

EXPLANATORY MEMORANDUM TO
THE UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) (AMENDMENT)
REGULATIONS 2023

2023 No. 1238

1. Introduction

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

2. Purpose of the instrument

- 2.1 The purpose of the instrument is to provide additional amounts of transitional protection to eligible claimants who move from a legacy benefit¹ to Universal Credit (UC) and are entitled to the transitional severe disability premium (SDP) element (tSDPe).
- 2.2 The Regulations make provision for new claimants, who commence their Universal Credit award on or after the date the regulations come into force, to receive the additional amount with their Universal Credit award.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

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 (Transitional Provisions) (SDP Gateway) Amendment Regulations 2019² introduced the severe disability premium (SDP) Gateway. The SDP Gateway prevented recipients of the SDP from claiming Universal Credit (UC). These regulations came into force on 16th January 2019. The Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019³ added provision to the Universal Credit (Transitional Provisions) Regulations 2014⁴ to

¹ Income Support, income related Jobseeker's Allowance and income related Employment and Support Allowance

² <https://www.legislation.gov.uk/ukxi/2019/10/regulation/1/made>

³ <https://www.legislation.gov.uk/ukxi/2019/1152/contents>

⁴ <https://www.legislation.gov.uk/ukxi/2014/1230/contents>

provide for the planned migration of all existing benefits claimants to Universal Credit (UC). These Regulations also introduced the transitional severe disability premium (SDP) amount for claimants entitled to SDP as part of their legacy award who had already moved to UC, following a change in their circumstances (known as natural migration). These payment provisions came into effect from 22nd July 2019 and this provided 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.

- 6.2 The Universal Credit (Transitional Provisions) (Claimants previously entitled to a severe disability premium) Amendment Regulations 2021⁵ which came into force on 27th January 2021 further amended Schedule 2 of the Universal Credit (Transitional Provisions) Regulations 2014. This amendment also provided a transitional SDP element (tSDPe) to a member of a couple where the other member was entitled to an award of income support, income-based jobseeker's allowance or income-related employment and support allowance.
- 6.3 The Universal Credit (Transitional Provisions) (Amendment) Regulations 2023 will make provision for additional amounts to be added to the tSDPe for claimants, who move to UC following a change in their circumstances, in respect of the difference in monies paid between the legacy benefits and their UC award in respect of enhanced disability premium, disability premium and the difference between the disabled child premium / disabled child element and the lower rate of the disabled child addition in UC.
- 6.4 The new total amount of tSDPe will continue to be treated as a transitional element and will be subject to erosion and termination associated with transitional protection as described in the Universal Credit (Transitional Provisions) Regulations 2014 Regulations.

7. Policy background

What is being done and why?

- 7.1 In response to a High Court judgment⁶ that was handed down in January 2022, the Judge decided that there is differential treatment between SDP recipients who have naturally migrated to UC and those who remain on legacy benefits. This was either because their change of circumstances did not trigger a new claim for benefit, or because they experienced their change of circumstances when the SDP Gateway was in place (between 16th January 2019 and 27th January 2021), preventing them claiming UC. The Judge found that this difference was not justified.

Explanation

- 7.2 The judgment did not order the Government to take any action, however in response the Government decided to amend The Universal Credit (Transitional Provisions) Regulations 2014.
- 7.3 These amendments to the Universal Credit (Transitional Provisions) Regulations 2014 make provision to introduce additional amounts for claimants who:

⁵ <https://www.legislation.gov.uk/uksi/2021/4/made>

⁶ <https://www.bailii.org/ew/cases/EWHC/Admin/2022/123.html>

- are entitled to a transitional severe disability premium (tSDPe) (or a transitional SDP amount) in UC and
- were previously entitled in the month preceding their claim to Universal Credit (UC) and continue to satisfy the eligibility conditions up to and including the first day of their UC award, to one or more of the following:
 - enhanced disability premium (EDP)⁷
 - disability premium (DP)⁸
 - disabled child premium (DCP)⁹ or the disabled child element (DCE)¹⁰ and are now receiving the lower rate disabled child addition (DCA) in Universal Credit (UC).

What we will do now

- 7.4 The monthly additional amount added to the transitional severe disability premium (SDP) element (tSDPe) will broadly reflect the value of the EDP and DP premiums that a claimant was entitled to prior to them naturally migrating to UC.
- 7.5 The additional monthly rates will be (for 2023/24):
- Enhanced Disability Premium – single rate £84; couple rate £120
 - Disability Premium – single rate £172; couple rate £246
 - Disabled Child Addition (lower rate) - £177 for each eligible child or qualifying young person.
- 7.6 For those claimants who have disabled children and were previously entitled to the DCP or the DCE and are now entitled to the lower rate DCA in UC, the additional amount added to the tSDPe will broadly reflect the difference between the DCP/DCE and the lower rate DCA.
- 7.7 The Universal Credit (Transitional Provisions) (Amendment) Regulations 2023 will require claimants to be eligible for the relevant premiums at the start of their UC award, as it is a condition of eligibility for the additional amounts that had the claimant still been on existing benefits, those premiums would not have ceased.
- 7.8 The additional amount will be added to the claimant’s tSDPe and in line with the existing transitional protection rules covered under the Universal Credit (Transitional Provisions) Regulations 2014 the new amount will be subject to erosion and will end where UC claimants form a couple or separate from their partner or where entitlement to UC ends.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act Consolidation

9. Consolidation

- 9.1 Informal consolidated text of instruments is available to the public free of charge via the ‘National Archive’ website: <https://www.legislation.gov.uk/>

⁷ EDP is payable in income related Employment and Support Allowance or Income Support or income-based Jobseeker’s Allowance

⁸ DP is payable in Income Support or income-based Jobseeker’s Allowance

⁹ DCP is payable in Income Support or income-based Jobseeker’s Allowance

¹⁰ DCE is payable in Child Tax Credits

10. Consultation Outcome

10.1 The Department presented the draft regulations to the Social Security Advisory Committee (SSAC) on 11 October 2023. The Committee did not take the regulations on formal reference.

11. Guidance

11.1 Guidance will be issued to the Department's staff in advance of the regulations coming into force to reflect the changes in the statutory instrument.

11.2 Guidance will also be published on gov.uk.¹¹ once the regulations come into force.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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. However, we will continue to assess how the changes will be delivered.

14.3 The regulations do not include a statutory review clause.

15. Contact

15.1 Steve Lawrence at the Department for Work and Pensions email: steve.lawrence@dwp.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Graeme Connor, 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 Tom Pursglove MP, Minister of State for Disabled People, Health and Work at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

¹¹ <https://www.gov.uk/health-conditions-disability-universal-credit/severe-disability-premium>