EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2025

SR 2025 No. 3

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 122(1)(d), 129A(2), (3) and (5) and 171(1) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, sections 2(3)(b) and 19(1) of the State Pension Credit Act (Northern Ireland) 2002, Articles 16(4), 38, 48(1) and (2) of and paragraphs 1(1), 4, 6 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 amendments to various social security regulations relating to Universal Credit (UC), Pension Credit (PC), Housing Benefit (HB) and Tax Credits (TC). The amendments include:

- enabling children placed for adoption while looked after by an 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- removing unnecessary references to superseded regulations.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 (ESA) 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 (LCWRA) element.
- removing the requirement to reduce the transitional element when a claimant moves from specified accommodation into accommodation funded through the UC housing element.
- allowing TC claimants 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 UC claimant 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 or Pension Age Disability Payment (PADP) in payment in Scotland where claimants qualify for an additional bedroom;
- correcting drafting errors in legislation.

3. Background

The State Pension Credit Regulations (Northern Ireland) 2003

3.1 Regulation 2 of the Statutory Rule amends Schedule 2A to the State Pension Credit Regulations (Northern Ireland) 2003.

3.2 In both UC and PC, a child or qualifying young person cannot be considered to be the responsibility of the claimant where they are looked after by an authority. However, children placed for adoption with a UC claimant are treated as not being looked after by an authority and are therefore part of the claimant'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 an authority. Children placed for adoption in these circumstances are, for the purposes of PC, to be treated as not being looked after by an 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'.

The Housing Benefit Regulations (Northern Ireland) 2006

3.3 Regulation 3 of the Statutory Rule amends regulation 2 of the Housing Benefit Regulations (Northern Ireland) 2006.

3.4 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 (Northern Ireland) 2006 and the Universal Credit Regulations (Northern Ireland) 2016. In respect of AA the changes are to reflect the position as it should have been when the definition was inserted in 2017.

The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006

3.5 Regulation 4 of the Statutory Rule amends regulation 2 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006.

3.6 These changes reflect the changes to the Housing Benefit Regulations (Northern Ireland) 2006 mentioned in paragraph 3.4 and correct a drafting error in the definition of entitlement to an additional bedroom where a claimant or their partner is in receipt of a qualifying disability benefit and is unable to share a bedroom.

The Universal Credit Regulations (Northern Ireland) 2016

3.7 Regulation 5 of the Statutory Rule amends Schedule 4 to the Universal Credit Regulations (Northern Ireland) 2016.

3.8 To mirror the changes to the Housing Benefit Regulations (Northern Ireland) 2006 this change means that "a couple who cannot share a bedroom" now means a couple in receipt of any rate of AA or PADP.

3.9 A drafting error in Schedule 4 means that currently regulations state that for claimants 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.

The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016

3.10 Regulation 6 of the Statutory Rule amends regulations 4A, 6A, 9, 22, 45, 51, 56 and 61 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016.

3.11 All payments of TC will end on 5 April 2025 as part of the migration of legacy benefit claimants to UC. The changes to regulation 4A 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.

3.12 The changes to regulation 6A remove redundant references to regulation 47(1). Regulation 6A pertains to the timing of the award of the two-week Transition to Universal Credit (UC) Housing Payment when a claimant in receipt of HB claims UC.

3.13 The changes to regulation 9 are consequential to the changes made to regulation 6A and are consequential to the changes in place to close the TC scheme.

3.14 The changes to regulation 22 allow claimants migrating from ESA 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 ESA claim and a UC claim means that the outcome of a claimant's Work Capability Assessment (WCA) does not carry over into the UC award. This means that claimants with a gap between their ESA and UC claims serve a new three-month waiting period before the additional amount for LCWRA can be included in the UC award. This is true for claimants of both working age, and any State Pension age claimants who are eligible for UC because they have a working age partner i.e. a mixed age couple.

3.15 The changes to regulation 22 mean that claimants 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[1] decision on 29 November 2023. The claimant 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 claimant 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.

3.16 Regulation 45 prescribes how the Department is to issue notice to claimants to claim UC. The general rule is that recipients must be given a minimum period of no less than three

[1] https://www.gov.uk/administrative-appeals-tribunal-decisions/pr-v-secretary-of-state-for-work-and-pensions-2023-ukut-290-aac

months. The changes to regulation 45 remove this restriction for TC claimant to allow for periods of less than three months to claim UC.

3.17 TC closes on 5 April 2025 and eligible claimants are being migrated to UC. There will be claimants 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 claimants would receive a migration notice with a deadline after TC closes. If a claimant 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 three months. This is designed to ensure that those with TC entitlement reinstated less than three months before the closure of TC can be issued a migration notice, the deadline for which is set in a way that will ensure entitlement to the transitional element is calculated by reference to their TC award.

3.18 Regulation 51 deals with claimants claiming legacy benefits who have a change of couple status between the issue of a migration notice and making their UC claim. Claimants 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 claimants with ineligible partners, including those with no recourse to public funds.

3.19 The changes to regulation 56 prevent the transitional element being eroded by the addition of the UC housing element where the claimant 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 on 19 February 2024[2]. The claimant 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 claimant experienced discrimination as a result of having their transitional element eroded. These changes ensure that this will not happen to claimants in the same circumstances going forward.

3.20 Regulation 61 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, the amendment made by the Statutory Rule supplements this by specifying that the claimant must have made a qualifying claim for that to apply.

3.21 Regulation 61B deals with the treatment of deferred retirement pension income. Where a claimant of State Pension age has deferred their retirement pension, the amount the claimant would be entitled to is taken into account in the UC award as notional income. On migrating to UC, any deferred retirement pension is not taken into account as notional income for twelve months. Currently regulation 61B states this applies to notified persons; the change made by this Statutory Rule supplements this by specifying that the claimant must have made a qualifying claim for that to apply.

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

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 (Miscellaneous Amendments) Regulations 2025 (S.I. 2025/3) in Great Britain.

11. Additional Information

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

12. 21 Day Rule

12.1 Due to the need to align the Statutory Rule with the final Department for Work and Pensions (DWP) instrument, it was not possible to lay it on the same date as DWP. It is necessary, however, to align the operational date with the equivalent DWP legislation. This is because the UC System is owned and developed by DWP for the delivery of UC on a UK wide basis. Any delay in the operational date for this Statutory Rule could give rise to operational difficulties.