

## EXPLANATORY MEMORANDUM TO

### THE UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) (SDP GATEWAY) (AMENDMENT) REGULATIONS (NORTHERN IRELAND)

2019 No. 2

#### 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.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the [Universal Credit \(Transitional Provisions\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016 No. 226\)](#) ('the UC Transitional Regulations NI') and makes some consequential amendments to the [Welfare Reform \(Northern Ireland\) Order 2015 \(Commencement No. 8 and Transitional and Transitory Provisions\) Order 2017 \(S.R. 2017 No. 190\)](#). These amendments make provision to:
  - introduce a 'Gateway Condition' so that claimants who are receiving income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or Housing Benefit with a Severe Disability Premium (SDP) included in their award will not claim Universal Credit (UC) if they need to make a new claim for support, but will remain on existing benefits.

#### 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 This instrument makes corresponding provisions for Northern Ireland to the Universal Credit (Transitional Provisions) (SDP Gateway) Amendment Regulations 2019. The coming into force date of this instrument is 16 January 2019. This breaches the 21-day rule. The reason for this is to ensure that those claimants in Northern Ireland who currently receive SDP as part of an award of an existing benefit will also benefit from introduction of this protection from 16 January 2019, which is the date that the corresponding changes come into force for Great Britain.

##### *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 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 (UC), 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 UC 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 UC.
- 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](#) was made on 12 October 2016 making provision corresponding to the social security provisions of the 2016 Act.
- 6.6 The UC Transitional Regulations NI, 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 income-related Employment and Support Allowance (ESA(IR)), and income-based Jobseeker's Allowance (JSA(IB)).

- 6.7 This instrument amends the UC Transitional Regulations NI to introduce a “Gateway Condition” so that claimants who are receiving ESA (IR), JSA (IB), Income Support or Housing Benefit with a Severe Disability Premium included in their award will not claim Universal Credit (UC) if they need to make a new claim for support, but will remain on existing benefits.

## **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 income-based Jobseeker's Allowance (JSA (IB)), Income Support (IS), Housing Benefit (HB) or income-related Employment and Support Allowance (ESA (IR)). Claimants receiving the SDP are likely to lose in monetary terms if they need to claim UC following a change of circumstance. Claimants moving to UC because of this – known as a “natural migration” – are not eligible for transitional protection. 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.

## **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, or no significant impact on business, civil society organisations or the public sector. 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 DfC 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.

- 12.3 The concessions for those receiving SDP in ESA(IR), JSA(IB), IS and HB will benefit an estimated 3,000 claimants in Northern Ireland who would otherwise migrate naturally to UC.

### **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 Universal Credit 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.