

EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (EXCEPTIONS TO THE REQUIREMENT NOT TO BE RECEIVING EDUCATION) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2020

SR 2020 No. 166

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

2. Purpose of the instrument

The purpose of this instrument is to make it clear that the exception from the requirement to not be receiving education under regulation 14(b) of the Universal Credit Regulations (Northern Ireland) 2016¹ (“the UC Regulations”) requires that the person is entitled to attendance allowance, disability living allowance or personal independence payment and must already have been determined to have limited capability for work (LCW). This determination could be made during an award of universal credit (UC), or during an award of employment and support allowance (ESA).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This S.R. will breach the 21-day rule as it will come into force the day after it is laid. This is because of the need to ensure the continuity of existing policy so as to maintain the effective administration of UC at a time when the Department and DfC have considerable capacity constraints because of the need to respond to the COVID-19 pandemic. The existing provisions are now considered to not provide the legal clarity needed as to the current policy that disabled people already on UC or ESA with LCW can be encouraged to enter full time education to improve their prospects of work.

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 Northern Ireland.

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

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 This instrument amends regulations 14(b) of the Universal Credit Regulations (Northern Ireland) 2016 so as to clarify that a person entitled to attendance allowance, disability living allowance or personal independence payment will only be entitled to UC if they have a determination of LCW on the date of claim, where the claimant has already started undertaking a course of education, student or training before making a claim for UC, or on the date that the person starts undertaking the course in any other case.

6.2 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, to the extent agreed between them, a single social security system for the United Kingdom. Though certain aspects of social security were devolved to the Scottish Government under the Scotland Act 2016, the Minister for Communities and the Secretary of State for Work and Pensions continue to work together in order to ensure parity between the benefit system in Northern Ireland and those benefits which are reserved in Great Britain, or in England and Wales. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.

6.3 The [Welfare Reform Act 2012](#) provided, amongst other things, for the introduction of Universal Credit (UC) and Personal Independence Payments (PIP).

6.4 The [Welfare Reform and Work Act 2016](#) made further provision in connection with social security, including amendments in relation to the benefit cap, employment and support allowance, and universal credit. It also introduced loans for mortgage interest.

6.5 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 Welfare Reform Act 2012. [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 Welfare Reform and Work Act 2016.

6.6 In line with the consent given by the Northern Ireland Assembly in relation to the 2015 Act, and with the agreement of the DfC, the Department for Work and Pensions is laying this instrument on behalf of Northern Ireland in order to deliver the changes equally across both Great Britain and Northern Ireland.

7. Policy background

What is being done and why?

- 7.1 The amendment restores the policy intent which was arguably not supported under the existing framing of regulation 14(b) of the UC Regulations. It makes clear that it is a requirement of this regulation that a person must already have been determined to have LCW.
- 7.2 The policy enables disabled people already assessed as LCW to enter or remain in education and better their prospects of obtaining work.
- 7.3 The purpose is not to enable a person to be referred for a WCA in order to determine whether they have LCW, so as to then satisfy the exception. In addition to a disability benefit, such as personal independence payment, a person can receive financial help from the student support system which, in addition to a maintenance loan, provides support that recognises a person's disability – for example the Disabled Students Allowance or discretionary grants.

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 This instrument will be informally consolidated in the Law relating to Social Security (Northern Ireland) or (“Blue Volumes”). It will be available to the public at no cost via the internet at: <https://www.communities-ni.gov.uk/services/law-relating-social-security-northern-ireland-blue-volumes>

10. Consultation outcome

- 10.1 Given that the amendment clarifies the original policy intent, no consultation has been undertaken.

11. Guidance

- 11.1 Existing guidance will continue to be used as the amended legislation supports the policy.

12. Impact

- 12.1 This change restores the policy intent.
- 12.2 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 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.

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 The regulation does not include a statutory review

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 John Ward, Deputy Director, Government Legal Department at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Justin Tomlinson, Minister for Disabled People, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.