

EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (CHILDCARE COSTS AND MINIMUM INCOME FLOOR) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2019

SR 2019 No. 173

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 Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The regulations make two amendments to *The Universal Credit Regulations (Northern Ireland) 2016*¹ ('the 2016 Regulations'). These amendments:
- increase the time permitted for a universal credit claimant to report that they have paid childcare costs so that a childcare element of universal credit can be paid. Hitherto claimants have generally been required to report the payment in the same monthly universal credit assessment period² as it was paid. The amendment extends the time allowed for reporting the payment to include the following assessment period; and
 - clarify an express provision to make clear that all universal credit claimants who are determined by the Department as being 'gainfully self-employed' and expected to work will be subject to an assumed level of earnings – the 'Minimum Income Floor' – when calculating their universal credit entitlement (unless they are still in a permitted period during which the Minimum Income Floor is not to be applied).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee

- 3.1 The regulations replicate the Universal Credit (Childcare Costs and Minimum Income Floor) (Amendment) Regulations 2019.

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 None

4. Extent and Territorial Application

- 4.1 The extent of this instrument is Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

¹ <http://www.legislation.gov.uk/nisr/2016/216/contents/made>

² Universal Credit claimants are assessed and paid on a monthly basis. The start date of this month is determined according to the claimant's date of claim, and is called the 'assessment period'.

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](#) places a statutory duty on the Minister for Communities 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.
- 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 rate.
- 6.3 *The Welfare Reform Act 2012*³ introduced a number of reforms which included the introduction of universal credit, a working age income-related social security benefit, and the abolition of income support, housing benefit, working tax credit, child tax credit and the income-related components of jobseeker's allowance and employment and support allowance.
- 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 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](#) 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 The 2016 Regulations provide for matters relating to the administration of universal credit, including: entitlement; components and calculation of an award; application of the Benefit Cap; requirements for participation in the labour market; sanctions and hardship payments.
- 6.6 Specifically, as regards the two amendments the Department is making in this instrument, the 2016 Regulations provide for a childcare costs element in a universal credit award, and the application of a 'Minimum Income Floor' when calculating the award of a claimant who is determined to be gainfully self-employed.

7. Policy background

What is being done and why?

Childcare costs

³ <http://www.legislation.gov.uk/ukpga/2012/5/contents>

- 7.1 The 2016 Regulations provide the conditions for the award of the childcare costs element of universal credit. To meet the conditions, the claimant must generally report that they have paid for childcare in the same universal credit assessment period in which the payment was made.
- 7.2 If a claimant does not report the payment in the same assessment period, then at present it is considered under general rules on the late reporting of a change of circumstance. This means that the Secretary of State must be satisfied that special circumstances prevented timely reporting. The phrase “special circumstances” is not defined in law, but can include, for example, death, bereavement, serious illness or major postal disruption. If that is not the case, then the childcare costs element will not be paid. Currently if the claimant pays for childcare at the very end of their assessment period it leaves them with very little time to report the payment to the Department within that assessment period. If they report the childcare payment in the next assessment period, special circumstances would need to apply in order to have those costs considered for reimbursement up to the prescribed limits. This means there is a risk that they might not be eligible to have those costs included as the childcare element of their Universal Credit award.
- 7.3 Guidance was issued earlier this year to advise officials to take a generous and flexible approach to what might constitute special circumstances as an interim measure before the regulations could be changed in order to ensure claimants did not lose out on reimbursement of childcare costs. However, the claimant still needed to demonstrate some form of special circumstances.
- 7.4 **Regulation 2** of this instrument will amend the 2016 Regulations to ease the reporting rule so that a childcare costs element will be paid if reported either in the assessment period during which the claimant paid the childcare costs or the assessment period immediately following that payment.
- 7.5 This change is intended to help households with children, giving people more confidence that they will receive support they need in work.

The Minimum Income Floor

- 7.6 The 2016 Regulations also provide for a ‘Minimum Income Floor’ to be applied when calculating the award of universal credit claimants who are determined by the Department to be ‘gainfully self-employed’⁴.
- 7.7 The Minimum Income Floor sets an assumed level of income from self-employment, and is designed to provide a fair incentive for the self-employed to increase their earnings and productivity. The earnings expectations of self-employed claimants under universal credit mirror those that would be expected of claimants with similar circumstances in employed work. For example, the level of the Minimum Income Floor for claimants expected to be able to work full-time is equivalent to 35 hours per week at the National Minimum Wage.
- 7.8 The Minimum Income Floor is applied to a universal credit claimant⁵ subject to two conditions: that the claimant (a) is gainfully self-employed and (b) within the All Work Related Requirements conditionality group (i.e. that their circumstances are such that they are expected to be available for and seek work).

⁴ As defined in the 2016 Regulations: <http://www.legislation.gov.uk/nisr/2016/216/regulation/63/made>

⁵ Provided that they are not in a permitted ‘start-up’ period during which the Minimum Income Floor is not to be applied.

- 7.9 **Regulation 3** of this instrument amends the 2016 Regulations to make clear that a reference to a claimant in the All Work Related Requirements conditionality group includes those who are exempt from the requirement to look for work only because their earnings exceed the Conditionality Earnings Threshold.⁶
- 7.10 The Conditionality Earnings Threshold is only relevant to employed claimants and, as such, should have no role in the application of the Minimum Income Floor. For example, a claimant could meet the Conditionality Earnings Threshold as a result of average earnings over a period of time if they are an employed earner. However, self-employed universal credit claimants are expected to plan for fluctuations in income in the same way as all other self-employed people must do and which is part of running a sustainable business. Gainfully self-employed claimants are expected to earn at or above the set assumed level in each assessment period and, where earnings equal or fall short of this, the Minimum Income Floor is applied.

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

- 10.1 None.

11. Guidance

- 11.1 Guidance is being updated to support staff and will be published on the Department's website.

12. Impact

- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 There is no impact on the public sector.
- 12.3 The change in the rule for reporting childcare costs gives claimants more time to do so. This will be beneficial to all working claimants with children, and may be particularly helpful to vulnerable claimants and lone parents, who may face more pressure when managing their universal credit claims compared with other working households with children.
- 12.4 The amendment relating to the application of the Minimum Income Floor seeks only to clarify the legislation. It does not change the treatment of universal credit claimants.
- 12.5 A Regulatory Impact Assessment has not been prepared for this instrument because it has no direct impact on business or in relation to the impact on individuals, charities and the wider public sector.

⁶ The Conditionality Earnings Threshold is a level of earned income above which an employed universal credit claimant is not expected to seek more work.

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 review the impacts of these amendments, which are

- beneficial for claimants as regards reporting childcare costs, and
- neutral as regards application of the Minimum Income Floor, since this amendment only clarifies the law to reflect long-standing policy.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Anne McCleary at the Department for Communities can be contacted with any queries regarding the instrument: Telephone: 028 90823332 or email: annemccleary@communities-ni.gov.uk.

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

15.3 Mims Davies MP - Minister for Employment can confirm that this Explanatory Memorandum meets the required standard.