dividing by 12. However, this calculation is modified where appropriate to take into account any rent-free weeks specified in a HB claimant's tenancy agreement.
- 7.17 Where the existing benefits records do not hold all of the required information – e.g., information about capital would not be available for someone who had solely been claiming tax credits – the regulations permit this to be drawn from other sources.
- 7.18 Where a claimant is subject to the benefit cap, the regulations provide that the total amounts of existing benefits and UC used in the transitional element calculation cannot be above the benefit cap.
- 7.19 There will be tax credit claimants whose level of earnings is high enough not only to produce an indicative UC amount of nil but also to reduce further any UC paid at the end of the month (which could only consist of the transitional element), despite their earnings remaining the same. Regulation 56(1)(b) therefore, provides for a mechanism to ensure that the transitional element is not incorrectly eroded in this circumstance.
- 7.20 Where the total amount of existing benefits is greater than the indicative UC amount, the transitional element will be equal to the difference between the two amounts. However, where the UC indicative amount is reduced nil (because of earnings) the excess earnings (after the work allowance and taper) are added to the transitional element amount. This is to ensure that a person whose earnings have not changed will not have reduction from the existing benefits when they receive their first UC payment. An illustrative example of how this would work is below.<sup>7</sup>

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<sup>7</sup> Numbers in all illustrative examples have been rounded to the nearest 1p.

7.21 A claimant who is a lone parent with one child and who is in receipt of IS, CTC and HB, will be entitled to the following benefits on the day before the UC claim is made:

CTC daily rate of  
£9.11  
IS weekly amount of  
£73.10  
HB weekly rate of  
£225.00

7.22 These amounts are then turned into monthly amounts as follows:

CTC daily rate	$£9.11 \times 365 \div 12 =$	£277.09
IS weekly amount	$£73.10 \times 52 \div 12 =$	£316.77
HB weekly rate	$£225 \times 52 \div 12 =$	£975.00

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**Total monthly legacy amount**  
**£1,568.86**

7.23 The UC indicative amount is also calculated:

Standard Allowance  
£317.82  
Child Element  
£277.08  
Housing Element  
£975.00

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**Total monthly UC indicative amount**  
**£1,569.90**

These two amounts are then compared to see whether the transitional element needs to be applied to the UC award. In this case, no transitional element would be awarded because the claimant would not receive a lower UC entitlement, i.e., an award that is less than £1,568.86.

7.24 The transitional element will be included as part of the overall UC award. Any future deductions for earnings, other income or capital will be made from that overall UC award and not directly from any specific element. This means the transitional element itself will not reduce if a claimant's earnings have temporarily increased.

7.25 Once the transitional element has been calculated, the regulations allow for it to be revised or superseded and the result applied to the new UC claim or UC award in certain cases. These are: where it is discovered that the information used to calculate the total legacy amount or the indicative amount was incorrect; where claimants have misrepresented their circumstances, or failed to report a change of circumstances that they were required to report; or where a decision on a previous existing benefit award has been revised following an upheld appeal.

7.26 The regulations also allow for the transitional element to be eroded by an increase in the second or subsequent assessment period if another element included in the UC award increases, or when a new UC element is added to the UC award. An illustrative example of how this would work is below.

7.27 A claimant is in receipt of £1,901.57 UC, which is made up as follows:

Child Element for 2 children	£277.08 + £231.67
Standard Allowance	
£317.82	
Housing Element	
£975.00	
Transitional Element	
£100.00	

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**Total monthly UC indicative amount**

**£1,901.57**

7.28 However, if the claimant reports an increase in rent by £25 to £1,000 in an assessment period after the transitional element has been awarded, the UC award would be adjusted as follows:

Child Element		Standard Allowance
£277.08 + £231.67		£317.82
	Housing Element	
	£1000.00	
Transitional Element		
£75.00		

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**Total monthly UC indicative amount**

**£1,901.57**

7.29 However, this will not apply where new childcare costs are included in the UC award or where existing childcare costs increase. This is intended to maintain the incentive for UC claimants to start work or increase their hours, since any increase of their UC award for additional childcare costs would otherwise correspondingly reduce their Transitional Protection award.

7.30 The regulations also provide for circumstances where the transitional element will end, which are as follows:

- there is a sustained drop in earnings for more than three months to a level below the Administrative Earning Threshold (AET) in UC<sup>8</sup> where the claimant's earnings had been equal to or above that threshold in the first UC Assessment Period (i.e., the first month of the UC award);
- a couple separates, or a claimant forms a couple with a new partner; or
- the UC award ends. However, where claimants whose UC had ended because of the level of their earnings returns to UC within four months of their previous UC award, the transitional element will be re-applied to the new UC award. This is to ensure that claimants who are not paid monthly do not lose the transitional element as a result of their monthly UC assessment period

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<sup>8</sup> The AET is the administrative distinction between being in work and out of work and ensures that only claimants on no income or very low income will receive intensive support. See regulation 97(14)(a) or (b) of the UC Regulations <http://www.legislation.gov.uk/nisr/2016/216/contents/made>  
[http://www.legislation.gov.uk/ukxi/2013/376/pdfs/ukxi\\_20130376\\_310515\\_en.pdf](http://www.legislation.gov.uk/ukxi/2013/376/pdfs/ukxi_20130376_310515_en.pdf)



periodically encompassing an extra pay day.

Transitional Protection – transitional capital disregard

- 7.31 It is a financial condition of entitlement to UC that a claimant does not have capital exceeding £16,000.<sup>9</sup> Since there is no capital limit on entitlement to tax credits, provision has been made for a transitional capital disregard to be applied in relevant cases.
- 7.32 The regulations permit tax credits claimants with capital exceeding £16,000 to make a UC claim. They may receive UC for up to 12 months unless their capital falls to £16,000 or below, at which point normal UC rules including all financial conditions of entitlement would be applied. The disregard would not be re-applied even if the claimant’s capital rose above £16,000 again within 12 months of the UC award commencing. An illustrative example of how this would work is below.
- 7.33 A claimant makes a claim for UC as part of the managed migration process and has capital above £16,000 disregarded. As a result, UC can be awarded, but any capital in excess of £6,000 and up to £16,000 will be treated as yielding an income of £4.35 per month for each complete £250 over £6,000. The capital deduction, therefore, is  $£10,000 \div £250 \times £4.35 = £174$ .
- 7.34 The claimant’s award of UC would be:

Child Element  
£277.08 +  
Standard Allowance  
£317.82 +  
Capital deduction  
£174 -

**Total monthly UC**  
**£420.90**

Self-employment and the Minimum Income Floor

- 7.35 Where self-employed claimants are managed migrated to UC and are found to be ‘Gainfully Self-Employed’, they will enter the 12-month Start-Up period and will not have the MIF<sup>10</sup> applied to their UC award until this period has ended, regardless of how long they have been self-employed prior to being managed migrated.
- 7.36 This also includes benefit claimants who are self-employed who when managed migrated were not gainfully self-employed when they made their UC claim, but were found to be gainfully self-employed at a later point. Once the Start-Up period ends, the UC claimant would be subject to the MIF and the overall UC award (which may include a transitional element) would be reduced accordingly.
- 7.37 The regulations also make provision for this to apply to all other new gainfully self-employed claimants from 23<sup>rd</sup> September 2020. This will include claimants who naturally migrate because they have a change in their circumstances and other new claimants to UC, including from those running a long-standing business, as well as

<sup>9</sup> Article 10, the 2015 Order

<http://www.legislation.gov.uk/nisi/2015/2006/contents>

<sup>10</sup> The MIF is an assumed level of income designed to encourage individuals to increase their earnings by developing their self-employment.

those existing UC claimants who become gainfully self-employed. There will be no retrospective application to those claimants already subject to the MIF.

#### Claimants in education

- 7.38 Where claimants are receiving an existing benefit and are also in education,<sup>11</sup> but would not meet the UC entitlement of “not receiving education,” when they migrate, the regulations treat them as having met this condition so they can make a claim for UC and be entitled to UC and Transitional Protection, if applicable. This exemption would last until the course that they were attending ends.

#### Discretionary hardship payments

- 7.39 The regulations also make provision so that discretionary hardship payments can be made to claimants who are being managed migrated to UC and who appear to be in hardship as a result of the termination of their existing benefits or if any other issues related to managed migration have resulted in hardship.

#### Claimants in receipt of Severe Disability Premium (SDP)

- 7.40 Regulations have been included to support the transition for those claimants who are entitled to the SDP in JSA(IB), IS, or ESA(IR). Those who were entitled to SDP as part of a Housing benefit (HB) only claim will not be eligible for these SDP transition payments. The legacy system’s complex mix of disability elements has been simplified in UC. 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.
- 7.41 The Limited Capability for Work and Work Related Activity Element (LCWRA), 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 ESA(IR). As part of this simplification, the SDP has not been carried forward into UC. Those in receipt of SDP who are moved to UC will be eligible for Transitional Protection.
- 7.42 The Universal Credit (Transitional Provisions) (SDP Gateway) (Amendment) Regulations (Northern Ireland) 2019 introduced a Gateway whereby those claimants in receipt of an existing income related benefit, as above, which includes an award of SDP cannot make a claim to UC until they are required to claim as part of the formal managed migration process. This came into force on 16<sup>th</sup> January 2019.
- 7.43 A recent High Court judgment<sup>12</sup> in GB found that the differential treatment between SDP claimants who have already moved to UC and those who are prevented from doing so because of the SDP gateway is not justified.
- 7.44 In light of this judgment, the Government has decided to abolish the SDP gateway from January 2021.
- 7.45 This Statutory Instrument makes provision so that eligible claimants who have already moved to UC following a relevant change in their circumstances will be considered for ‘transitional payments’. These will consist of an ongoing monthly payment and an additional lump-sum payment to cover the period since they moved to UC. The monthly payments reflect the amount of SDP that a claimant was

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<sup>11</sup> See regulation 12(2) of the UC Regulations

<sup>12</sup> [https://www.matrixlaw.co.uk/wp-content/uploads/2019/05/TP-AR-CSX-SSWP-Judgment-Final-2May19\\_.pdf](https://www.matrixlaw.co.uk/wp-content/uploads/2019/05/TP-AR-CSX-SSWP-Judgment-Final-2May19_.pdf)

receiving prior to migration, and are a flat rate of:

- £285 a month for claimants not in the UC LCWRA group (i.e. the broad monthly equivalent of the lower rate SDP at £65.85 a week).
- £120 a month where the UC claimant has been determined as having LCWRA, and who therefore already receives an additional amount in their UC award because of their health condition. The higher rate of the LCWRA component is taken into account against the extra payments offered by the transitional provisions.
- £405 a month where joint claimants were receiving the higher couple rate SDP in their existing benefits.
- £285 a month where joint claimants were receiving the lower couple rate SDP and are not receiving the LCWRA component in UC.
- £120 a month where joint claimants were receiving the lower couple rate SDP and are receiving the LCWRA component in UC.

7.46 The regulations provide for a one-off check, which:

- ensures that the additional transitional payment is restricted to claimants who are still entitled to UC. This is because claimants who have ceased to be entitled would have had changes of circumstance which means that they cannot be considered as being in an equivalent position to someone still on UC and requiring support;
- excludes cases where, since the claimant moved to UC following a relevant change in their circumstances, has formed a couple or separated from their partner. These would be excluded on the basis that such wider changes would have been likely to affect entitlement to the SDP had the claimant remained on existing benefits, and that protection should not cover such wider lifestyle changes;
- both the above criteria are also criteria by which it is proposed to end Transitional Protection for managed migration cases, thereby providing a continuity of treatment.

7.47 There is also a check as to whether:

- the claimant (or partner) has, since moving to UC, got a carer who receives either Carer's Allowance or the carer element of UC in respect of them. This is because their care needs would be met elsewhere in the benefit system; and
- the claimant/partner is still getting the main qualifying benefits for SDP, such as Disability Living Allowance or Personal Independence Payments.

7.48 These are designed as a check to ensure that some of the basic qualifying conditions for the SDP remain and, as such, had the claimant still been on existing benefits, SDP would not have ceased.

7.49 As with Transitional Protection, the 'transitional payment' will end where UC claimants form a couple or separate from their partner or where entitlement to UC ends. At a future date to be determined by the Department, these payments will be converted into a transitional element. Once these payments have been converted to a transitional element, they will be subject to the rules associated with Transitional Protection and will erode or end in certain circumstances.

7.50 The regulations allow the transitional payment to be backdated to the point that

claimants migrated to UC, provided that they had not had a change of circumstances that would have caused the inclusion of the SDP in their award to have ended. A lump sum covering this period may be paid, based on the relevant flat rate payment at the point the regulations come into force. As some of the backdated payments may be substantial, provision has been made so any lump-sum payment can be disregarded in UC for the duration of the UC award, or 12 months, whichever is longer.

7.51 There are also some other groups of UC claimants who will be included in the transitional payments scheme. These are:

- a. Those who become entitled to backdated amounts of SDP following Legal Entitlement and Administrative Practices (LEAP) exercises being undertaken by the Department (e.g., they are subsequently found to have been entitled to SDP after they moved onto UC and it is backdated to before their UC claim).
- b. Those whose PIP applications have taken a long time to be processed. Once processed, SDP eligibility is backdated to the period up to when they claimed UC.
- c. Those who have not received SDP in legacy due to maladministration/error e.g. those whom the Department did not identify as having entitlement and therefore never had it included in their award.
- d. Those who win their appeal or Mandatory Reconsideration of their legacy award and were therefore entitled to SDP in the period before they moved to UC.
- e. Claimants who have inadvertently breached the SDP gateway to claim UC.

## **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 [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 or civil society organisations. However, DfC will be working with a number of civil society organisations in order to identify and support those claimants who might need extra help.
- 12.2 DWP has concluded that no benefit recipient with a protected characteristic will be affected because there are no adverse or disproportionate negative impact on equality.
- 12.3 DfC will carefully consider the published assessment of the impacts of managed migration in the GB pilot prior to commencing managed migration in Northern Ireland.
- 12.4 DfC estimates that Transitional Protection will boost the income of an estimated 55,000 households in Northern Ireland, that would otherwise have a lower UC entitlement compared with existing benefit entitlement at the point of transition. Because UC combines six different benefits, it is estimated that 33,000 households in Northern Ireland will receive entitlement, to benefits that they were not claiming under the legacy system, worth on average £183 per month.
- 12.5 It is estimated that as at November 2018 there were 42,000 SDP recipients in Northern Ireland (on benefits that will be replaced by UC), who, if they maintain their entitlement to SDP, will benefit from the protection afforded by the Regulations.

## **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 continuing roll-out of UC will be closely monitored and the operation of the regulations will continue to be reviewed through the normal avenues of guidance, enquiries received from the DfC's 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](mailto:annemccleary@communities-ni.gov.uk) .
- 15.2 Anne McCleary, Director of Social Security Policy and Legislation Division, at the Department for Communities 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.