EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (CORONAVIRUS) (SELF-EMPLOYED CLAIMANTS AND RECLAIMS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2020

2020 No. 85

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 the Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this instrument is to clarify how grants received as part of the Self-employment Income Support Scheme[1] (SEISS) are to be treated if the self-employed person has an award of Universal Credit (UC).

2.2 The regulations also stipulate how payments from the Coronavirus Job Retention Scheme[2] (CJRS) are to be treated where a self-employed person has applied to the scheme to get support for their employees or themselves.

2.3 It also covers the treatment of other grants available to businesses if they meet certain criteria, that will help them during the period of the pandemic. These include the Small Business Support Grant Fund[3], the Retail, Hospitality, Tourism and Leisure Grant[4], and the Bounce Back Loan Scheme[5].

2.4 The Statutory Rule also provides for a change that allows claimants to be brought back into UC after an initial claim has failed or an award has eased because earnings have exceeded entitlement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These are emergency regulations in relation to the Government's response to Covid-19.

3.2 This SR will breach the 21-day rule as it will come into force on 21st May 2020. Payments from the Self-employment Income Support Scheme (SEISS) are going to be made imminently so legislation needs to be in place to ensure these payments are taken into account as earnings. If this were not the case self-employed claimants would be overpaid UC as they would receive duplicate provision for living costs from both UC and the relevant scheme.

---

[1] https://www.nibusinessinfo.co.uk/content/coronavirus-self-employed-income-support-scheme-seiss
[2] https://www.nibusinessinfo.co.uk/content/coronavirus-claim-wages-under-coronavirus-job-retention-scheme
[3] https://www.nibusinessinfo.co.uk/business-support/%C2%A310000-small-business-support-grant-scheme-ni-only
[4] https://www.nibusinessinfo.co.uk/content/coronavirus-%C2%A325000-retail-hospitality-tourism-and-leisure-grant.
[5] https://www.nibusinessinfo.co.uk/content/coronavirus-apply-bounce-back-loan-scheme

3.3 The legislation also covers self-employed claimants who receive a Self-employment Income Support Scheme (SEISS) grant but also receives a payment from the Coronavirus Job Retention Scheme (CJRS) for their employees. It ensures that the CJRS payment is not taken into account as earnings for the self-employed claimant. This is because these payments are to be passed on to their employees. Again, if this was not so, CJRS payments could cause the self-employed claimant's UC to cease thus causing them financial hardship.

3.4 Finally, where self-employed claimants receive Coronavirus support via a loan or grant, to aide with business recovery, these payments will be disregarded for a period of 12 months, for the purposes of UC. If they were not, these payments would be taken into account within UC potentially causing the self-employed claimants UC payment to stop.

3.5 Based on the above, it would not be appropriate to delay the legislation in order to comply with the 21-day rule as self-employed claimants' need certainty about how their UC awards will be affected by payments from the SEISS or CJRS, as they may reduce or cease depending on the level of grant received. They also need to be assured that any grant or loan payments which are made to aide with business recovery will not cause their UC payments to stop, thus leaving them with no financial support towards living costs.

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)

3.6 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 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 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 time.

6.3 The Welfare Reform Act 2012[6] provided for the introduction of a new working age income-related social security benefit, UC, and the abolition of income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, Working Tax Credit and Child Tax Credit.

6.4 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 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 could 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 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.

6.5 In line with the consent given by the Northern Ireland Assembly in relation to the 2015 Act, and with agreement of the Department for Communities in recognition of the urgency of the situation, the Department for Work and Pensions will be laying this instrument on behalf of Northern Ireland in order to deliver the changes equally across both Great Britain and Northern Ireland.

6.6 Regulation 2 of the instrument modifies regulation 57 of the Universal Credit Regulation (Northern Ireland) 2016[7] to clarify how payments made via the Self-employment Income Support Scheme (SEISS) and/ or Coronavirus Job Retention Scheme (CJRS) are taken into account if a self-employed person has an award of UC.

6.7 It also includes provision for the way grants or loans available to self-employed people to help with the recovery of their business once the pandemic has eased will be treated.

6.8 Regulation 3 also inserts a new regulation 31A into the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016[8] so a claimant who would otherwise be required to claim UC can be treated as having claimed it. This applies for 5 months where no award has been made on the first claim, or where an award has ended because earnings exceeded entitlement. The Department has

[6] http://www.legislation.gov.uk/ukpga/2012/5/contents
[7] https://www.legislation.gov.uk/nisr/2016/216/regulation/57
[8] http://www.legislation.gov.uk/nisr/2016/220/contents/made

introduced this change during the pandemic so claimants can more easily be brought back into UC when their earnings drop.

7. Policy background

What is being done and why?

7.1 As part of the Government's strategy of supporting people affected by Covid-19, it has set up schemes that allow self-employed people to receive financial support for themselves and their employees.

7.2 The Self-employment Income Support Scheme (SEISS) allows self-employed people to claim a taxable grant worth 80% of their trading profits up to a maximum of £2,500 a month to cover their earnings. It is available for 3 months, but may be extended. The grant is subject to Income Tax and National Insurance contributions but does not need to be repaid.

7.3 The Coronavirus Job Retention Scheme (CJRS) allows employers (including the self-employed) to apply for a payment that covers 80% of an employee's usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and pension contributions[9] where that employee has been furloughed.

7.4 This is a temporary scheme which was initially in place for 4 months starting from 1st March 2020, but has now been extended until the end of October 2020 allowing employers to use this scheme anytime during this period. It is designed to help employers whose operations have been severely affected by coronavirus to retain their employees and protect the UK economy. However, all employers are eligible to claim under the scheme and the Government recognises different businesses will face different impacts from coronavirus.

7.5 Although the SEISS has been put in place since April 2020, payments from it are only expected to come through in May 2020. As a result, some self-employed people may have claimed Universal Credit (UC) since the beginning of the 'lockdown' to cover their living costs.

7.6 These Regulations therefore provide for the SEISS to be taken into account as self-employed earnings in UC in the assessment period[10] in which a payment is received. In some cases, this may mean the support available via UC comes to an end but in others where incomes are low, UC will continue to 'top-up' the self-employed persons' income until it is no longer needed.

7.7 As well as the availability of the SEISS, self-employed people may claim a payment from CJRS where they have employees. These payments will not be taken into account in the self-employed claimants UC as earnings (and the claimant will not be able to treat the wages covered by CJRS as expenses in the calculation of their earnings). A UC self-employed claimant in receipt of a Coronavirus Job Retention Scheme (CJRS) payment for their employees is obliged to pass these monies on to those employees (under HMRC rules).

7.8 In some cases, self-employed UC claimants who are trading through a limited company which "employs" them may be supported as a furloughed employee under CJRS and

[9] Up to the level of the minimum automatic enrolment employer pension contribution.
[10] A UC assessment period is a period of one month beginning with the first date of entitlement.

where this is the case these payments will be treated as earnings and applied to the UC award.

7.9 Once earnings are received from the CJRS or the Self-employment Income Support Scheme (SEISS), or other related grants, they will need to be assessed to see how they affect the UC claim. However, as a result of operational changes to mitigate the impacts of receiving CJRS and the SEISS payments this will not cause the UC claim to 'close', where such earnings reduce the UC award to zero. Instead, the claimant will be "treated as making" a new UC claim for the following 5 assessment periods. This means if earnings reduce in these assessment periods the claimant will not need to make a new claim for a payment of UC to be made.

7.10 By treating the claimant as making a new claim it also allows for surplus earnings to be applied to the UC award[11]. This means:

- if the earnings received as an employee under the Coronavirus Job Retention Scheme or as a self-employed person under the Self-employment Income Support Scheme (within the assessment period), are more than £2,500 over the amount that would normally cause the UC claim to stop i.e. in the case of a lump sum;
- any amount over the £2,500 limit will be deducted from following assessment period(s) if the claim is 'made' within 6 months of the previous claim ending; and
- will continue until there is no surplus remaining.

7.11 In some case, this may mean that where the surplus is carried over, the claimant will not get a Universal Credit (UC) payment. However, this is dependent on the claimants' circumstances and the level of payment they get.

7.12 The regulations also provide for the treatment of grants or loans to aide with business recovery once the pandemic has eased. Where such payments are capital they will be disregarded for a period of 12 months, for the purposes of UC. These include, subject to meeting the eligibility criteria, the:

- Small Business Grant Fund – This provides a one-off grant of £10,000 to eligible businesses to help meet their ongoing business costs[12];
- Retail Hospitality and Leisure Grant[13] – Businesses in these sectors with a property that has a rateable value of over £15,000 and less than £51,000 may be eligible for a grant of £25,000;
- Bounce Back Loan Scheme[14] – This scheme is designed to ensure that small firms who need cash injections to keep operating can get finance within days, with ability to borrow between £2,000 and £50,000. It will provide lenders with a 100% guarantee for the loan and will be interest free for the first 12 months; and
- Future Fund[15] – This provides Government loans to UK-based companies ranging from £125,000 to £5 million, subject to at least equal match funding from private investors. These convertible loans may be a suitable option for businesses that rely on equity investment and are unable to access the Coronavirus Business Interruption Loan Scheme.

[11] Currently a new claim is required for surplus earnings to be applied.
[12] https://www.gov.uk/government/publications/coronavirus-covid-19-business-support-grant-funding-guidance-for-businesses
[13] https://www.gov.uk/government/publications/coronavirus-covid-19-business-support-grant-funding-guidance-for-businesses
[14] https://www.gov.uk/guidance/apply-for-a-coronavirus-bounce-back-loan
[15] https://www.gov.uk/guidance/future-fund

- Sea Fish Industry (Coronavirus) (Fixed Costs) Scheme[16] – This provides vessel owners with fund payments for up to three months. These payments vary depending on the overall length of the vessel, with initial payments paid to cover two months (for April and May 2020).

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 As this is a temporary measure, consolidation is not being undertaken.

10. Consultation outcome

10.1 Given the urgency of these regulations, no consultation has been undertaken

11. Guidance

11.1 Guidance will be issued to DfC staff urgently to reflect the changes in the statutory rule

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as no, or no significant, impact on business, or the private, voluntary or public sector, is foreseen.

13. Regulating small business

13.1 The legislation may apply to small business, where they are self-employed and make a claim to UC, as outlined above.

14. Monitoring & review

14.1 DfC is firmly committed to evaluating and monitoring the impact of its policies. To do this the DfC will continue to consider whether further changes are required in line with CMO guidance while the Covid-19 outbreak continues.

15. Contact

15.1 Anne McCleary at the Department for Communities. Telephone: 02890 839332 or email: anne.mccleary@communities-ni.gov.uk can answer any queries regarding the instrument.

15.2 Anne McCleary, Director of Social Security Policy, Legislation and Decision Making at the Department for Communities, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Thérèse Coffey, Secretary of State at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

[16] https://www.nibusinessinfo.co.uk/content/coronavirus-%C2%A31.5-million-support-package-fishing-industry