EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) REGULATIONS 2025

2025 No. 3

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Sir Stephen Timms, Minister for Social Security and Disability at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

2.2 Graeme Connor, Deputy Director for Universal Credit Policy at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Hannah Clark at the Department for Work and Pensions, email: uc.migrationpolicy@dwp.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes amendments and modifications to various social security regulations relating to Universal Credit (UC), Pension Credit, Housing Benefit and tax credits (TC). The amendments include:

- enabling children placed for adoption while looked after by a local authority to be included in a Pension Credit award;
- strengthening measures to prevent claims for TC being made after the end of the 24/25 financial year;
- removing unnecessary references to superseded regulations;
- preventing mixed-age couples migrating from Employment and Support Allowance to UC having to serve a three-month waiting period before being entitled to an award of Limited Capability for Work and Work-Related Activity element;
- removing the requirement to reduce the transitional element when a customer moves from specified accommodation into accommodation funded through the UC housing element;
- allowing tax credit customers subject to managed migration to have a migration notice period of less than three months where the migration notice period would otherwise run beyond 5 April 2025;

- clarifying the operation of the rules for transitional element where a Universal Credit (UC) customer makes a claim as a single person because their partner is ineligible for UC;
- amending the reference to rates of Attendance Allowance (AA) in payment in England and Wales or Pension Age Disability Payment (PADP) in payment in Scotland where customers qualify for an additional bedroom;
- correcting drafting errors in legislation.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Scotland and Wales, except for regulations 1 and 7 which also extend to Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Scotland and Wales, except for regulations 1 and 7 which also apply in Northern Ireland.

5. Policy Context

What is being done and why?

The State Pension Credit Regulations 2002, Schedule 2A[1]

5.1 In both UC and Pension Credit (PC), a child or qualifying young person cannot be considered to be the responsibility of the customer where they are looked after by a local authority. However, children placed for adoption with a UC customer are treated as not being looked after by the local authority and are therefore part of the customer's benefit unit so they can receive the UC child element for such children. The changes to Schedule 2A ensure that the same approach is taken in PC as it is in UC where children are placed with a person for adoption by the local authority. Children placed for adoption in these circumstances are, for the purposes of PC, to be treated as not being looked after by the local authority and therefore an additional amount can be paid in respect of the child(ren) to the person they are placed with. The instrument also adds a definition of 'foster carer'[2].

The Housing Benefit Regulations 2006, Regulation 2[3]

5.2 Currently, Regulation 2 states that a "member of a couple who cannot share a bedroom" means a member of a couple who are in receipt of AA or PADP at the higher rate. These changes amend references to the rate of AA or PADP in payment to any rate of AA or PADP and are reflected also in the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006[4] and the Universal Credit Regulations 2013[5]. In respect of Attendance Allowance (AA) the changes are to reflect the position as it should have been when the definition was

[1] https://www.legislation.gov.uk/uksi/2002/1792/schedule/IIA
[2] This definition could have been inserted in the State Pension Credit (Additional Amount for Child or Qualifying Young Person) (Amendment) Regulations 2018 (S.I. 2018/676) https://www.legislation.gov.uk/uksi/2018/676/contents/made. This instrument is therefore issued free of charge to all known recipients of S.I. 2018/676.
[3] https://www.legislation.gov.uk/uksi/2006/213/regulation/2
[4] https://www.legislation.gov.uk/uksi/2006/214/regulation/2
[5] https://www.legislation.gov.uk/uksi/2013/376/regulation/4

inserted in 2017[6].

The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, Regulation 2[7]

5.3 These changes reflect the changes to the Housing Benefit Regulations 2006[8] mentioned in paragraph 5.2 and correct a drafting error in the definition of entitlement to an additional bedroom where a customer or their partner is in receipt of a qualifying disability benefit and is unable to share a bedroom[9].

The Universal Credit Regulations 2013, Schedule 4[10]

5.4 To mirror the changes to The Housing Benefit Regulations 2006[11] this change means that "a couple who cannot share a bedroom" now means a couple in receipt of any rate of AA or Pension Age Disability Payment.

5.5 A drafting error in Schedule 4 means that currently regulations state that for customers to qualify for an additional bedroom, a child has to be in receipt of both Disability Living Allowance (DLA) and Child Disability Payment (CDP). This amendment makes it clear that the qualifying benefits are either DLA for children or CDP, CDP being payable in Scotland only[12].

The Universal Credit (Transitional Provisions) Regulations 2014[13]

5.6 All payments of tax credits (TC) will end on 5 April 2025 as part of the migration of legacy benefit[14] customers to Universal Credit. The changes to Regulation 6A strengthen the provisions introduced to support the closure of TC on 5 April 2025. They will ensure that a person is unable to renew their TC claim or to claim an alternative TC from the 2025/2026 tax year. These changes will put beyond doubt for the purposes of persons still in the scheme that they will no longer be able to continue with their TC claim beyond the 2024/2025 tax year.

5.7 The changes to Regulation 8A remove redundant references to Regulation 46(1)[15]. Regulation 8A pertains to the timing of the award of the two-week Transition to

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[6] For this reason, the instrument will be issued free of charge to all known recipients of the Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/213) https://www.legislation.gov.uk/uksi/2017/213/contents/made.

[7] https://www.legislation.gov.uk/uksi/2006/214/regulation/2

[8] https://www.legislation.gov.uk/uksi/2006/213/regulation/2

[9] For this reason, the instrument will be issued free of charge to all known recipients of S.I. 2022/177, which is the source of the error.

[10] https://www.legislation.gov.uk/uksi/2013/376/regulation/4

[11] https://www.legislation.gov.uk/uksi/2006/213/regulation/2

[12] For this reason, the instrument will be issued free of charge to all known recipients of the Social Security (Scotland) Act 2018 (Disability Assistance for Children and Young People) (Consequential Modifications) Order 2021 (S.I. 2021/786) https://www.legislation.gov.uk/uksi/2021/786/contents/made, which is the source of the error.

[13] https://www.legislation.gov.uk/uksi/2014/1230/contents

[14] 'Legacy Benefits' is a term used to describe six benefits which have been replaced by Universal Credit: working tax credits, child tax credits, income-related Employment and Support Allowance; income-based Jobseekers Allowance, Income Support and Housing Benefit.

[15] Regulation 46A of The Universal Credit (Transitional Provisions) Regulations 2014 (https://www.legislation.gov.uk/uksi/2014/1230/regulation/46) deals with the termination of existing benefits for managed migrated customers if a Universal Credit claim is not made before the migration notice deadline.

Universal Credit (UC) Housing Payment when a customer in receipt of Housing Benefit claims UC[16].

5.8 The changes to Regulation 11 are consequential[17] to the changes made to Regulation 6A and are consequential to the changes in place to close the tax credit scheme.

5.9 The changes to Regulation 21 allow customers migrating from Employment and Support Allowance to UC upon reaching the qualifying age for State Pension to be treated as though they are in receipt of National Insurance credits for a period of one month. Currently any break between an Employment and Support Allowance (ESA) claim and a UC claim means that the outcome of a customer's Work Capability Assessment (WCA) does not carry over into the UC award. This means that customers with a gap between their ESA and UC claims serve a new three-month waiting period before the additional amount for Limited Capability for Work and Work-Related Activity (LCWRA) can be included in the UC award. This is true for customers of both working age, and any State Pension age customers who are eligible for UC because they have a working age partner i.e. a mixed age couple.

5.10 The changes to Regulation 21 mean that customers in such circumstances will not have a break between claims and therefore allow the outcome of their WCA to be carried over. These changes are in response to an Upper Tribunal decision[18] on 29 November 2023. The customer in the claim had a nine-day break between their ESA claim ending (upon them reaching State Pension age) and their UC claim being submitted and therefore had a break in claim. The court decided that the customer was subject to discrimination as a result of being required to serve a three-month waiting period prior to receiving the LCWRA element in their UC claim.

5.11 Since the decision of 29 November 2023, the Department has been actioning cases of the same circumstance of which they are made aware. The determination of the Upper Tribunal does not affect decisions made by the Secretary of State before 29 November 2023.

5.12 Regulation 44 prescribes how the Secretary of State is to issue notice to customers to claim UC. The general rule is that recipients must be given a minimum period of no less than three months.

5.13 Tax credits (TC) closes on 5 April 2025 and eligible customers are being migrated to UC. There will be customers whose entitlement to TC is reinstated when there are less than three months until TC closes, such as due to a successful appeal. The current legislation prescribes that these customers would receive a migration notice with a deadline after TC closes. If a customer were to make a claim for UC after the closure of their TC, their transitional element entitlement (if any) would not reflect their award of TC. The changes to this Regulation allow a deadline date of 6 April 2025 even where this is less than the three months. This is designed to ensure that those with TC entitlement reinstated less than three months before the closure of TC can be

[16] Because the reference to Regulation 46 is an error, the instrument will be issued free of charge to all known recipients of the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 (S.I. 2019/1152, which inserted Regulation 8A) and the Universal Credit (Transitional Provisions) Amendment Regulations 2022 (S.I. 2022/752, which relevantly amended Regulation 8A). Those instruments are accessible at https://www.legislation.gov.uk/uksi/2019/1152/contents and https://www.legislation.gov.uk/uksi/2022/752.
[17] Consequential meaning 'as a result of' or 'indirectly'.
[18] https://www.gov.uk/administrative-appeals-tribunal-decisions/pr-v-secretary-of-state-for-work-and-pensions-2023-ukut-290-aac

issued a Migration Notice, the deadline for which is set in a way that will ensure entitlement to transitional element calculated by reference to their TC award.

5.14 Regulation 50 deals with customers claiming legacy benefits[19] who have a change of couple status between the issue of a migration notice and making their Universal Credit (UC) claim. Customers in this situation are not eligible for a transitional element as a like for like comparison between the circumstances of their legacy claim and their new, UC claim cannot be done. The changes to this regulation clarify that this policy includes customers with ineligible partners, including those with no recourse to public funds.

5.15 The changes to Regulation 55 prevent the transitional element being eroded by the addition of the UC housing element where the customer has been in specified or temporary housing within one month of the housing element being added to their UC award. These changes are in response to an Upper Tribunal decision[20] on 19 February 2024. The customer had been living in specified accommodation and upon moving to privately rented accommodation, had the UC housing element added to their UC award, which subsequently eroded their transitional element. The court decided that the customer experienced discrimination as a result of having their transitional element eroded. These changes ensure that this will not happen to customers in the same circumstances going forward.

5.16 Since the decision of 19 February 2024, the Department has been actioning cases of the same circumstances as the Upper Tribunal decision of which they are made aware. The determination of the Upper Tribunal does not affect decisions made by the Secretary of State before 19 February 2024.

5.17 Regulation 60 removes the UC basic condition of not being in full time education for students migrating to UC while they undertake that course. Currently the regulation states that this applies to notified persons[21], this amendment supplements this by specifying that the customer must have made a qualifying claim for that to apply.

5.18 Regulation 60B deals with the treatment of deferred retirement pension income. Where a customer of State Pension age has deferred their retirement pension, the amount the customer would be entitled to is taken into account in the UC award as notional income[22]. On migrating to UC, any deferred retirement pension is not taken into account as notional income for twelve months. Currently Regulation 60B states this applies to notified persons; this change supplements this by specifying that the customer must have made a qualifying claim for that to apply.

The Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019[23]

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[19] 'Legacy Benefits' is a term used to describe six benefits which have been replaced by Universal Credit: working tax credits, child tax credits, income-related Employment and Support Allowance; income-based Jobseekers Allowance, Income Support and Housing Benefit.

[20] https://www.gov.uk/administrative-appeals-tribunal-decisions/secretary-of-state-for-work-and-pensions-v-ja-uc-2024-ukut-52-aac

[21] 'Notified person' means a legacy benefit customer who has been issued with a Migration Notice inviting them to move to Universal Credit to maintain their financial support.

[22] 'Notional income' in this context means the amount of pension a person is entitled to. After twelve assessment periods this is counted as income, even if they have decided not to take it. This can affect how much Universal Credit a person receives, more information is available here https://www.gov.uk/guidance/universal-credit-if-youre-state-pension-age-and-get-a-migration-notice-letter#what-youll-get

[23] https://www.legislation.gov.uk/uksi/2019/167/contents

5.19 The changes to Article 3 ensure that for the purposes of persons still in the tax credits (TC) scheme that their TC claim will not continue beyond the 2024/2025 tax year.

5.20 The changes to Article 3A make the equivalent change to the provisions relating to the migration of State Pension age (SPa) tax credit customers to Pension Credit (PC) as that made by the amendment of Regulation 44 of the Universal Credit (Transitional Provisions) Regulations 2014. Only customers issued with a Tax Credit Closure Notice (the equivalent of the UC Migration Notice) can qualify for transitional protection in Pension Credit (PC); these changes ensures that transitional protection can be considered in these cases if their PC award would otherwise be less than their tax credit (TC) award.

What was the previous policy, how is this different?

The Universal Credit (Transitional Provisions) Regulations 2014[24]:

5.21 The changes to Regulation 21 address that the previous policy did not permit work capability decisions to be carried over from a legacy benefit to Universal Credit (UC) where there was a break of any length of time between claims. The continuity between claims that these changes will allow will mean that customers who are entitled to the Limited Capability for Work and Work-Related Activity element will not be required to serve the 'relevant period' of three months before they can receive this element.

5.22 The changes to Regulation 44 address the three-month notice period that current legislation prescribes. Under current rules, customers issued with a Migration Notice must be given a minimum of three months to claim UC. The changes to Regulation 44 remove this restriction for TC customer to allow for periods of less than three months to claim UC.

5.23 The changes to Regulation 55 address that the previous policy allowed any additional awards to erode the transitional element with the sole exception of childcare costs. These changes mean that the addition of the UC housing element will not erode the transitional element where the customer has moved from specified or temporary housing within the last month.

The Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019, Article 3A[25]

5.24 The changes to Article 3A mirror the changes made by the amendment referred to at paragraph 5.22 in respect of the notice period provided for SPa customers being migrated from TC to PC. Under current rules customers must be given a minimum of three months in which to apply for PC. The changes to Article 3A remove this restriction.

Amendments with no policy changes

5.25 For the following amendments, there have not been any policy changes, there is simply a strengthening of existing policy intent, a clarification of the regulations, a consequential amendment, or the correction of errors as explained in paragraphs 5.1 – 5.20:

[24] https://www.legislation.gov.uk/uksi/2014/1230/contents
[25] https://www.legislation.gov.uk/uksi/2019/167/article/3A

- The State Pension Credit Regulations 2002, Schedule 2A;
- The Housing Benefit Regulations 2006, Regulation 2;
- The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, Regulation 2;
- The Universal Credit Regulations 2013, Schedule 4;
- The Universal Credit (Transitional Provisions) Regulations 2014, Regulation 6A, 8A, 11, 50, 60 and 60B;
- The Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019, Article 3.

6. Legislative and Legal Context

How has the law changed?

6.1 The changes to Regulation 21 address the terms of the decision of the Upper Tribunal (UT) of 29th November 2023[26] in which the UT found the Department's treatment of customers in these circumstances to be discriminatory, as laid out in paragraphs 5.9 – 5.11.

6.2 The changes to Regulation 55[27] address the terms of the decision of the Upper Tribunal (UT) of 19 February 2024 in which the UT found the Department's treatment of customers in these circumstances to be discriminatory, as laid out in paragraphs 5.15 and 5.16.

Amendments with no policy changes

6.3 For the following measures, there have not been any policy changes, there is simply a strengthening of existing policy intent, a clarification of the regulations, a consequential amendment, or the correction of errors as explained in paragraphs 5.1 – 5.20:

- The State Pension Credit Regulations 2002, Schedule 2A;
- The Housing Benefit Regulations 2006, Regulation 2;
- The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, Regulation 2;
- The Universal Credit Regulations 2013, Schedule 4;
- The Universal Credit (Transitional Provisions) Regulations 2014, Regulation 6A, 8A, 11, 44, 50, 60 and 60B;
- The Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019, Article 3 and Article 3A.

Why was this approach taken to change the law?

6.4 Alternative approaches to the changes to Regulation 21 of the Universal Credit (Transitional Provisions) Regulations 2014 were explored, including bringing forward managed migration for those Employment and Support Allowance customers who

[26] https://www.gov.uk/administrative-appeals-tribunal-decisions/pr-v-secretary-of-state-for-work-and-pensions-2023-ukut-290-aac
[27] https://www.gov.uk/administrative-appeals-tribunal-decisions/secretary-of-state-for-work-and-pensions-v-ja-uc-2024-ukut-52-aac

may be in similar circumstances in future (thereby avoiding their migration being triggered by turning State Pension age, and therefore avoiding a break in claim). This would likely provide an incomplete solution and would face operational challenges and therefore a legislative solution was chosen to better safeguard customers.

6.5 A further option would have been to strengthen existing communications with Employment and Support Allowance (ESA) customers approaching State Pension age (SPa) to encourage them to make their Universal Credit (UC) claim before their ESA claim ends. Given that the existing arrangements had not been sufficient for the customer in the Upper Tribunal case, a legislative solution was chosen to better safeguard customers.

6.6 Changes to the following regulations were the only possible legal approaches to make the necessary changes:

- The State Pension Credit Regulations 2002, Schedule 2A;
- The Housing Benefit Regulations 2006, Regulation 2;
- The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, Regulation 2;
- The Universal Credit Regulations 2013, Schedule 4;
- The Universal Credit (Transitional Provisions) Regulations 2014, Regulation 6A, 8A, 11, 44, 50, 55, 60 and 60B;
- The Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019, Article 3 and Article 3A.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department presented the draft regulations to the Social Security Advisory Committee on 6 November 2024. The committee did not take the regulations on formal reference.

7.2 The Department has a statutory duty to consult the Local Authority Associations on amendments to Housing Benefit regulations and Scottish Ministers on amendments to the housing costs elements of the Universal Credit regulations. They were content with the regulations and no comments were received.

8. Applicable Guidance

8.1 Where relevant, advice for decision making: staff guide[28] will be updated on gov.uk by the relevant coming into force dates.

8.2 For the changes to The Housing Benefit Regulations guidance will be issued to local authority staff before the regulations come into force and will be published on gov.uk[29].

[28] https://www.gov.uk/government/collections/decision-makers-guide-staff-guide
[29] https://www.gov.uk/government/collections/housing-benefit-for-local-authorities-circulars

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because this statutory instrument primarily clarifies and strengthens existing policy intent and has no impact on businesses.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the package is primarily comprised of minor, technical amendments to social security regulations.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the package primarily contains minor, technical amendments to social security regulations.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that there are no plans to formally review the impacts of these amendments, because the package is primarily comprised of minor, technical amendments to social security regulations.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").