

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY AND UNIVERSAL CREDIT (MIGRATION OF TAX CREDIT CLAIMANTS AND MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2024

SR 2024 No. 54

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under, sections 5(1)(s), 165(1), (4) and (6) of the Social Security Administration (Northern Ireland) Act 1992, sections 122(1)(a) and (d), 132(3) and (4)(b), and 171(1) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, Articles 2(2), 14(1) and (4)(b) of the Jobseekers (Northern Ireland) Order 1995, and now vested in it, sections 17(1), (3)(b), and 24(1) of the Welfare Reform Act (Northern Ireland) 2007, and Articles 5, 9(2) and (6), 13(3), 16(4), 17(1) and (3), 24(2)(d), (3) and (4), 25(1)(b), 30(a), 31(6)(a), 32(4)(a), and 48(2), and paragraphs 4(1)(b) and (c), 4(2), 4(3)(a) and 5(1) of Schedule 1 to, and paragraphs 1(1) and 7 of Schedule 6 to the Welfare Reform (Northern Ireland) Order 2015 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 This Statutory Rule makes minor changes that amend the following regulations:
 - The Income Support (General) Regulations (Northern Ireland) 1987;
 - The Jobseeker's Allowance Regulations (Northern Ireland) 1996;
 - The Housing Benefit Regulations (Northern Ireland) 2006;
 - The Employment and Support Allowance Regulations (Northern Ireland) 2008;
 - The Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016;
 - The Universal Credit Regulations (Northern Ireland) 2016 and
 - The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016.
- 2.2 These amendments make appropriate provision for student finance in the calculation of means tested benefits, ensure that advance payments of Universal Credit can only be made to persons with a National Insurance Number, update out of date references to other legislation, ensure children placed for adoption are treated as part of a Universal Credit claimant's household, and support the move to Universal Credit and associated Tax Credits closure.

3. Background

What is being done and why?

Amendment to regulation 66D of the Income Support (General) Regulations (Northern Ireland) 1987, regulation 136C of the Jobseeker's Allowance Regulations (Northern Ireland) 1996, regulation 64B of the Housing Benefit Regulations (Northern Ireland) 2006 and regulation 139A of the Employment and Support Allowance Regulations (Northern Ireland) 2008 - Treatment of loans for specific purposes

- 3.1 Loans for specific purposes (which are intended to cover course costs for, for example, books, equipment, travel and childcare) are payable to some Higher Education students in Great Britain. In Great Britain, loans and grants for these purposes are disregarded when considering the impact of student income on benefits. This amendment ensures that loans for specific purposes will be disregarded in the same way in Northern Ireland.

Amendment to regulation 5(1) of the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2013 - Payment on account of benefit where there is no award of benefit

- 3.2 The Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2013 set out the circumstances in which an advance of benefit can be made to a person where there is no award of benefit. The policy intent in Universal Credit is, and always has been, that an advance of benefit should only be made to a person who has been allocated a National Insurance Number (NINo). This policy intent was not supported by the Court of Appeal's interpretation of the existing provision as set out in a recent judgment¹. In response to the judgment, and since it is not possible to make advance Universal Credit payments before a NINo has been allocated without introducing a significant fraud risk, this amendment ensures that an advance of Universal Credit will only be paid where the person has been allocated a NINo.

Amendments to the Universal Credit Regulations (Northern Ireland) 2016

Regulation 5 – Responsibility for children looked after by an authority

- 3.3 The child element in Universal Credit cannot generally be paid for children looked after by an authority (including foster children). This exclusion should not apply if the child is, despite authority involvement, living with a person who has parental responsibility for them.

¹ <https://www.bailii.org/ew/cases/EWCA/Civ/2023/566.html>

- 3.4 Children and Qualifying Young People placed for adoption with a Universal Credit claimant are considered part of the claimant's benefit unit and the policy intent is therefore that the claimant can receive the Universal Credit child element for these children. The Universal Credit claimant is then to be treated as having 'parental responsibility' for the child or young person and, despite ongoing involvement with the authority, the child should not be treated as 'looked after' by the authority once they are placed on what is hoped is a permanent basis.
- 3.5 This amendment ensures that when children are placed for adoption with a Universal Credit claimant, the claimant can receive the Universal Credit child element for these children.

Regulation 68(7) - Person treated as having student income

- 3.6 The Universal Credit Regulations (Northern Ireland) 2016 currently includes a reference to the Young Student Bursary (YSB), which is payable to certain students in Higher Education in Scotland, in the definition of a student loan. The YSB is defined as a payment under specific Scottish legislation. A change in the way the YSB has been paid means that there are no longer any YSB payments to which that definition applies. The YSB (in its current form) in Scotland should now be treated as a student grant. This amendment removes the redundant reference to YSB, which is disregarded when calculating student income for the purposes of Universal Credit, from the definition of a student loan to ensure any confusion or ambiguity is avoided.

Regulation 71 - Calculation of student income - amount for an assessment period

- 3.7 This amendment clarifies that where a student makes a claim to Universal Credit part-way through their course year, the student income is to be averaged across an academic year, or a period of study if shorter. This change reflects the policy intent to ensure that student income is attributed to assessment periods as intended.

Amendments to the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016

Regulation 4A - Restrictions on claims for housing benefit, income support or a tax credit

- 3.8 The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 introduced restrictions on claims to tax credits but included an exemption that allowed existing tax credit claimants to renew their tax credit claim each financial year between April and July, and to continue receiving tax credits for the following year, if they are eligible, and report any changes they may have.
- 3.9 This amendment removes the exemption that ensures that existing tax credit claimants can automatically renew those tax credit claims. It also removes the exemption for existing tax credit claimants who are claiming working tax credit only and have a change of circumstances that would require them to claim child tax credit, and vice

versa. Removing the exemption will mean claimants will not be able to request a renewal of their tax credits claim from 6th April 2025, supporting His Majesty's Revenue and Customs (HMRC) commitment to migrating (tax credit claimants will be invited to move to Universal Credit) or ending tax credits claims by the end of the 2024/2025 tax year.

Regulation 11(1) – Modification of tax credits legislation: finalisation of tax credits

- 3.10 Claimants who make a claim to Universal Credit are required to confirm details of their income and circumstances for the part-year they were receiving tax credits, up to the day before their claim for Universal Credit (known as “In-Year Finalisation”).
- 3.11 Although the current legislation allows for In-Year Finalisation, once a Universal Credit claim is made, whether that be via a voluntary, natural or managed migration, it does not allow for the same treatment where no claim to Universal Credit has been made.
- 3.12 This amendment allows the In-Year Finalisation of tax credit awards where a claimant, who has been invited to claim Universal Credit, has not done so by their deadline date, ensuring they are treated the same as those who do. This will avoid the need for complex, confusing and potentially delayed interactions with HMRC that claimants would otherwise face. It also provides those claimants with their relevant appeal rights earlier, should they need to exercise them.

Schedule 1, paragraph 16 – Modification Tax Credits Legislation - Finalisation of Tax Credits)

- 3.13 HMRC has made changes to the way self-employed traders tax liability on their trading profits for a specific tax year are calculated (known as the Basis Period Reform). These changes align self-employed traders accounting periods to the actual tax year (6 April to 5 April) and remove all legislative reference to the term ‘basis period’.
- 3.14 This amendment removes accounting dates to allow In-Year Finalisation of tax credits using the correct amount of trading profits applicable to the part-year in 2024/2025 and ensures accurate and consistent finalisations.

4. Consultation

- 4.1 There is no requirement to consult on these Regulations.

5. Equality Impact

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise and concluded that the changes did not have any significant implications for equality of opportunity. In light of this, the Department considered that an equality impact assessment was not necessary.

6. Regulatory Impact

- 6.1 The proposed Rule does not require a Regulatory Impact Assessment as it does not impose any new costs on business, charities, voluntary bodies or on the public sector.

7. Financial Implications

- 7.1 None for the Department.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that the Rule complies with that provision.

9. EU Implications

- 9.1 Not applicable.

10. Parity or Replicatory Measure

- 10.1 This Statutory Rule is broadly equivalent to the Social Security and Universal Credit (Migration of Tax Credit Claimants and Miscellaneous Amendments) Regulations 2024 (S.I. 2024/341) in Great Britain.

11. Additional Information

- 1.1 Guidance will be issued to the Department for Communities staff prior to this Statutory Rule becoming operational.