

1.1 EXPLANATORY MEMORANDUM TO  
**THE UNIVERSAL CREDIT (EXCEPTIONS TO THE REQUIREMENT NOT TO BE  
RECEIVING EDUCATION) (AMENDMENT) REGULATIONS (NORTHERN  
IRELAND) 2021**

**S.R. 2021 NO. 303**

**2. Introduction**

- 2.1 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.
- 2.2 The Statutory Rule is made under Articles 9(2) and 48(1) and (2) of, and paragraph 1(1) and 4(1)(b) and (2) of Schedule 6 to, the Welfare Reform (Northern Ireland) Order 2015, and is subject to the negative resolution procedure.

**3. Purpose**

- 3.1 The purpose of this instrument is to amend one of the exceptions to the requirement to not be receiving education which determines entitlement to Universal Credit (UC). This amendment provides that a person who is entitled to attendance allowance (AA), disability living allowance (DLA), child disability payment (CDP) or personal independence payment (PIP) must have been determined to have limited capability for work (LCW) **before** the person starts undertaking a course of education.
- 3.2 This instrument also amends regulations 19(2) and 19(4) of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 to ensure that a disabled student who transitions to Universal Credit (UC) from old-style (income related) Employment and Support Allowance (OS ESA) is treated as having LCW for the purposes of regulation 14(1)(b) of the UC Regulations.

**4. Background**

*What is being done and why?*

- 3.1 It is a condition of entitlement to UC that a claimant is not receiving education pursuant to Article 9(1)(d) of the Welfare Reform (NI) Order 2015. Exceptions to this condition can be found in regulation 14(1)(b) of the UC Regulations.
- 3.2 The policy intent of regulation 14(1)(b) is that it enables a disabled person already assessed as having LCW **before** they enter education, to then subsequently undertake a course of education and better their prospects of obtaining work in order to reduce, or end, their reliance on UC. In addition, the policy intent is to maintain continued support for a disabled person in education who transitions to UC from OS ESA which has different qualifying conditions for disabled students.
- 3.3 Currently, a disabled person who had already started a course of education could circumvent the policy intent of regulation 14(1)(b) of the 2016 UC Regulations by

obtaining a LCW determination, via a claim to new-style contributory employment and support allowance (NS ESA), **after** they had started undertaking a course. The person could subsequently meet the requirements of regulation 14(1)(b), as then drafted, and be eligible for UC but this is contrary to UC policy intent.

- 3.4 This amendment closes off the ‘workaround’ whereby an existing disabled student makes a claim to NS ESA in order to be referred for a work capability assessment (WCA) in the expectation that they will be determined to have LCW. If the person is subsequently determined to have LCW they could then, prior to the coming into operation of this Rule, satisfy the requirements of regulation 14(1)(b) of the UC Regulations and be entitled to UC. This is contrary to the policy intent because the LCW determination will have been made **after** the person entered education.
- 4.5 The primary source of financial support for all students comes from the student support system of loans and grants. This includes support which recognises a person’s disability, such as the Disabled Students Allowance for those in higher education and discretionary bursaries and grants if undertaking further education. Disabled students also have access to discretionary Hardship Funds which are made available by universities and colleges.
- 4.6 Any disabled student who is not entitled to UC should continue to rely on financial help from the system of loans and grants provided by Student Finance Northern Ireland. Students cannot normally satisfy the entitlement conditions for UC and exceptions are generally made where they have additional needs or responsibilities that are not met through the student support system, such as those responsible for a child.
- 4.7 If a person enters education before they make a claim for UC or NS ESA, they will not be entitled to UC but they may be entitled to NS ESA if they have paid sufficient national insurance contributions. Some UC claimants who receive a qualifying disability benefit, such as PIP, and entered education after being determined to have LCW may, depending upon their individual circumstances, be able to continue to receive an amount of UC in addition to their student finance. This will better the future prospects of work for this existing claimant group and to help reduce, or end, their reliance on UC support.
- 4.8 Whilst it is the case that the amending regulations will close the workaround and end a route to UC which a limited number of disabled students have been using to date, the Government nevertheless continues to support all disabled students through the system of loans and grants which includes support which recognises a person’s disability.
- 4.9 These regulations also amend regulations 19(2) and (4) of the Universal Credit (Transitional Provisions) Regulations (NI) 2016 to ensure that a disabled student who transitions to UC from OS ESA, which has different qualifying conditions, is treated as having LCW for the purposes of regulation 14(1)(b) of the UC Regulations.

## **5. Consultation**

- 5.1 There is no requirement to consult on these regulations.

## **6. Equality Impact**

- 6.1 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.

## **7. Regulatory Impact**

- 7.1 These Regulations do not require a Regulatory Impact Assessment as they do not impose a cost on business, charities, social enterprises or voluntary bodies.

## **8. Financial Implications**

- 8.1 None anticipated.

## **9. Section 24 of the Northern Ireland Act 1998**

The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that the Rule is in compliance with that provision.

## **10. E U Implications**

- 10.1 Not applicable.

## **11. Parity or Replicatory Measure**

- 11.1 These Regulations are equivalent to the Universal Credit (Exceptions to the Requirement not to be receiving Education) (Amendment) Regulations 2021 in Great Britain, which were made on 1st November 2021, laid on 4<sup>th</sup> November 2021 and come into force on 15th December 2021.

## **12. Additional Information**

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