EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (CONSEQUENTIAL, SUPPLEMENTARY, INCIDENTAL AND MISCELLANEOUS PROVISIONS) REGULATIONS (NORTHERN IRELAND) 2016

S.R. 2016 No. 236

AND

THE JOBSEEKER'S ALLOWANCE (MEMBERS OF THE FORCES) (NORTHERN IRELAND) (AMENDMENT) REGULATIONS 2016

S.I. 2016 No. 622

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities (Northern Ireland) 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 These instruments support the introduction of Universal Credit and of the new Jobseeker's Allowance and Employment and Support Allowance that will be based only on National Insurance contributions. These regulations make consequential amendments to primary and secondary legislation in the UK as a result.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As these instruments are subject to the negative resolution procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 87 of the Northern Ireland Act 1998 places a statutory duty on the Minister for Social Development 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.

4.2 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 rates.

4.3 The Welfare Reform Act 2012 introduced a number of reforms in Great Britain including Universal Credit, Personal Independence Payment, the Jobseeker's

Allowance Claimant Commitment and a cap on the amount of benefits working age people can receive.

4.4 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 provides a 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 and regulations stemming from the Order to implement the various welfare reforms set out in the Welfare Reform Act 2012 in Northern Ireland are now being brought forward.

5. Extent and Territorial Application

5.1 The extent of these instruments is Northern Ireland.

5.2 The territorial application of this instrument is Northern Ireland.

5.3 These regulations replicate for Northern Ireland the Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations 2013 SI 2013/630. A separate Statutory Instrument, the Jobseeker's Allowance (Members of Forces) (Northern Ireland) (Amendment) Regulations 2016, replicates regulation 21(2)(a)(i) of SI 2013/630.

6. European Convention on Human Rights

6.1 As these instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Welfare Reform (Northern Ireland) Order 2015 provides for the introduction in Northern Ireland of Universal Credit, which replaces 6 existing benefits - income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit for working age people and Child and Working Tax Credits.

7.2 Although income-based Jobseeker's Allowance and income-related Employment and Support Allowance will be replaced by Universal Credit, Contributions based Jobseeker's Allowance and Employment and Support Allowance will continue to be available to those claimants who are entitled to them.

7.3 Universal Credit in Northern Ireland will be introduced via first stage implementation in a limited geographical area in 2017.

The Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations (Northern Ireland) 2016

7.4 Most of the provisions in the Universal Credit (Consequential, Supplementary, Incidental And Miscellaneous Provisions) Regulations (Northern Ireland) 2016 (The

Universal Credit (Consequential) 2016 regulations) make changes in relation to Part 2 of the Welfare Reform (Northern Ireland) Order 2015, dealing with Universal Credit and the abolition of income-based Jobseeker's Allowance and income-related Employment and Support Allowance. The Universal Credit (Consequential) 2016 regulations ensure that the legislation in Northern Ireland which remains in operation after the introduction of Universal Credit correctly refers to Universal Credit and the new contributory Jobseeker's Allowance and Employment and Support Allowance; and to benefits that will eventually be abolished under Article 39 of the Welfare Reform (Northern Ireland) Order 2015.

7.5 There are a number of other provisions where there are more substantive changes. These arise in part as a result of the wider scope of Universal Credit which is payable to people in work, as well as out of work.

Amendments of enabling legislation (Part 2)

Regulation 3 - Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990

7.6 Existing legislation in Northern Ireland (Article 10 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990) refers to "lone parents" (in connection with training) and refers to other social security legislation which defines the term. As there is no definition of "lone parent" in legislation relating to Universal Credit, once migration to Universal Credit is complete and existing income-related benefits are abolished, all definitions of "lone parent" will be removed from social security legislation. Regulation 3 therefore amends the Order to replicate the existing definition without a social security cross reference.

Regulations 9 and 43 - Recoupment from Industrial Tribunals Awards

7.7 Articles 18 and 19 of the Industrial Tribunals (Northern Ireland) Order 1996 and the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations (Northern Ireland) 1996 enable any Income Support, Jobseeker's Allowance or income related Employment and Support Allowance paid to a person during any period for which they receive an Industrial Tribunal Award to be recouped from that award before it is paid, thereby recovering any benefit which would not have been paid. Regulations 9 (Amendment of the Industrial Tribunals Order) and 43 (Amendment of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations) of the Universal Credit (Consequential) 2016 regulations amend the Industrial Tribunals (Northern Ireland) Order 1996 and the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations (Northern Ireland) 1996, to similarly enable recoupment of any Universal Credit that was paid which would not have been paid had the person's earnings remained the same.

7.8 Universal Credit is payable to people who are in work and out of work and replaces Housing Benefit and Working and Child Tax Credits, which it is not currently practical to recoup. The amount of benefit recouped may therefore increase. However only benefit which the person would not have received, had their earnings not changed, will be recouped.

Regulations 13 and 34 - Housing Grants

7.9 The Housing (Northern Ireland) Order 2003 provides for disabled people to receive a disabled facilities grant to make necessary adaptations to their homes. Once a grant

application is approved the amount payable is subject to a means test. The Housing Benefit Regulations (Northern Ireland) 2006 provide for this means test. Regulations 13 (Amendment of the Housing (Northern Ireland) Order), and 34 (Amendment of the Housing Benefit Regulations) amend the Housing (Northern Ireland) Order 2003 SI 2003/412 and the Housing Benefit Regulations (Northern Ireland) 2006 (SR 2006 No. 405) so that disabled people in receipt of Universal Credit will be treated as having no income. People in receipt of Universal Credit will therefore not be expected to contribute towards the costs of any necessary adaptations.

Amendments of secondary legislation

Part 3, Chapter 1 Social Security Benefits

Housing Benefit

7.10 Where a Housing Benefit recipient has a non-dependant living with them, that person is usually expected to contribute towards the rent and the claimant's benefit is reduced accordingly. If that person is under 25 and receiving an income-related benefit they are exempted from making this contribution. A similar provision applies with respect to the housing costs paid to owner occupiers as part of Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, and State Pension Credit.

7.11 The following Regulations make amendments in order to provide an exemption for young recipients of Universal Credit:

- Regulation 26 – Amendment of the Income Support (General) Regulations;
- Regulation 28 - Amendments of the Jobseeker's Allowance Regulations;
- Regulation 31 - Amendments of the State Pension Credit Regulations;
- Regulations 34 – Amendment of the Housing Benefit Regulations
- Regulation 35 – Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations; and
- Regulation 36 – Amendment of the Employment and Support Allowance Regulations

7.12 In cases where the non-dependant of the claimant is aged less than 25 and is entitled to universal credit on the basis that he does not have any earned income, a deduction will not be made from the housing costs element of Income Support, Jobseeker's Allowance, State Pension Credit, Housing Benefit and Employment and Support Allowance.

Part 3, Chapter 2 Child Support

7.13 The general aim of these amendments is to amend child support regulations to take account of the introduction of Universal Credit, and in particular to provide that where parents are awarded Universal Credit on the basis that they have no earned income, they are treated similarly to those who are awarded the current out of work benefits.

7.14 These regulations amend the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992 and the Child Support (Maintenance Assessment and Special Cases) Regulations (Northern Ireland) 1992 to incorporate Universal Credit within the calculation of a 1993 scheme maintenance liability. It makes amendments to exclude Universal Credit from a parent's income, subject to the

provisions referred to below concerning payment of a minimum amount of maintenance. Where a parent is paid Universal Credit in prescribed circumstances they are treated as having no "assessable income". Where a paying parent has no "assessable income" then, subject to certain exceptions, they are liable to pay the minimum amount of maintenance. The amendments provide that the circumstances in relation to Universal Credit are where the award of Universal Credit is made on the basis that the parent has no earned income. They also provide for the determination of the effective date of a superseding decision in these circumstances.

7.15 Regulation 39 amends the Child Support Departure Direction and Consequential Amendment Regulations (Northern Ireland) 1996 in relation to the qualifying criteria for an application to depart from the standard 1993 maintenance formula (a "departure"). In any scenario where receipt of an out of work benefit by one of the parties to the case would cause an application to depart from the standard maintenance formula to fail. Regulation 39 brings in a similar provision in respect of an award of Universal Credit made on the basis that the claimant has no earned income.

7.16 The Child Support (Maintenance Calculation and Special Cases) Regulations (Northern Ireland) 2001 and the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 are amended to incorporate Universal Credit within the calculation of a 2003 and 2012 scheme maintenance liability. The Regulations provide that where an award of Universal Credit is made on the basis that the claimant has no earned income, and that person is a non-resident parent in a 2003 or 2012 scheme child support case, they shall be liable to pay a flat rate of maintenance unless certain exemptions apply.

Part 3, Chapter 7 National Insurance Contributions and Credits

7.17 National Insurance credits help to preserve a person's contribution record. They are generally available to people who are unable to work and pay contributions, for example because they are unemployed, incapable of work or caring for others. Class 1 credits count towards entitlement to all contributory benefits. Class 3 credits count towards entitlement to the basic State Pension and bereavement benefits only.

7.18 These regulations amend the Social Security (Credits) Regulations (Northern Ireland) 1975 (which can accessed via the Northern Ireland Blue Volumes) to provide that a person entitled to Universal Credit will be credited with Class 3 contributions. This will simplify the range of contributions credited under the current benefit system where claimants can receive a range of different National Insurance credits, or in some cases no credits at all. Where Universal Credit is paid jointly to a couple, both claimants will be credited with individual National Insurance contributions. These changes will extend crediting arrangements to claimants who, under the current benefit system, would not have been credited, for example, Housing Benefit claimants or non-working partners of people in low-paid jobs. This is a step towards realising the Government's objective of a more comprehensive State Pension coverage.

7.19 As Class 3 credits do not count towards contributory benefits entitlement, this policy strengthens the link between those contributory benefits and work, between paying into the system and receiving support. A Universal Credit claimant who has concurrent contributory benefit entitlement will be credited with a Class 1 contribution until their entitlement to the contributory benefit is exhausted. This may mean that some people will not be entitled to a contributory benefit whereas they would in the current system. However, the only people who would not be able to

access benefits are those not entitled to Universal Credit on the basis of their savings, capital or income from other sources.

7.20 Unlike with certain labour market sanctions in Jobseeker's Allowance, National Insurance contributions will continue to be credited for the duration of a sanction where entitlement to Universal Credit continues to subsist. This is a simplification measure, to allow more effective administration of Universal Credit.

The Jobseeker's Allowance (Members of the Forces) (Northern Ireland) (Amendment) Regulations 2016

7.21 Regulation 18 (Amendment of the Social Security (Benefit) (Members of the Forces) Regulations of the Universal Credit (Consequential) 2016 regulations amends the Jobseeker's Allowance (Members of the Forces) (Northern Ireland) Regulations 1975.

7.22 However any amendments to the Jobseeker's Allowance (Members of the Forces) (Northern Ireland) Regulations 1997 must, under Article 24 of the Jobseekers (NI) Order 1995, be made way of a separate statutory instrument

7.23 The Jobseeker's Allowance (Members Of The Forces) (Northern Ireland) (Amendment) Regulations 2016, replicates regulation 21(2)(a)(i) of SI 2013/630 by a statutory instrument rather than a Statutory Rule.

Other Government Department secondary legislation

7.24 The consequential amendments to other Government Department legislation in Great Britain and Northern Ireland, apart from those referred to above, include amendments to regulations governing schemes such as exemption from payment of court fees and the disabled facilities grant to add Universal Credit to the benefits that currently provide entitlement.

7.25 The amendments also expand Northern Ireland legislation providing for the interaction between existing benefits and legislation providing for the administration of: housing, student support and loans; police benefits and exemption from wearing seat belts under the Road Traffic (Northern Ireland) Order 1995 to encompass Universal Credit.

Consolidation

7.26 This instrument will be informally consolidated in the NI equivalent of the GB Law Relating to Social Security (or "Blue Volumes"), as the legislation applies only to Northern Ireland. It will be available to the public at no cost via the internet at: https://www.dsdni.gov.uk/services/law-relating-social-security

8. Consultation outcome

8.1 The Department for Social Development consulted extensively about the implications of the wider reforms in the Welfare Reform Bill (Northern Ireland) consultation process, and has also discussed informally with stakeholders to ensure that the operational implications are fully understood and that processes are in place to ensure that the changes are implemented correctly in Northern Ireland.

9. Guidance

9.1 Guidance, similar to that produced in GB, will be produced to support decision makers in administering Universal Credit, including for claimants on new style

Jobseeker's Allowance and Employment and Support Allowance. This will be available before the regulations come into operation.

9.2 Prior to the implementation of these regulations, changes will also be to the Decision Makers Guide (DMG) which is also available free on the DSD internet at:

https://www.dsdni.gov.uk/articles/decision-makers-guide

10. Impact

10.1 There is no significant impact on business, charities or voluntary bodies as a result of these regulations. However, the Department is aware that as a result of the overarching change to the benefit system claimants will seek advice from voluntary sector organisations and recognise the valuable support charities provide. That is why throughout the design and development of Universal Credit the Department has worked with stakeholder organisations, including charities, to ensure their expertise is utilised.

10.2 There are no significant costs to the public sector from these regulations as they are consequential, enabling the current arrangement for contributory benefit to remain under Universal Credit.

10.3 An Impact Assessment has not been prepared for this instrument as there is no impact separate from the overarching Universal Credit policy. An assessment has been prepared for the The Universal Credit Regulations (Northern Ireland) 2016 (SI 2016/216) and is available at: http://www.legislation.gov.uk/nisr/2016/216/impacts

10.4 We estimate that there will be around 310,000 Universal Credit claimants in Northern Ireland, who will have a new entitlement. Entitlement will be based on their personal circumstances and whether they respond to the increased incentives to work provided by Universal Credit. Nobody will lose financially from Universal Credit where they have been moved over without a change in circumstances.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The operation of the Regulations will continue to be reviewed through the normal avenues of guidance enquiries received from the Northern Ireland Department's offices and correspondence from members of the public.

13. Contact

13.1 Anne McCleary at the Department for Communities, Telephone: 02890819984 or email: anne.mccleary@communities-ni.gov.uk can answer any queries regarding the instrument.