EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) (CLAIMANTS PREVIOUSLY ENTITLED TO A SEVERE DISABILITY PREMIUM) AMENDMENT REGULATIONS 2021

2021 No. 4

1. Introduction

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

2. Purpose of the instrument

2.1 Legacy benefits are being replaced by Universal Credit (UC) and the two systems are structured differently from each other. Legacy benefits include a Severe Disability Premium (SDP) which is not directly replicated in UC. The gateway which prevents people in receipt of the SDP in legacy benefits from making a new claim to UC is being removed on 27th January 2021 and from this date this group of people will be able to make new claims to UC. To help with the financial transition to UC, previous SDP claimants will be eligible to be considered for a transitional SDP element. These regulations provide the criteria for these payments. In addition, the regulations outline how this payment will be treated in a claimant's UC award.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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)

3.2 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 Great Britain.

4.2 The territorial application of this instrument is Great Britain.

4.3 Corresponding legislation for Northern Ireland is being produced and led by the Department for Communities in 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 The Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 provide for the removal of the SDP gateway on 27th January 2021[1]. The SDP gateway[2] prevents people receiving SDP from making a new claim to UC. Once the gateway is removed, people in receipt of SDP will be able to make new claims to UC.

6.2 The 2019 regulations also introduced a SDP transitional payment[3] for claimants entitled to SDP as part of their legacy award who had already moved to UC before the gateway came into effect on 16th January 2019 and for others who moved after that date but who were subsequently awarded SDP retrospectively. These payment provisions came into effect from 22 July 2019. This was intended to provide transitional support to these claimants in acknowledgement of the decrease in financial award they would have experienced moving to UC prior to the introduction of the SDP gateway.

6.3 The 2021 regulations provide for the award and treatment of these SDP transitional payments going forward now people in receipt of SDP will begin to move onto UC in greater numbers.

7. Policy background

What is being done and why?

7.1 These regulations broadly maintain the principles of the 2019 regulations providing for the award of SDP transitional payments to those people entitled to SDP before the SDP gateway came into effect. For these people, awards of SDP transitional payments were made as an ongoing monthly payment with arrears payable as a lump sum to the date the claimant moved to UC. Once the gateway is removed, previous SDP recipients will be able to make new claims to UC and therefore regulations need amending to allow for these payments to be made at the time of UC claim, rather than as a retrospective award as the 2019 regulations provided.

7.2 The SDP transitional payment, an additional amount of UC, was initially paid separately from a claimant's UC award. From the 8th October 2020 these payments have been converted to a transitional SDP element and paid as part of an individual's UC award. This was announced in a Written Ministerial Statement laid on 17th September 2020. Therefore, the 2021 regulations refer to this payment as a transitional SDP element.

7.3 Eligibility for the transitional SDP element remains broadly the same as is set out for SDP transitional payments in the 2019 regulations. However, the 2021 regulations widen eligibility to the transitional SDP element to both ex partners following a couple separation where SDP had been included in the legacy benefit award.

7.4 Previously, this was not the case. Due to the administration of legacy benefits, even where both couple members meet the criteria for SDP and they receive the higher rate of SDP, only one member is classed as the claimant who is eligible for the benefit which includes SDP. The other partner does not officially have eligibility to SDP, despite their level of need being the same. The amendments in the 2021 regulations

[1] Regulation 7.
[2] Introduced from 16 January 2019 - https://www.legislation.gov.uk/uksi/2019/10/regulation/1/made
[3] Regulation 3, (inserts Schedule 2).

ensure that where a couple separate, both ex-partners are treated equally when being considered for a transitional SDP element when making a new single UC claim. This is positive for claimants as it extends potential access to the transitional SDP element to both members of a legacy benefit claim if they make a new claim to UC following a separation. We estimate this will benefit a few hundred claimants overall.

7.5 The regulations therefore provide the criteria for a transitional SDP element as being, in essence, that the claimant must:

- not be joining an existing UC claimant;
- have been entitled (or been part of a couple where one member was entitled) to an award of IS, JSA(IB) or ESA(IR) that included an SDP within the period of a month preceding the first day on which they became entitled to UC; and
- continue to meet the eligibility conditions for SDP at the time of their UC claim.

7.6 These criteria, as in the 2019 regulations, mean that if a single person entitled to SDP forms a couple and they make a new joint UC claim, they will also come in the scope for a transitional SDP element. The new couple would have to meet the SDP eligibility criteria to be awarded the payment.

7.7 The 2021 amendments also make a further clarification to current regulations. As explained above, when a SDP recipient has a change of circumstances which prompts them to make a new UC claim, they can come into scope for the transitional SDP element. If they have no change of circumstances to prompt a new UC claim, they will remain on legacy benefits until the Department requests them to move to UC as part of the Department's managed migration process. In this situation, the claimant will be considered for the Transitional Element. These regulations prevent someone awarded the Transitional Element from receiving a transitional SDP element.

7.8 In practice, the only difference between the Transitional Element and a transitional SDP element is the initial amount paid in the first month of the UC award. The transitional SDP element is set at a rate outlined in these regulations; the Transitional Element is calculated to reflect the claimant's previous legacy award in comparison to their initial UC award. After this first month, both types of payment are treated in the same way and will reduce, or cease, in exactly the same circumstances, as was announced in the 8 October 2020 Written Ministerial Statement.

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 Informal consolidated text of instruments is available to the public free of charge via the 'National Archive' website: www.legislation.gov.uk.

10. Consultation outcome

Social Security Advisory Committee

10.1 The Department presented the draft regulations to the Social Security Advisory Committee (SSAC) on 9 December 2020. The Committee did not take the regulations on formal reference.

11. Guidance

11.1 Guidance will be issued to the Department's staff to reflect the changes in the statutory instrument.

11.2 Guidance will also be published on gov.uk.

12. Impact

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

12.2 The measure has a small impact on the Department, with an estimated AME cost of around £1m across the 5 years to 2025/26. This funding has been agreed with the Treasury. There is no significant impact on the wider public sector.

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

12.4 The Department has concluded that no benefit recipient with a protected characteristic will be adversely affected by these regulations. By bringing both partners of a previous SDP couple award into scope for consideration of a transitional SDP element, the regulations have the potential to be more generous to claimants than the differential treatment of the partners provided for in legislation.

13. Regulating small business

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

14. Monitoring & review

14.1 There are no plans to formally review the impacts of these amendments.

14.2 If issues arise in its operation the Department will evaluate and take appropriate action.

14.3 The regulations do not include a statutory review clause.

15. Contact

15.1 Nina Young at the Department for Work and Pensions Telephone: 0207 449 5351 or email: nina.young@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Alex Bion, in place of Deputy Director for Universal Credit Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Will Quince, Minister for Welfare Delivery, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.