

The Draft Universal Credit (Managed Migration)  
Regulations 2018 (SI 2018/\*\*\*\*)

Report by the Social Security Advisory Committee under  
Sections 172(1) and Section 174(1) of the Social  
Security Administration Act 1992 and statement by the  
Secretary of State for Work and Pensions in accordance  
with Section 174(2) of that Act

*Presented to Parliament pursuant to Section 174(2) of the Social  
Security Administration Act 1992*

November 2018



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ISBN 978-1-5286-0841-1

CCS1018817174                      11/18

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

# DWP Response to the Social Security Advisory Committee's recommendations on the Universal Credit (Managed Migration) Draft Regulations 2018

## Overview

Universal Credit replaces six benefits with one, to simplify the system and make work pay. As a result, people claiming Universal Credit move into work faster, stay in work longer and spend more time looking to increase their earnings. Universal Credit also provides more help with childcare costs, a dedicated Work Coach and removes the cliff edges at 16, 24 and 30 hours of work.

Earlier this year we introduced an additional £1.5 billion to support those moving to Universal Credit. We made advance payments more generous (up to 100% of the claimant's expected Universal Credit award) and we extended the time to pay this back from 6 months to 12 months. We also removed the seven day waiting period at the start of a claim and provided an additional two weeks of Housing Benefit transitional payments which do not need to be repaid.

Over the next few years, the Universal Credit caseload will increase in size from around one million households today to around 6.5 million households by the end of 2023. This growth, in part, will be as a result of new claims to Universal Credit being made, including changes in circumstances on legacy benefits triggering a new claim.

These Managed Migration draft regulations specifically extend the benefits of Universal Credit to households who would otherwise remain on legacy benefits and tax credits as they are not expected to be subject to a change of circumstance in this period. These draft regulations, therefore, support the move to the Universal Credit system, opening up work and allowing people to increase their hours without the penalties they would normally be subject to with legacy benefits.

Universal Credit aims to accurately target support at the vulnerable. Universal Credit pays up to 85 per cent of childcare costs to support working parents, compared to 70 per cent under legacy. Because it is simpler, the most recent estimates show that around 700,000 households will get entitlements they were not claiming under the legacy system, worth on average £285 per month.

As part of these draft Regulations, we are funding Transitional Protections to ensure that no one sees a reduction in their cash entitlement as we move them over to Universal Credit.

In June 2018, we announced additional protection for around 500,000 people currently receiving Severe Disability Premium. These draft regulations will prevent these claimants from naturally migrating to Universal Credit prior to the managed migration process, and provide financial protection for those who have already moved over.

Most recently, the Chancellor announced changes in the 2018 Budget that see:

- A £1000 annual increase in the Work Allowances from April 2019, strengthening the Universal Credit work incentives even more and providing a boost to the incomes of the lowest paid;
- A reduction in the cap for deductions from 40% to 30% to soften the burden of repayments of debts. Additionally, from October 2021, advances can be repaid over 16 months;
- The creation of a one year grace period<sup>1</sup> from the Minimum Income Floor for people joining Universal Credit who already have an existing business that may have been running for several years. This is to give them time to grow their businesses and the change is included within the draft Managed Migration regulations;
- The introduction of a two week run on of Employment Support Allowance Income Related (ESA IR), Jobseekers Allowance Income Based (JSA IB) and Income Support (IS), provides an extra two weeks of benefits for people moving onto Universal Credit from those benefits. This is intended to help them manage in the period up to their first monthly payment of Universal Credit and also included in the draft regulations. This extra financial support will not need to be repaid;
- An extension in the surplus earnings disregard exception for up to £2500 for another year from 2019 to 2020.

We are committed to delivering managed migration in a way which supports claimants. In 2019, and in line with our Test and Learn approach, we will test and refine our approach with a very small number of claimants from July 2019 to check that it is working well, before we take on larger volumes in 2020. We will complete the managed migration process by the end of 2023.

As part of that, we are co-designing the process with claimants, charities, experts and other stakeholders, making sure that it works for everyone and building in safeguards to ensure that vulnerable claimants are fully supported. To complete managed migration successfully, we will work closely with key stakeholders, experts and claimants throughout the process.

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<sup>1</sup> The legislative terminology refers to a start-up period, rather than a grace period. The definition for the start-up period has been extended to allow a 12 month period where the Minimum Income Floor is not applied to a wider group.

## ***Operational Readiness***

1. We recommend that, before the testing phase of the managed migration process commences, the Department should publicly define what it considers good operational readiness to be. It should then undertake a rigorous and transparent assessment of whether it has met those criteria (and, if not, what challenges remain). In undertaking this assessment, due consideration should be given to how effectively Universal Credit (Universal Credit) is currently operating, taking account of the evidence available after the completion of the first phase of the roll out programme at the end of this calendar year.

### *Accepted in Principle*

Throughout the Universal Credit roll out, the Universal Credit Programme has prepared a set of outcome based entry criteria, metrics and plans to support its decision making related to implementation. This approach has enabled the Programme to identify the most important Operational and Programme activities to achieve the expected outcomes for testing and roll out readiness decisions. This approach is based on best practice for large scale digital implementations and recommendations from the Infrastructure and Projects Authority, the Government's centre of expertise for infrastructure and major projects.

Testing is vital in allowing us to finalise our plans. In particular, as well as making sure the processes we develop with stakeholders are fit for purpose, testing will help us determine the criteria that judge whether the Programme plans are mature enough to support moving larger numbers of people through managed migration.

The 'Test and Learn' planning approach has, and will continue to, support operational readiness and decision making.

**Stakeholder and claimant feedback has influenced the planning approach:** The Universal Credit Full Service has now rolled out into 530 jobcentres nationwide and, by the end of December 2018, it will be in all 634 jobcentres. We have made changes where needed, for example:

- introduced the Universal Credit Transitional Housing Payment;
- put in place advances for up to 100% of a claimants indicative award and extended the recovery period from six months to 12 and we are now going to extend it to 16 months from October 2021;
- put in place a landlord portal so that Social Rented Sector landlords can input claimant's rent, speeding up verification and first payments; and
- removed waiting days earlier this year.

We also announced through the budget a number of additional measures to support the transition to Universal Credit and ensure that people keep more of what they earn, which are set out within the introduction of this response.

**A safe, steady and secure approach to roll out is recognised as key:** We have learnt, and continue to learn, from experience and adjust the Universal Credit service accordingly. For the early test phase for the roll out of the full service, we started very small in Sutton in one postcode area, increasing incrementally to the full jobcentre area. Over a number of months we steadily built up the caseload in this one jobcentre before moving to a second jobcentre, testing and learning as we went and continually releasing new functionality and improvements to the service. We will look to adopt best practice from this for the managed migration roll out. Universal Credit is supporting individuals to progress more quickly into work and remain in work longer. It is also helping to support those who are unable to work, while being fairer to the taxpayer.

**We will not be moving everyone at once:** We will use learning gained from the roll out of Universal Credit to inform our managed migration roll out. As a result we will begin in July 2019 with small-scale testing to ensure that the processes work well before the volume of managed migration increases. No more than 10,000 people will be migrated during the testing period.

**We will work with stakeholders to co-design the migration processes** in order to ensure that we have listened and understood claimant's experiences. We want processes that work well for everyone. Over a number of years now, we have built up a strong working relationship with delivery partners. We have regular meetings with housing associations, Local Authority groups, and other stakeholders. Many have already helped us to improve the service we offer. The landlord portal, for example, was co-designed with a number of Housing Associations. We will continue to work with stakeholders, including charities, experts, Local Authorities, Housing Associations and claimants to design the process of managed migration (with a list of planned activity set out in section 2a).

**The DWP has well-established governance in place:** Universal Credit Governance has been independently assured by the Infrastructure Projects Authority. Universal Credit governance comprises of a number of boards, the highest being the Programme Board. Just this month, we agreed we will routinely release Universal Credit Programme Board papers after two years, publishing batches of Programme Board papers twice a year.

**The success criteria will be confirmed through governance:** Success criteria will be informed by the testing and agreed through Programme governance once the testing is complete. This will take into account a number of factors including operational readiness, efficiency of the service, key functionality being in place and ensuring we have processes in place to support vulnerable claimants. We agree with

the Committee on the need for criteria and expect to set those in 2020 in line with the new timetable and before we undertake an assessment which, once complete, will be published.

2. We also recommend that:

- the Department work more closely with local authorities, housing associations, advice giving and other organisations in developing its detailed plans;
- an initial stage of testing should cover a range of different practical ways of moving people onto Universal Credit;
- 'dummy runs' featuring claims in a cross-section of claimant scenarios – including those identified in vulnerable situations – should be evaluated with necessary adjustments being made before actual migration begins;
- the test and learn phase should prioritise developing strategies for identifying and supporting through the managed migration, those who might find it more challenging. These might include young people living independently, homeless people, and people who have communication or cognitive difficulties;
- the test and learn phase should also allow for fundamental changes to be made to the structure of the policy if the evidence led to the conclusion that it was necessary, for example being prepared to change the requirement to make a claim if the evidence shows its effects are negative and loads unreasonable risks on the claimant; and
- the Department should explore all potential options for communications needed for this exercise, including text messages, telephone calls, home visits and advertising campaigns. All forms of communication should be tested against claimants from segmented groups and/or their representatives. Arrangements should also be put in place to ensure that claimants with disabilities receive information in the format that they need.

*2a) Accepted*

The Department has representation from Local Government on its Programme Board. Their role on the Board is to represent the services provided by Local Authorities, and ensure these are factored into any decisions, escalate risks, ensure that the design of Universal Credit is workable from a Local Authorities perspective, and ensure the interests of Local Authorities are properly represented and impacted.

The Department carried out a formal consultation with Local Authority Associations on the draft regulations, which ran from 22<sup>nd</sup> June 2018 until 3<sup>rd</sup> August 2018. This gave Local Authorities the opportunity to comment on our plans. The Department has held engagement events with Local Authorities on Natural Migration to support roll out. We hold quarterly Local Authority engagement events on Universal Credit. These provide insight, for example the issues Local Authorities face with supporting those in Temporary or Supported Accommodation were used to prompt positive

changes in policy to protect the financial position of both customers and Local Authorities. We have existing consultation forums with the Local Authority Associations and Local Authorities to consider Universal Credit and its impact on Local Authorities as delivery partners for Housing Benefit. There are three key groups that meet six weekly covering the strategic, operational and financial aspects respectively.

In addition to the above, we have three bespoke groups for landlords to discuss Universal Credit and related issues- one for Social Rented Sector landlords, one for Private Rented Sector landlords and one for Scottish Social Rented Sector landlords, these meet quarterly and both of the Social Rented Sector meetings include Housing Associations. We have used these Forums to design and test new tailored landlord products such as the landlord portal and a new Alternative Payment Arrangement application process.

As we move forward with our detailed design for managed migration, we will continue our intensive work with the range of external organisations, including Local Authorities and Housing Associations that support our claimants in order to help identify and resolve any issues that they may face.

We held an event with over 70 stakeholders in October to discuss the managed migration process, including: the timetable and approach; how we are preparing; our communications strategy; and perceived challenges. This event is the beginning of on-going engagement on managed migration with future workshops planned to support continued collaborative working.

The initial four workstreams will focus on: (1) how we create a successful claimant experience, exploring how we understand our claimants and their needs; (2) how we deliver that experience, including what role delivery partners and external organisations might play in migration; (3) how we communicate and engage with claimants, engaging effectively with different types of claimants; and (4) how we identify and support our most vulnerable claimants.

These workstreams will take place over the course of the Autumn and invitations will be extended to those organisations that attended the October event including Local Authorities, Housing Associations, third sector organisations as well as other organisations with relevant insights and experience. These workstreams will form only the initial iteration of our collaboration with stakeholders and we envisage several further iterations as we move into exploration of more detailed issues.

The Department runs a number of forums which have wide representation from external organisations. The Department's Ministers have also held a number of Universal Credit roundtables and meetings with stakeholders and employers and will continue to do so.



## *2b) Accepted*

We will be testing a number of approaches to move claimants safely to Universal Credit in the most effective way during our test period. This will include testing a non-mandatory approach where claimants will be invited to go through the process. We will use the results of this to adapt the managed migration process as appropriate.

In order to maximise our learning from the test period, we intend to test the managed migration process for claimants on all benefits and in a range of circumstances to ensure we will move all claimants safely onto Universal Credit. At each stage, we will adjust and amend our processes and journey according to how claimants respond. We will identify this through ongoing user research with claimants so we can ensure we have built processes that really work. We will be closely monitoring the quality of the communications we will be issuing and we will monitor how claimants react to, and understand, the communications before we increase the pace of the managed migration.

We have already started some user research to inform the managed migration communications. As our processes develop and throughout our testing period, we plan to continue gathering the views of claimants and their representatives on all aspects of the managed migration journey.

## *2c) Accepted in principle*

We will be testing a number of approaches for managed migration with all claimant groups, including vulnerable claimants. As mentioned earlier, all approaches will involve detailed user testing to help understand claimant behaviour, this will enable us to define the optimal delivery approach, with the claimant needs at the heart of what we do.

For example, we are already undertaking user research with existing benefits claimants on some of our communications. We are exploring the language we use to ensure they are understood and do not make claimants anxious about their move to Universal Credit, as well as providing them with all the information they need to make a successful claim to Universal Credit. We are taking the results from this research into consideration as we develop plans and communications for the managed migration process and for consultation with stakeholders before testing begins.

We have also looked at the outcomes of previous migration projects, to gain an understanding of best practice to help inform the early design.

## *2d) Accepted*

We are working to ensure all claimants successfully make the move to Universal Credit and will continue to consult and work with stakeholders, including charities, Housing

Associations, employers, providers and more, to understand the best way to support all managed migration claimants to claim Universal Credit successfully. This will be via the continuous feedback from the on-going sessions between the Department, Local Authorities, Housing Associations and advice-giving organisations.

We have improved how our work coaches and case workers view the claimant's Universal Credit account so they clearly know when a claimant is vulnerable and what support they may need.

A personal appointee (this is someone who is responsible for handling the benefits of someone who cannot manage their own affairs because they are mentally incapable or severely disabled) process has been designed and delivered so others can work with us to support vulnerable claimants.

We have also improved the telephony claim service so that claimants who are not able to digitally access Universal Credit can make a claim and our agents can continue to support them. We have increased the detail of SMS messages so claimants are better informed about what we are asking them to do. Enhancements have been made for claimants with no bank account, with exception payment methods available, for example, Post Office card accounts and payments can also be made in to third party accounts.

We are taking a slow, measured approach to managed migration and this will allow for on-going evaluation of the process to ensure that it is working successfully and this will allow us to refine our methods to support claimants.

## *2e) Accepted*

The draft regulations that cover the process of managed migration are designed to be flexible enough to allow changes to the managed migration process without the need to make further legislative changes and also to cater for the diverse needs of the different claimant groups that will be moved to Universal Credit. The revised draft regulations now provide that we must give claimants **a minimum of three months** in which to make a claim for Universal Credit and sets no maximum period in which a claim must be made. With unlimited flexibility to extend claim periods we will work with representative groups to produce guidance that will ensure adequate support for each individual claimant's needs.

Some of the circumstances where we may extend the deadline include the following:

- where a claimant is having trouble completing the Universal Credit claim;
- the claimant cannot make a Universal Credit claim by the deadline day because they have to go or have gone into hospital;

- the work coach or case manager has not got enough information from the claimant so needs to give the claimant more time to get the information to us;
- the claimant has a mental-health condition; or
- the claimant is disadvantaged because they are homeless, have a disability, have had a domestic emergency or have caring responsibilities.

This list is not exhaustive and each case will be considered on its individual circumstances and merits.

The Department can also cancel the migration notice. For example if a notice has been sent in error or the claimants circumstances have changed, we can cancel the migration notice. These flexibilities enable the Department to evaluate and review the policies and to make fundamental changes based on results of the Test and Learn phase. This will ensure that claimants make a smooth transition to Universal Credit and receive uninterrupted support.

#### *2f) Accepted*

We fully appreciate the need to test a variety of methods and formats to meet the needs of different claimants, so that they move to Universal Credit successfully. During our test-and-learn phase, we will test a variety of communications methods, including advertising campaigns, face to face communication, letters, texts, telephone calls and home visits. We will also be engaging with claimants' representatives as part of the test so that we are confident that the process also meets their requirements. As with all DWP communications, we will ensure that these are available in accessible formats.

### ***Publishing an Impact Assessment***

3. We recommend that, by the end of March 2019, the Department publish a detailed impact assessment of the migration plans, setting out the ways in which, and the extent to which, they may have an impact on claimants and/or their family members. We believe that such an assessment should be conducted by segmenting those migrated on the basis of protected characteristics, as well as by other key experiences such as homelessness, lone parenthood and existing legacy benefit entitlement. The assessment should extend to any impact on local authorities and third sector bodies. An action plan for mitigating the effects of any adverse impacts identified should be published alongside the assessment.

*Accepted in principle*

We have now announced that testing for the managed migration will commence in July 2019, we will test and refine our processes on a small scale to ensure that they are working well before we take on larger volumes from 2020, completing the process by the end of 2023. We are conducting detailed Equality Assessments of migration plans as part of our Public Sector Equality Duty. This process is iterative, and so the impacts of the testing will be fully evaluated with equality impacts reassessed in accordance with the evaluation results.

So it can take into account the learning and adaptations we make following the testing phase we will publish an assessment of the impacts of managed migration prior to increasing the scaling of managed migration.

### ***Transferring Claims***

4. We therefore recommend that the Department conduct a careful segmented analysis of the claimant groups who will be manage migrated so that any scope for dispensing with the need for a claim can be identified and acted upon. This analysis should be published. Where a claim for Universal Credit is unavoidable, we recommend that the Department pre-populates as much of the digital claim form as possible. Claimants should not be expected to produce data that the Department already holds, particularly if it is information that has been verified and is unlikely to have changed. The Department should also make the claiming process simpler, for example by removing the requirement for people to attend interviews in cases where there are no work-related requirements and so no need to add to the claimant commitment, or where identity has already been established.

### ***Agree to explore options***

We do not underestimate the challenge that managed migration represents and we are working closely with stakeholders and claimants to design the best solution. We need to keep our options open on the detail of the design so that we can ensure we adopt the most appropriate design. In doing so, our focus will be on safeguarding claimants and ensuring a smooth transition with uninterrupted support.

We will therefore use existing decisions or verification to make aspects of the process easier. For example, if a claimant has an existing Work Capability Assessment decision, they will not be required to have another assessment in order to get the disability elements of Universal Credit. Where a Tax Credit claimant has already verified their identity, in order to make and maintain their Tax Credit claim, we may be able to reuse this digital registration to the benefit of the claimant.

Outside of this, the Department believes it will be crucial that new claims are made to Universal Credit because we need to ensure data is as accurate and as up-to-date as possible when claimants move to Universal Credit. This will ensure that any errors will not be migrated from the existing benefit system to Universal Credit. In addition, as Universal Credit replaces six different existing benefits, the Department may not have sufficient information to determine the full Universal Credit entitlement because some of this information is not available from the existing benefit data. For example, no information on capital or other benefits received is held in respect of tax credit claims.

Universal Credit is a different regime so the Department cannot simply assume that all existing claimants will want to make a claim, some form of consent from each claimant would be required. Requiring a claim to be made will provide that and it will be important that claimants understand the new Universal Credit regime into which they are moving and the corresponding responsibilities this will bring. This is especially important for vulnerable groups.

The Department has also learnt from the migration to Employment and Support Allowance (ESA), where some decisions on entitlement did not consider the possibility of whether claimants may also have been entitled to income-related ESA. This has led to the Department estimating the need to spend around £1bn on historic underpayments. As a result, we believe that requiring people to make a new claim for Universal Credit will ensure that all their relevant details are updated and confirmed and that we can establish the claimant's full benefit entitlement when the claim is made.

With regard to pre-populating claimant data, there is a high risk that the data may be incorrect. This could result in confusion and may lead to delays to payments. If claim data was simply transferred, it would have to be verified before we could pay the Universal Credit entitlement. If there are errors in the claim data, verification processes would highlight this, triggering the need for changes to be reported and, therefore, slowing down the claim process and requiring further verification. Given this, we will continue to explore options for elements of pre-population, and will provide an update in due course.

For claimants who do not have any work-related requirements, we already operate a digital claimant commitment acceptance process and we will carry that forward as part of the managed migration process. This will mean some claimants will not need to attend a face to face interview.

Claimants in the following regimes will have an automated Claimant Commitment, but may be required to confirm their identity:

## **No Work Related Requirements Labour Market regime**

This would include claimants who are not expected to look for work at the moment. For example, this may include those who:

- are too sick to work (for example people who are terminally ill) or have defined caring responsibilities;
- are over State Pension Credit Age;
- are in Full Time Education (in exception cases only – who remain eligible for Universal Credit);
- have a serious health condition or disability which prevents them from working or preparing for work (Limited capability for work and work related activity - LCWRA);
- are lone parents, lead foster carers, or lead carers in a couple, with a child under the age of one;
- are adopters, in the first year of a child being placed with them;
- are pregnant women within 11 weeks of their due date OR have given birth less than 15 weeks ago; or
- have substantial (35 hours or more) and regular caring responsibilities for a severely disabled person.

## **Working Enough Labour Market regime**

This would include claimants who are earning above their individual or household conditionality earnings threshold.

## **Light Touch Labour Market regime**

This would include claimants who are in work, but earning less than we could reasonably expect, either based on their household or individual earnings. For example, those who are out of work but have a working partner on low earnings (i.e., below the household conditionality earnings threshold).

A proof of concept is taking place to gauge the effectiveness of Work Coaches delivering a telephone Claimant Commitment rather than a face to face interview. This proof of concept is aimed at the following groups:

- claimants who currently have substantial caring commitments, which prevents them from working at present;
- claimants who are currently too committed to work because of caring responsibilities, for example: a claimant who is a lead carer with a youngest child aged one; and

- claimants who we expect to work in the future but are not expected to look for work at this stage, for example a lead carer with a youngest child aged two.

The Department will test the effectiveness of this communication channel for communicating the key requirements for receiving Universal Credit to the claimant.

### ***Implicit Consent***

5. We recommend that the concept of 'implicit consent' which applies in legacy benefits should be extended to Universal Credit, but with appropriate safeguards in place to ensure that personal data held by the Department are not compromised. This Committee would be willing to work with the Department and other interested parties to identify what those safeguards should be. This work should be completed, and conclusions published, by the end of March 2019.

#### *Agree to explore options in collaboration with the Social Security Advisory Committee*

Because Universal Credit is delivered on a different platform to legacy benefits, and it replaces six major benefits, the approach taken to consent needs to be different. The amount of personal data available on Universal Credit is far greater than the individual legacy systems, meaning that any data breach has far reaching consequences for claimants. We therefore need to balance consent against this risk.

Where consent is needed it can be quickly given in different ways. For example, claimants only need to put a note in their journal to give consent, this is a far simpler and more straightforward process than in legacy systems. Once consent is given, advisers will work with the claimant's representatives.

A number of organisations have raised concerns as to whether the implicit consent rules are sufficiently flexible. We therefore, agree to explore options for improving the process of explicit consent in relation to Universal Credit in collaboration with the Social Security Advisory Committee to consider how current practices could be enhanced and to publish a report on our joint conclusions.

### ***Defective Claims***

6. We recommend that the Department omit the rule that making a defective claim prevents transitional protection in a subsequent successful claim for Universal Credit.

*Accepted*

We have amended the draft regulations by removing draft regulation 48(2). Consequently, as long as claimants make an effective claim to Universal Credit before their managed migration deadline day and provide any required substantiating evidence, they will be considered as meeting the requirements for managed migration and be eligible for Transitional Protection.

Defective claims are those which are deemed to not be valid claims. In Universal Credit, a claim is effective from the point at which the Universal Credit claim is submitted. Because of its digital nature, it is almost impossible to make a defective claim on Universal Credit because the system does not allow the claim to be submitted until relevant fields have been populated. It has therefore been decided that any reference to making a defective claim is unnecessary.

When an effective Universal Credit claim is made, claimants are then required to provide evidence for their entitlement to be determined and Universal Credit to be put into payment. Ordinarily, claimants have a month to provide evidence, but in law the Secretary of State has the power to extend this period, for as long as it is felt appropriate, if she considers it reasonable. If claimants do not provide evidence by the month deadline and this is not extended, this becomes a 'failed claim' and a decision is made that there is no entitlement to Universal Credit. This decision has appeal rights.

### ***Alternative Methods of Claiming***

7. We recommend the Department actively publicises and gives greater prominence to the availability of alternative methods of claiming Universal Credit. Those who find it very difficult to manage the digital method of claiming Universal Credit should be pro-actively offered the option of making their claim by telephone. And for those who would find it difficult to make either a digital or telephone claim, the option of taking a claim during a home visit should also be pro-actively offered. In those cases where the Department has identified that someone has found the digital process difficult, they should work with the claimant to provide on-going support for digital management of their Universal Credit award.

### ***Accepted***

We are committed to providing tailored support for all claimants, including those who have restricted access to technology. Each individual's circumstances are different and therefore their barriers to work and the support needed must be tailored to these needs.



Around 99% of claims are made online. Where our customers need assistance to access our services and information, we can make reasonable adjustments to meet individual needs. This means that, for example, the Department can communicate with claimants in a variety of different formats to help them make and manage their claim, including through face to face interviews or via the telephone. The Universal Credit telephone helpline is now a free phone number. We can also arrange a home visit to support a claimant to make a claim to Universal Credit.

We already have a number of ways claimants can be supported through the processes such as:

- The Jobcentre – Claimants can use dedicated computers to access their accounts, and work coaches can provide additional support to help claimants make and manage their claim. Jobcentres can also signpost claimants to local organisations, such as local authorities or other partner organisations, if they need help with managing their money;
- Appointees - For claimants who are unable to manage their own affairs, they can have appointees on Universal Credit to act on their behalf;
- Home Visits - Home visits can be arranged for claimants who cannot leave their house or who are in hospital with a health condition. Once a home visit is identified (this can be from the information obtained from the claimant or via their representative) a Universal Credit agent makes a referral to the Visiting Team detailing the reason for and the requirements of the visit; and
- New Claims by Telephone - Claimants unable to use digital services, for whatever reason, are able to make a new claim to Universal Credit by telephone.

This help and alternative methods of claiming will continue to be available during Managed Migration.

### ***Mitigating the effect of missing the deadline***

8. We recommend that the Department put in place protection for those who miss their deadline date and who do not qualify for the one month backdating rule in Universal Credit. There are various technical possibilities for such a safety net, but we are drawn to two in particular that we recommend the Department explores further:

(i) adopting the tax credit practice, by establishing a grace period after the legacy benefit award has been terminated, where the claim for Universal Credit can be made without having to show good cause for backdating;

or

(ii) suspending payment of the legacy benefit for a period pending receipt of the claim for Universal Credit, without terminating entitlement to legacy benefit so that arrears of the legacy benefit can be paid to an individual when they have made their claim.

*Accepted – Option (i)*

We are designing the system to ensure there is enough support for everyone to make a successful claim to Universal Credit, however we acknowledge that additional safeguards should be put in place to mitigate the effect of missing the deadline day. We agree to implement Option (i) – adopting the tax credit practice. Therefore, instead of restricting backdating to those who meet the prescribed backdating criteria, we will allow all Universal Credit managed migration claimants who miss the deadline to access backdating, as long as they make a claim within a month of the deadline day passing. This also means that anyone who misses their deadline day, but claims within a month of it will be eligible for transitional protection, and the transitional housing payment and DWP legacy benefit transitional payment, where appropriate.

***Gap to the first payment of Universal Credit***

9. We strongly recommend that the Department review what steps it can take to mitigate the effects of its policy. Our preference is that out of work benefits should automatically run-on for two weeks, as Housing Benefit now does. If the Government cannot accept this, then repayment terms for any advance should be more flexible than the current arrangements, in recognition of the fact that it is the Government that has put claimants in the situation of needing a loan.

*Accepted*

We accept that adapting to monthly payments when claimants have been used to weekly or fortnightly payments will be a challenge for some claimants. We also accept that this will be particularly challenging for those claimants who are in receipt of out-of-work benefits. We have, therefore, announced at the Budget that we will be introducing a two week run on of entitlement for those on income related Employment and Support Allowance, Income Support, or income based Jobseekers Allowance. As the managed migration test period will begin in July 2019, before the run on is introduced, we will include in the regulations the power to make discretionary payments to managed migrated claimants facing hardship. This will allow the Department the discretion to provide financial support to claimants who migrate ahead of the run-on commencing where this is needed to avoid hardship.

In addition to the financial support provided by these new transitional payments, claimants who are managed migrated will also have access to the existing two week

Transition to Universal Credit Housing Payment, which we introduced earlier this year for those who naturally migrate, where relevant.

The announced run on for DWP out-of-work legacy benefits will begin in July 2020, ahead of the scaling up the volumes of people being managed migrated. In addition to the financial support provided by these new transitional payments, claimants who are managed migrated will also have access to the Universal Credit advances that are already available to all new claimants in order to ensure that they have access to funds while awaiting their first Universal Credit payment.

### ***Transitional Protection (TP)***

10. We recommend that the Department should not allow former tax credit claimants with capital<sup>2</sup> over £16,000 to temporarily receive a higher Universal Credit amount than they were previously getting, simply because their housing costs are now included in their award. We are of the firm view that, whilst transitional protection should ensure claimants do not receive less under Universal Credit than they received under legacy benefits, it should not lead to them receiving more than their entitlement under legacy benefits. We suggest that claimants in such circumstances be treated as having no housing costs.

#### ***Rejected***

The Government has already made a commitment that anyone who is moved to Universal Credit without a change of circumstance will not lose out in cash terms. Transitional Protection will be provided to eligible claimants to safeguard their existing benefit entitlement until their circumstances change.

Ordinarily, individuals with capital in excess of £16,000 are not eligible for Universal Credit. In order to honour the Government's commitment, we decided to disregard any capital in excess of £16,000 for 12 months for those Tax Credit claimants in this situation who are managed migrated. Normal benefit rules apply after this time in order to strike the right balance between keeping incentives for saving and asking people to support themselves.

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<sup>2</sup> "Capital" includes savings, stocks and shares, property and trusts. It does not include:

- the property occupied by the claimant as his or her main home;
- personal injury compensation payments placed in trust funds;
- certain other compensation payments;
- personal pension schemes and retirement annuity contracts;
- business assets; or
- capital belonging to a relevant child dependant within the assessment unit.

Developing different entitlement assessment rules for these cases would, in effect, require a separate administrative system for these cases. The comparison of the administrative costs of doing this compared to the additional benefit costs of applying consistent rules mean this would not provide value for money even if the Universal Credit Programme had the capacity to build it. Taking account of this, we believe the proposed approach strikes the right balance to providing protection for tax credit claimants with capital in excess of £16,000.

### ***Earnings and TP***

11. We recommend that no-one whose earnings take them off Universal Credit should lose Transitional Protection unless their earnings have been above the Universal Credit threshold for six consecutive months – not the Government’s proposal of four.

#### *Agree to seek further evidence*

We intend to use the test phase to assess what impact the current policy may have on claimants. As mentioned earlier under recommendation 9, we intend to make discretionary payments to help people who are experiencing hardship during the test phase. These payments will also be available for claimants who experience hardship in these circumstances.

The rules for cessation of transitional protection will therefore be as follows:

- a sustained (three months) earnings drop below the Administrative Earnings Threshold where the claimant has moved into a more intensive conditionality regime; and/ or
- the formation or separation of a couple;
- the ending of the Universal Credit award. Where this was due to an increase in earnings and a new claim is made within 4 months of the Universal Credit award ending, the claimant will have their Transitional Protection re-awarded as part of their new award of Universal Credit.

***Publish worked examples***

12. The Department should also, ahead of the Parliamentary debates on these affirmative regulations, publish some worked examples of tax credit claimants with changes in circumstances (particularly in relation to earnings and patterns of working) which have and have not been reported to HMRC, showing how the total legacy amount is calculated. We would like to be assured that the method of calculating this amount achieves the Government's commitment that there will be no cash losers for existing claimants when Universal Credit is implemented.

*Accepted in principle*

Officials have already provided a worked example to SSAC. If further examples are required, we will make them available to members of both Houses prior to parliamentary debates. We will also discuss with the Committee the best way that these can be disseminated to a wider audience.

## **Annex Responses**

### **Clarification on Appeal rights**

Recent meetings with stakeholders, has highlighted that there is a lack of clarity around the position of appeals in relation to the issue on cancellation of migration notices and the extension of the deadline day.

The Department can now confirm that we will be following the established policy in the social security legislation which is that decisions on procedural and administrative measures do not attract appeal rights. We have clarified this in the draft regulations (regulation 63).

As set out earlier, DWP staff have a lot of discretion in this space. For example they can extend the deadline day in a number of cases, the list below gives some examples on when this can occur:

- where a claimant is having trouble completing the Universal Credit claim;
- the claimant cannot make a Universal Credit claim by the deadline day because they have to go or have gone into hospital ;
- the work coach or case manager has not got enough information from the claimant so need to give the claimant more time to get the information to us
- the claimant has a mental-health condition;
- the claimant is disadvantaged because they are homeless, have a disability or has learning difficulties or have a domestic emergency or have caring responsibilities.

This list is not exhaustive and each case will be considered on its individual circumstances and merits.

Other appeal rights remain unaffected, therefore there will still be appeal rights for all entitlement decisions.

The Rt. Hon Esther McVey MP  
Secretary of State for Work and Pensions  
Caxton House  
London  
SW1H 9NA

5 October 2018

Dear Secretary of State,

## **The Universal Credit (Transitional Provisions) (Managed Migration) Amendment Regulations 2018**

### ***Introduction***

These draft regulations, which form the legislative basis for moving claimants in receipt of a working age income-related benefit on to Universal Credit, were considered by the Committee at its meeting on 20 June 2018.<sup>3</sup>

The Committee concluded that it would like to examine these draft regulations in more detail in view of:

- the numbers that would be affected over a sustained period (around three million people in two million households); and
- the scale of the operational challenge for the Department.

It was on that basis that the Committee asked for the formal reference of the proposals in accordance with sections 172(1) and 174(1) of the Social Security Administration Act 1992. To help inform our advice, the Committee undertook a public consultation exercise during the period 22 June to 20 August. This was longer than our standard four week consultation period, as we wanted to give individuals and organisations enough time to respond over the peak holiday period.

### ***Consultation response***

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<sup>3</sup> The relevant extract of the minutes of the Committee's June 2018 meeting is attached at annex E.

Given the significance of the step DWP is about to take, it is perhaps unsurprising that the Committee's consultation attracted a record number of submissions and comments. We were delighted to receive 455 responses, and would like to place on record our gratitude to the individuals and organisations<sup>4</sup> who took the time to respond to our consultation. We are also grateful to the many stakeholders who either hosted or attended a series of workshops on these proposals enabling us to explore some of the evidence we had received in more detail. This thoughtful and insightful evidence has helped inform our advice.

It is worth noting at this point that well over 300 of the responses were submitted by individual claimants or their carers, either on Universal Credit and writing of their experience, or on a legacy benefit expressing very real concerns about how the proposed changes are going to affect them.<sup>5</sup> We were particularly struck by the degree of anxiety that was conveyed to us in the submissions from individuals.

While we have cited some of the evidence provided to us in this report, the sheer volume of responses received means that it is impractical to cover every issue that has been raised with us here. However, in view of the high quality of many of the consultation responses received, we have shared them all with the Department for further consideration.

All of the evidence submitted to us during the consultation exercise has helped support us in submitting our advice to you in a timely way, and ensuring that it will be available to Parliamentarians ahead of their debates on these draft regulations.

It is also unsurprising that a number of respondents have also taken the opportunity to comment on the Universal Credit policy more generally. Many have asked us to recommend a pause in the further roll-out in the current phase of Universal Credit roll-out, as well as in the start of the managed migration programme, until the well-documented concerns already raised by this Committee, Parliamentarians, National Audit Office and other interested parties have been addressed. We do not intend to go over the history of issues with wider Universal Credit policy and delivery as these fall outside the parameters of the managed migration exercise. However it is evident that any weakness within the Universal Credit system will be brought into greater relief when managed migration gets underway.<sup>6</sup>

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<sup>4</sup> A list of consultation respondents is attached at annex C.

<sup>5</sup> Among the 328 responses from individuals, 211 formed part of an organised campaign and were submitted using an identical template.

<sup>6</sup> The Committee has, from 2012 onwards, provided advice to the Secretary of State on a number of these issues. All of the Committee's previous reports, including [our report on The draft Universal Credit Regulations 2013](#), can be found at [www.gov.uk/ssac](http://www.gov.uk/ssac)



*Our evidence has consistently highlighted that aspects of Universal Credit, including the current exemptions and safeguards aimed at supporting the most vulnerable, are not operating effectively for people experiencing homelessness. Given the high number of vulnerable claimants that will be part of the managed migration caseload, we recommend that managed migration does not take place (and that natural migration does not continue) until the Department has demonstrated that exemptions and safeguards are working effectively.*

**Homeless Link**

## **Our Evaluation**

Our recommendations are set out below. Each has been informed by four criteria we have applied in evaluating the managed migration proposals:

- is it **deliverable**? Is it likely to work or would it be too complex or unwieldy?
- is it **explicable**? Will those affected understand it and what they must do?
- is it **proportionate** to the problem it is trying to solve?
- is it **fair**? For example, does it unreasonably transfer the Government's risks onto claimants? Is the Government doing enough to mitigate potentially negative outcomes for claimants? Does it impose disproportionate burdens on particular groups of people?

In terms of the 'fairness' criteria, we have looked at this from a variety of perspectives, including both claimants and tax payers. For example, is it fair to people who transfer to Universal Credit through 'natural migration'; as well as to those who transfer through 'managed migration'?

Inevitably the focus of many of the respondents to our consultation have been people in vulnerable situations. Defining 'vulnerability' is not easy – it means different things to different respondents.<sup>7</sup> For the purposes of this report, the Committee uses the term 'vulnerable' to include the following circumstances:

- those living in unstable accommodation where receiving post cannot be guaranteed. It would include those who share living spaces, live in temporary accommodation, move frequently or who are homeless;
- people at risk of domestic violence;
- disabled people who must have adjustments in how the Department communicates and interacts with them if they are to navigate the process successfully. It would include those who have a visual impairment or are hearing impaired;

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<sup>7</sup> SSAC Occasional Report: [Implementation of Universal Credit and the support needs of claimants](#) (2013)

- those unable to understand and act on information sent to them because they have challenges in terms of mental capacity (for instance, because of learning disability, dementia or severe brain injury) or do not have fluent English;
- those afraid of ‘the brown envelope’ who may not open it (for instance, some people with mental health conditions); and
- those without digital access or skills, or who lack confidence to make an online application.

### ***The Scale of the Challenge***

The challenge facing the Department is exceptionally difficult. It is a huge logistical task to contact several million people in several million households, who may be receiving anything up to four different benefits administered by three different organisations, collect any additional information needed to decide Universal Credit entitlement, and seamlessly terminate legacy benefit awards as Universal Credit awards start, without leaving any gaps or overlaps in entitlement. The Department estimates that 36 per cent of this group will be people with disabilities migrating from Employment and Support Allowance.

But DWP has a further challenge of meeting the commitment it made that the cash position of existing beneficiaries would be protected at the point of change.<sup>8</sup> This is extremely complicated, particularly for people in receipt of tax credits, which are calculated on a very different basis for Universal Credit. How best, for example, should the Department deal with someone with a significant tax credit award, who has recently taken high paid employment, which would in due course take them off tax credits?

On this second challenge of transitional protection, the Committee’s view is that in general terms the Government’s proposed approach will go a long way to protect the position of people who would otherwise lose money on transferring from legacy benefits to Universal Credit. Although, in the absence of an analysis of potential gainers and losers, we cannot be certain how far it will deliver on the Government’s commitment.

Our concerns focus primarily on the logistics: on the claims process itself and on the move to monthly payments. We have taken the view that the migration plans should, as far as is possible, minimise the risk to claimants. They do not yet do this. In fact, in some respects, the Department has chosen to reduce its own risk by transferring it to claimants – most obviously, through the proposal to require all existing claimants to make a new claim for Universal Credit. In some circumstances this may be

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<sup>8</sup> See, for example, the written statement from the Secretary of State for Work and Pensions dated 7 June 2018: “*The Government has already made a commitment that anyone who is moved to Universal Credit without a change of circumstance will not lose out in cash terms. Transitional protection will be provided to eligible claimants to safeguard their existing benefit until their circumstances change.*”

unavoidable, but not as a universal rule and not to the extent the Government proposes. The short, one month, deadline in which to make the claim is another example of where the risk is loaded on to a large number of claimants.

Further, there are other steps the Government can, and should, be taking in planning, preparing, and managing migration that will reduce the risk to claimants. The Government has time to put some of them in place. But the Committee believes that, if all are to be implemented, it is unlikely that the Department will be able to start migrating people at the beginning of next year.

### ***Our Recommendations***

Our recommendations on transitional protection and on lowering the risks in the migration process are set out below.

#### **Operational Readiness**

1. *We recommend that, before the testing phase of the managed migration process commences, the Department should publicly define what it considers good operational readiness to be. It should then undertake a rigorous and transparent assessment of whether it has met those criteria (and, if not, what challenges remain). In undertaking this assessment, due consideration should be given to how effectively Universal Credit is currently operating, taking account of the evidence available after the completion of the first phase of the roll-out programme at the end of this calendar year.*
  
2. *We also recommend that:*
  - *the Department work more closely with local authorities, housing associations, advice giving and other organisations in developing its detailed plans;*
  
  - *an initial stage of testing should cover a range of different practical ways of moving people onto Universal Credit;*
  
  - *‘dummy runs’ featuring claims in a cross-section of claimant scenarios – including those identified in vulnerable situations – should be evaluated with necessary adjustments being made before actual migration begins;<sup>9</sup>*
  
  - *the test and learn phase should prioritise developing strategies for identifying and supporting through the managed migration, those who might find it more challenging. These might include young people living independently, homeless people, and people who have communication or cognitive difficulties;*

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<sup>9</sup> Dummy runs should include trialling processes, including invitation letters, with real claimants (obviously with their consent) but without actually moving them onto Universal Credit.

- *the test and learn phase should also allow for fundamental changes to be made to the structure of the policy if the evidence led to the conclusion that it was necessary, for example being prepared to change the requirement to make a claim if the evidence shows its effects are negative and loads unreasonable risks on the claimant; and*
- *the Department should explore all potential options for communications needed for this exercise, including text messages, telephone calls, home visits and advertising campaigns. All forms of communication should be tested against claimants from segmented groups and/or their representatives. Arrangements should also be put in place to ensure that claimants with disabilities receive information in the format that they need.*

### *Publishing an Impact Assessment*

We do not believe that the impact of the changes on this huge and diverse group of people is fully explored or explained.

3. *We recommend that, by the end of March 2019, the Department publish a detailed impact assessment of the migration plans, setting out the ways in which, and the extent to which, they may have an impact on claimants and/or their family members. We believe that such an assessment should be conducted by segmenting those migrated on the basis of protected characteristics, as well as by other key experiences such as homelessness, lone parenthood and existing legacy benefit entitlement. The assessment should extend to any impact on local authorities and third sector bodies. An action plan for mitigating the effects of any adverse impacts identified should be published alongside the assessment.*

### *Transferring Claims*

A key feature of the Department's proposals is that everyone is asked to make a new claim. This is not managed migration as many people had expected. We are of the strong view that the responsibility for ensuring that claimants are migrated safely to Universal Credit rests with the Government.

4. *We therefore recommend that the Department conduct a careful segmented analysis of the claimant groups who will be managed migrated so that any scope for dispensing with the need for a claim can be identified and acted upon. This analysis should be published. Where a claim for Universal Credit is unavoidable, we recommend that the Department pre-populates as much of the digital claim form as possible. Claimants should not be expected to produce data that the Department already holds, particularly if it is information that has been verified and is unlikely to have changed. The Department should also make the claiming process simpler, for example by removing the*

*requirement for people to attend interviews in cases where there are no work-related requirements and so no need to add to the claimant commitment, or where identity has already been established.*

### Implicit Consent

The move to explicit consent in Universal Credit appears to be affecting the ability of welfare rights workers, family members and other advocates to help claimants. At the same time, the Department has clear responsibilities to safeguard personal data which we are told are constantly under attack.

- 5. We recommend that the concept of ‘implicit consent’ which applies in legacy benefits should be extended to Universal Credit, but with appropriate safeguards in place to ensure that personal data held by the Department are not compromised. This Committee would be willing to work with the Department and other interested parties to identify what those safeguards should be. This work should be completed, and conclusions published, by the end of March 2019.*

### Defective Claims

The Department proposes that people can only make one claim to Universal Credit if they are to retain transitional protection. However, there are a range of reasons why a claim might not work and the claimant has to reclaim. If a claimant is able to make a successful claim within the time limits, we believe transitional protection should apply.

- 6. We recommend that the Department omit the rule that making a defective claim prevents transitional protection in a subsequent successful claim for Universal Credit.<sup>10</sup>*

### Alternative Methods of Claiming

Digital inclusion is important and beneficial to claimants, however we are not at the point yet where digital capability has reached near universal penetration among all customer groups nor all parts of the country. The Department, therefore, needs to demonstrate greater flexibility in supporting claimants who have difficulty with managing digital engagement.

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<sup>10</sup> Claims can be defective for several reasons but, for the avoidance of doubt, our use of the term includes circumstances where claimants are advised that their “claim is closed” because they have failed to complete the claiming process.

7. *We recommend the Department actively publicises and gives greater prominence to the availability of alternative methods of claiming Universal Credit. Those who find it very difficult to manage the digital method of claiming Universal Credit should be pro-actively offered the option of making their claim by telephone. And for those who would find it difficult to make either a digital or telephone claim, the option of taking a claim during a home visit should also be pro-actively offered. In those cases where the Department has identified that someone has found the digital process difficult, they should work with the claimant to provide ongoing support for digital management of their Universal Credit award.*

#### Mitigating the effect of missing the deadline

The Department proposes that claimants who do not respond within one month to their invitation letter will lose their entitlement to benefit unless the delay was a consequence of a 'prescribed category'.<sup>11</sup> The Committee accepts that for some claimants there has to be a trigger point which will prompt them to respond, however the proposal as it stands again transfers risks to claimants. We think these can be ameliorated without putting the overall migration at risk.

8. *We recommend that the Department put in place protection for those who miss their deadline date and who do not qualify for the one month backdating rule in Universal Credit. There are various technical possibilities for such a safety net, but we are drawn to two in particular that we recommend the Department explores further:*
- (i) *adopting tax credit practice, by establishing a grace period after the legacy benefit award has been terminated, where the claim for Universal Credit can be made without having to show good cause for backdating; or*
  - (ii) *suspending payment of the legacy benefit for a period pending receipt of the claim for Universal Credit, without terminating entitlement to legacy benefit so that arrears of the legacy benefit can be paid to an individual when they have made their claim.*

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<sup>11</sup> For example if:

- official error occurred; or
- the claimant has a disability; or
- medical evidence of an illness that prevented them from making a claim can be provided; or
- the claimant was unable to make a claim by means of an electronic communication because the official computer system was inoperative.

### Gap to the first payment of Universal Credit

We do not believe that out of work claimants whose circumstances have not changed, and who may be completely reliant on benefits paid fortnightly, should bear the risks of the Government's policy that Universal Credit be paid monthly. The Government is proposing that they be offered a choice between financial hardship as they wait for their first payment, or getting into debt to the Department by requesting an advance payment. We do not believe that this is acceptable.

9. *We strongly recommend that the Department review what steps it can take to mitigate the effects of its policy. Our preference is that out of work benefits should automatically run-on for two weeks, as Housing Benefit now does. If the Government cannot accept this, then repayment terms for any advance should be more flexible than the current arrangements, in recognition of the fact that it is the Government that has put claimants in the situation of needing a loan.*

### Transitional Protection (TP)

The Committee recognises that the Department has given careful consideration to its proposals on transitional protection. However we are of the view that there are a number of issues that require further attention.

Firstly, the arrangements for some of the people who have savings over £16,000. This group would not normally be entitled to Universal Credit but some receiving tax credits do have savings above this limit. The Department's transitional protection proposals will allow them to receive Universal Credit for a year. However a consequence is that they will also become entitled to support for their housing costs which might mean that they will receive more in Universal Credit than would have been the case in tax credits, only to lose all entitlement after twelve months.

10. *We recommend that the Department should not allow former tax credit claimants with capital over £16,000 to temporarily receive a higher Universal Credit amount than they were previously getting, simply because their housing costs are now included in their award. We are of the firm view that, whilst transitional protection should ensure claimants do not receive less under Universal Credit than they received under legacy benefits, it should not lead to them receiving more than their entitlement under legacy benefits. We suggest that claimants in such circumstances be treated as having no housing costs.*

We were also concerned about the treatment of people with fluctuating earnings who stand to lose transitional protection if their income takes them off Universal Credit for four months.

*11. We recommend that no-one whose earnings take them off Universal Credit should lose Transitional Protection unless their earnings have been above the Universal Credit threshold for six consecutive months – not the Government’s proposal of four.*

Finally, the Government’s challenge in meeting its commitment for people receiving tax credits is particularly difficult. There are a number of different ways in which it can be achieved. We felt that this was an area that required more evidence.

*12. The Department should also, ahead of the Parliamentary debates on these affirmative regulations, publish some worked examples of tax credit claimants with changes in circumstances (particularly in relation to earnings and patterns of working) which have and have not been reported to HMRC, showing how the total legacy amount is calculated. We would like to be assured that the method of calculating this amount achieves the Government’s commitment that there will be no cash losers for existing claimants when Universal Credit is implemented.*

Our recommendations address different parts of the proposed process for managed migration: from thinking about the segmentation of claimants in more depth to testing out different ways of communicating with them; supporting claimants through the migration process but also providing ways of ensuring people have a very low risk of falling out of the system entirely and being left with little or no support whatsoever.

This report sets out the Committee’s primary recommendations. However, we have several concerns about a number of other aspects of the Government’s proposals which we think merit further consideration by the Department. These issues are held at annex A for the Department’s consideration and response.

## **Conclusion**

The Government has largely delivered on its commitment to protect people’s incomes at the point of migration, but in several other respects too much risk is potentially loaded on to individuals.

Additionally, the Committee has significant concerns about the scale of the operational challenge facing the Department in terms of the delivery of these proposals. We welcome the Department’s commitment to consult, but consider that – if that consultation is to be meaningful and effective – the current timetable is unrealistic. Around three million individuals are relying on the Department to get this right; we strongly encourage the Department to give itself the time it needs to assess



robustly its operational readiness, and to adopt a transparent approach going forward so that those who have the expertise and skill to provide support have an opportunity to do so.

We therefore commend this report for the Government's urgent consideration.

**Ian Diamond**  
**Chair, Social Security Advisory Committee**

# Report by the Social Security Advisory Committee: The Universal Credit (Transitional Provisions) (Managed Migration) Amendment Regulations 2018

## **Background**

The Department is approaching the mid-way point in its overall roll-out of Universal Credit. Under current plans, by the end of 2018 it will no longer be possible to make a new claim for one of the six income-related benefits (called “legacy benefits”) which are being replaced by Universal Credit, although there are some limited exceptions.<sup>12</sup> All people of working age will have to claim Universal Credit from that point forward. This “natural migration” will extend to claimants in receipt of Housing Benefit who move to an address in a different local authority or who cease to be entitled to one of the legacy benefits.

The Department proposes, from January 2019, to start moving people who continue to be entitled to one or more of the legacy benefits on to Universal Credit. This “managed migration” will involve around three million individuals in two million households over a four year period. It represents a huge operational challenge for the Department.<sup>13</sup>

The main features of the Universal Credit managed migration proposals are summarised at annex B.

## **Operational readiness**

The Department has previously emphasised to us that Government policy is generally designed for the majority, rather than minority. However in the case of Universal Credit managed migration, the size of the ‘minority’ groups are substantial (both in percentage terms and actual numbers). For example the Department estimates that 36 per cent of the current caseload to be migrated will be ESA claimants. Many of this group are likely to be living in vulnerable circumstances, and must not be allowed to fall out of the benefit system through a lack of support during the managed migration process.

*The risk is not only that vulnerable claimants are left without the support they need to make and manage a Universal Credit claim, but also that the opportunity to kick-start individual journeys toward greater independence are lost...We believe this opportunity to engage households should be seized,*

<sup>12</sup> “Existing benefit” is defined in regulation 2(1) of the Universal Credit (Transitional Provisions) Regulations 2014 (SI 2014 No 1230) as “*income-based jobseeker’s allowance, income-related employment and support allowance, income support, housing benefit and child tax credit and working tax credit*”. Examples of exceptions include those in temporary or supported accommodation will still be able to claim Housing Benefit and those with more than two children will be directed to claim Child Tax Credit until February 2019.

<sup>13</sup> The Department’s current estimate is that, by the end of the process, 2.09 million households (2.87 million individuals) will have been migrated.

*with the ambition not only to help people onto Universal Credit, but also to help people take steps toward independence.*

## **Policy in Practice**

Detailed operational plans underpinning the managed migration process are not yet available. The level of support that will be provided to claimants in vulnerable situations throughout the process therefore remains unclear to us – but more importantly, also remains unclear to those organisations who will be responsible for providing some of that support. This includes those local authorities responsible for Housing Benefit, which necessarily have to be closely involved in the managed migration process.

We therefore urge the Department to take the time necessary to reassure itself that it is ready for the next phase. In doing so, it will want to consider carefully the issues raised in this report, and the supporting evidence provided by the many stakeholders who have responded to our consultation. The Department has previously stated its intention to consult local authorities as well as other partners and stakeholders. We welcome that commitment, but would ask the Department to ensure that it builds in time to give genuine consideration to the advice that consultation yields before pressing ahead. We fear that the current timetable does not give the Department sufficient time to do that.

In undertaking this assessment, due consideration should be given to how effectively Universal Credit is currently operating. The evidence available after the completion of the first phase of the roll-out programme at the end of 2018 will be a factor here. In considering its operational readiness, the Department's 'tests' (applied at a local level and nationally) might include the following examples:

- the time it takes to make a successful claim – where the start point is, when a claimant first registers on the Government digital gateway, and the end point when the first full payment of benefit is made;
- the level of backlogs, including the extent to which the Department is withdrawing migration notices to safeguard the efficient administration of Universal Credit;
- the proportion of appeals and requests for mandatory reconsideration in relation to the number of claims determined;
- the level, and rate of accumulation, of claimant debt.

At the end of its assessment of operational readiness, DWP should publish its findings, providing a clear explanation of what 'good' would look like, acknowledging in a transparent way the degree to which challenges remain, what fixes are being put in place to address them, and the associated timescales.

At the same time, the Department should publish its assessment of the triggers that would signal a deceleration or suspension of the managed migration process. Such triggers might include: a percentage threshold of people in vulnerable situations not being identified and appropriately supported, growing backlogs, falling accuracy in the determination of awards, a disproportionate increase in the number of complaints, and requests for a mandatory reconsideration and appeals.

We have already made the point that an initial stage of testing should involve 'dummy runs'. That should encompass a range of alternative scenarios for moving people over to Universal Credit from different benefit combinations, rather than simply testing one option.

### ***Delivery partners***

As we have already made clear, we welcome the Department's commitment to consult widely. Consultation with partners who can provide support to claimants locally is especially important. We therefore have some sympathy with the local authorities and others who have expressed considerable frustration that the Department has not yet started to engage with them on the plans for the managed migration process. We urge the Department to rectify that as a matter of priority. Local authorities and housing associations have emphasised their strong willingness to support the Department, and argued that they can play an important role in identifying and supporting claimants in vulnerable situations already known to them through this process.

*... it is disappointing to see that the role of local authorities in the process is not mentioned once in the accompanying explanatory memorandum to the draft regulations. It is our view that this needs to be urgently addressed by the DWP. As it stands the regulations would not allow local authorities' full potential to aid the process to be realised. In particular the regulations need to allow for a seamless flow of information between DWP and local authorities, which would be necessary for the provision of properly targeted support.*

**London Councils**

*Housing associations can work with tenants to prepare for Universal Credit and help support people through the migration process. They will be much more effective if the DWP can share information with social landlords in advance of migration. This would allow landlords to target communications and potentially provide a more personalised form of support.*

**National Housing Federation**

*Local authorities need to have a clearly defined role in working towards a smooth transition to Universal Credit. They are well placed for this in view of: their experience of administering Housing Benefit (HB); as social landlords; and as bodies often working with vulnerable people. A seamless flow of information between DWP and local authorities will be necessary, so that local authorities are able to determine the stage a person's managed migration has reached and assist where necessary. As a minimum we would want data on the transition dates for our own council tenants and any other people identified as vulnerable. This does not necessarily need to be set out in the regulations but could be agreed locally.*

**Westminster City Council**

The Committee is clear that the Department - working with HM Revenue and Customs - should share its plans with local authorities, housing associations, advice providers and other delivery partners at the earliest opportunity and, as a matter of priority, commence a dialogue about the support that they can provide during the managed migration process to help families make an effective claim on time. We are advised that local authorities played an important role in supporting claimants likely to be impacted by the introduction of the benefit cap, and the Department should therefore explore with colleagues in local authorities what lessons from that exercise can be applied for the managed migration process.

In particular, we would argue that local authorities and housing associations should be informed of the deadline dates that the Department has set for legacy benefit claimants in a particular area, as they may be able to identify tenants who require additional support and to help smooth the transition to Universal Credit for those individuals. There is also a case for communicating whether a successful claim for Universal Credit had been made by their tenants, as they would be well-placed to identify if someone in particularly vulnerable circumstances has fallen out of the system and requires urgent support to rectify the position.

*If the claimant is having their HB payment made direct to their landlord, then the landlord should have a notice to advise the HB will be ending. This feels right because the landlord is receiving and expecting that money and the added value is that we can then make contact and seek to assist them with their move onto Universal Credit.*

**Aster Group**

Departmental officials told us at our June meeting that they wanted to identify, and work with, as many appropriate partners as possible in order to reduce the risks when roll-out starts. We welcome that position and encourage DWP officials to commence that engagement as a matter of urgency.

### ***The ‘test and learn’ approach***

When Universal Credit was first introduced in 2012, the Department announced its test and learn approach as an integral part of the roll-out programme. We warmly welcomed that concept from the outset. The objective was that ongoing evaluation and testing would identify problems as they arose and enable them to be fixed quickly and before larger numbers moved on to the benefit.

However, it has become clear over the past six years that the agility of the ‘test and learn’ approach does not lend itself easily to significant amendments to the policy or its delivery. While some changes have been made, they have tended to be minor and procedural. If the managed migration programme is going to succeed, we believe that the test and learn approach must not be confined to the edges of the policy and its delivery.

*We draw attention to the continued and extensive use of the phrase ‘test and learn’, which although it implies flexibility also indicates that, five years after the Universal Credit Regulations were first made, progress is based upon a degree of guesswork and correcting errors only when they occur, rather than trying to make the process sufficiently efficient and flexible before it is applied to, and affects the lives of, potentially vulnerable claimants.*

**Derbyshire County Council**

We would also suggest a repositioning of that approach so that it is ‘test, listen and learn’. The insight, experience and expertise of other parties external to DWP operations should be given careful consideration. The Committee considers it implausible that the Department would not want to avail itself of as much informed advice as possible in trying to deliver successfully this major exercise. As some commentators have already observed, people in vulnerable situations should not be subjected to a system which risks their financial security while its operation continues to be subject to test and learn. There are other ways of conducting trials and we would suggest an initial phase of dummy testing of the service design with claimants before real people are migrated. Dummy runs should include trialling processes, including invitation letters, with a representative cross section of claimants (including those in vulnerable situations) but without actually moving them onto Universal Credit.<sup>14</sup>

*If the government pushes forward with a “test and learn” approach those who are found to be negatively impacted should be entitled to financial redress.*

**Law Centre NI**

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<sup>14</sup> With consent from claimants.

*We are generally supportive of the Universal Credit ‘test and learn’ approach, but we urge caution at using it for testing through the managed migration process when so much is at stake for the claimants. To minimise the risk to claimants, as much preparation, research and testing should take place before the testing phase of the migration with real claimants starts to ensure that the process is as robust as it can be. Of course, that should not mean that further changes cannot be made based on feedback, but as much as possible should be dealt with before involving real claimants where the risk of hardship should something go wrong is high.*

**Low Incomes Tax Reform Group**

*... it is going to be vitally important that the DWP has sufficient capacity within a Job Centre, or Service centre, to be able to cope with both preparatory managed migration phases to offer a good level of support to all individuals and households with the transfer to Universal Credit. We have indicated to the DWP that Welsh Government would wish to see greater collaboration and the joining up of support services in relation to targeted trauma training for DWP staff to help them to support those who are most vulnerable across Wales.*

**The Welsh Government**

### **Communications**

In view of the wide range of claimants subject to the managed migration process, the Department should also explore all potential options for communications needed for the managed migration exercise, including text messages, telephone calls, home visits and advertising campaigns. Targeted advertising could be very important, especially for recipients of tax credits who may think that advice about benefits does not apply to them because they are in work or because they have always dealt with HM Revenue and Customs. All forms of communication should be tested against segmented representatives of different claimant groups as well as with individual claimants. We see this as an integral part of the preparation that needs to be completed before moving on to testing.

*...we would question the effectiveness of these communications being purely by letter. If this is to be the preferred format, we would like to see some evaluation of the effectiveness of this at the pilot stage.*

**Gwent Welfare Reform Partnership**

*DWP should consider means of communication beyond standard letters. Where a claimant's mobile number is available they should be texted and more eye catching forms of physical communication, such as postcards could be utilised to increase engagement.*

**London Councils**

The need for clarity in communications cannot be over-stated. Alerting existing claimants to what they must do may itself generate anxiety, some of which could be allayed by a clear and well-targeted explanation. Working with claimants and their representatives as we have suggested, will provide greater insight for the Department about the concerns of claimants so that they can be addressed wherever that is possible. As an example of this, we received responses from claimants currently in receipt of ESA who were concerned by the prospect of having to undergo another work capability assessment (WCA) when they claimed Universal Credit. The Department has advised us that WCAs will continue to be conducted in the cycle that would have applied to the individual had they continued to be entitled to ESA. The Universal Credit claim would not therefore be an automatic trigger for a repeat WCA, and the communications issued should take the opportunity of providing appropriate reassurances in such cases.

*What I would like to see being made clear about these migration transfers from ESA (especially those in the Support Group of ESA) to U.C is when a claimant's time comes to transfer, will they have to undergo a fresh W.C.A assessment to pass the requirements to be placed in the Support Group/WRAG under U.C requirements...with Sick and Disabled people being required to visit Job Centre Plus offices causing more severe undue stress and anxiety for this group of claimants, or would their current claim to the legacy ESA just swap over to U.C without any issues or requirements like a fresh WCA or unnecessary visits JCP and face the possibility of sanctions.*

**Individual**

### **Recommendation 1**

**We recommend that, before the testing phase of the managed migration process commences, the Department should publicly define what it considers good operational readiness to be. It should then undertake a rigorous and transparent assessment of whether it has met those criteria (and, if not, what challenges remain). In undertaking this assessment, due consideration should be given to how effectively Universal Credit is currently operating, taking account of the evidence available after the completion of the first phase of the roll-out programme at the end of this calendar year.**



## **Recommendation 2**

**We also recommend that:**

- **the Department work more closely with local authorities, housing associations, advice giving and other organisations in developing its detailed plans;**
- **an initial stage of testing should cover a range of different practical ways of moving people onto Universal Credit;**
- **dummy runs' featuring claims in a cross-section of claimant scenarios – including those identified in vulnerable situations - should be evaluated with necessary adjustments being made before actual migration begins;<sup>15</sup>**
- **the test and learn phase should prioritise developing strategies for identifying and supporting through the managed migration, those who might find it more challenging. These might include young people living independently, homeless people, and people who have communication or cognitive difficulties;**
- **the test and learn phase should also allow for fundamental changes to be made to the structure of the policy if the evidence led to the conclusion that it was necessary, for example being prepared to change the requirement to make a claim if the evidence shows its effects are negative and loads unreasonable risks on the claimant; and**
- **the Department should explore all potential options for communications needed for this exercise, including text messages, telephone calls, home visits and advertising campaigns. All forms of communication should be tested against claimants from segmented groups and/or their representatives. Arrangements should also be put in place to ensure that claimants with disabilities receive information in the format that they need.**

As we acknowledged earlier, this is a huge challenge for the Department, and we are not persuaded that the Department will be in a position to commence testing the managed migration programme with real people in January 2019. At the same time, we recognise that pushing the timetable back could have a negative impact on some individuals naturally migrating to Universal Credit in the interim. Instead of being managed migrated to Universal Credit and having their legacy benefit award transitionally protected, they would simply receive the appropriate amount of Universal Credit applicable to them. It is clearly undesirable to have two distinct systems where significantly different and long-lasting financial outcomes arise from

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<sup>15</sup> Dummy runs should include trialling processes, including invitation letters, with real claimants (obviously with their consent) but without actually moving them onto Universal Credit.

arbitrary factors such as the timing or order of the managed migration process. It has the potential to undermine confidence in the fairness of the benefit system and it puts work coaches in an unenviable position of having to explain why households in identical circumstances receive differing levels of benefit.

We would therefore encourage the Department to consider other ways of protecting the position of those claimants.

## **Publishing an Impact Assessment**

Paragraphs 133-137 of the Department's explanatory memorandum refer to the impact of the managed migration policy on equality and diversity. There is an acknowledgment that a large proportion of the caseload being migrated from existing benefits will have a disability or health condition, but an absence of detail about particular impacts on specific groups and how they will be mitigated. The indication is that anyone who may encounter added difficulties in moving to Universal Credit will be picked up through a flexible system accommodated to meet varying needs. Such a system will allow appropriate support to go to those who need it and the test and learn approach will identify what adaptations to the process might be needed.

We remain unconvinced by this generalised approach. There is a very real prospect that some existing claimants will not be identified during the pre-claim period as in need of particular support. Others may receive some support but not enough, or not in time.

*DWP has stated its aim to “tailor the process more effectively for claimants”. Under DWP’s proposals, people with a “good reason” will be able to apply for an extension to their ‘deadline day’. While DWP has said some people will be able to delay the process if they have a good reason (e.g. homelessness), this relies on the DWP staff to identify this vulnerability.*

*We have serious concerns about the ability of DWP to deliver this kind of tailored service, to identify vulnerable people and to adapt their treatment accordingly. One of the most worrying aspects of the NAO’s recent report on Universal Credit was the department’s lack of ability to monitor the treatment of vulnerable claimants nationally.<sup>16</sup> The report also identified that DWP has not measured the impact on claimants or assessed how much hardship Universal Credit claimants suffer.*

**Shelter**

Whilst accepting that there is some discretion available that will provide a degree of mitigation, it is applied asymmetrically in the sense that the deadline date marks a watershed. In the lead-up to that date, help may be available, but once passed there is little that can be done for claimants beyond helping them make a claim for

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<sup>16</sup> National Audit Office: [Rolling out Universal Credit](#) (June 2018)

Universal Credit where any resultant award would neither link with the ending of the legacy benefit nor attract any transitional protection. The impact in such cases could be serious and long-lasting.

In their response to our consultation, the Equality and Human Rights Commission referred to three particular groups they had identified as having been most impacted by reforms to welfare: lone parent families, disabled people, and some BAME groups who are more likely to encounter difficulties claiming Universal Credit because of limited access to the internet, low literacy and numeracy skills and payment difficulties. They also state that there is likely to be a disproportionate impact of reforms on Gypsy, Roma and Traveller communities. They conclude:

*The last equality impact assessment into Universal Credit was conducted by the Department for Work and Pensions ('the Department') in November 2011. The assessment was simplistic and contained limited detailed evidence on specific protected groups. Since then significant changes have been made to the new benefits system which have not been fully assessed by the Department to determine the impact on equality and human rights. This will make it extremely difficult for the implications of the migration on the lives of people sharing protected characteristics to be understood and taken into account. The Government should undertake an updated equality impact assessment of the impact on groups sharing protected characteristics, in line with the UK Government's Public Sector Equality Duty (PSED) obligations.*

We concur with this conclusion. We believe that such an assessment should cover groups with protected characteristics, as would be expected in an equality impact assessment. But it should also deal with the impact on the wider spectrum of claimants more generally.

*DWP should provide data and an equality impact assessment of those who are losing income as a consequence of being migrated on to Universal Credit and consider whether further steps are needed to mitigate this.*

**Bath University Institute for Policy Research**

Given the concerns that have been raised in consultation responses about the prospect of local advice organisations and local authorities being overwhelmed by the demand that migration will create for them, this should include a realistic assessment of the impact this will have on civil society. The impact assessment should be scrutinised as part of the rigorous state of readiness.

*Increasing volumes to full operational capacity from July 2019 must be carefully managed to avoid overwhelming already stretched Universal Credit service centres and local provision. Lessons must be learned to prevent the same level of difficulties experienced during the Universal Credit Full Service natural migration roll-out. As one of the first Local Authority areas to move to Universal Credit Full Service, there is evidence of claimants, landlords and council services experiencing the consequences of stretched service centres, systems and process not being ready for the new benefit.*

**Inverclyde Council**

An impact assessment should include an action plan for mitigating the effects of any adverse impact identified beyond current provisions such as transitional protection. It should also cover the detailed operational aspects of the policy.

The delivery and impact of Universal Credit will also be affected by the extent to which claimants understand the changes that are being made. There is a basic principle that underpins the rule of law which requires that individuals know and understand what the rules are so that they can follow them. This means that claimants need clarity concerning the Universal Credit rules so that they are confident about accessing their legal entitlements and managing their obligations regarding these entitlements. Their understanding is likely to be affected by many different factors that an impact assessment and mitigating measures could address, including the extent to which local authorities and third sector bodies might be available to help them. This would form the basis of a more constructive dialogue with many partners and stakeholders who feel that they have relevant experience, expertise and insight to support the Department in the next challenging phase of roll-out. We would encourage ongoing transparency with changes to the original plans being published, as well as the Department's responses to feedback being reported back from its operational staff as part of the test and learn process.

We do not believe that the impact of the changes on this huge and diverse group of people is fully explored or explained.

### **Recommendation 3**

**We recommend that, by the end of March 2019, the Department publish a detailed impact assessment of the migration plans, setting out the ways in which, and the extent to which, they may have an impact on claimants and/or their family members. We believe that such an assessment should be conducted by segmenting those migrated on the basis of protected characteristics, as well as by other key experiences such as homelessness, lone parenthood and existing legacy benefit entitlement. The assessment should extend to any impact on local authorities and third sector bodies. An**

**action plan for mitigating the effects of any adverse impacts identified should be published alongside the assessment.**

## **Transferring claims**

The Committee is of the strong view that there is an important principle which should underpin the managed migration exercise – namely, that the risk should rest with the State rather than the individual. This is a view that is shared by a number of respondents to our consultation.

*The draft regulations seem designed to place both the burden of arranging migration and the financial risks associated with it almost entirely on to the shoulders of claimants. By definition this is a group who are least able to bear these risks: they are already living on a relatively low income with limited savings or assets, and are disproportionately likely to have children (particularly young children), to have children with disabilities or additional needs, to be suffering from ill health or disability themselves, to be single parents, to be care leavers, to be at risk of homelessness or to be in low-waged or insecure employment.*

**CPAG**

*The burden of migration should not fall wholly on individuals. The current proposals for managed migration require everyone on legacy benefits to make a full new claim to Universal Credit. The DWP should ensure it is making best use of existing data held by government departments to reduce the administrative burden on all claimants and avoid unnecessary risks to people's incomes, including working families and those who are disabled or have a health condition.*

**Citizens Advice**

*To protect hoped-for take-up gains the government should ensure that it, rather than the individual, bears the risk of further teething problems during the managed migration.*

**Resolution Foundation**

The Welfare Reform Act 2012, which laid the foundation for Universal Credit, contains a specific power for regulations to make provision for a claim to an existing benefit to be treated as a claim for this new benefit.<sup>17</sup> The Department's requirement that, without exception, entitlement to Universal Credit would depend on a valid claim being made was therefore a surprise for many stakeholders, particularly as previous migrations had simply transferred people from one benefit to the other with minimal

<sup>17</sup> Welfare Reform Act 2012, Schedule 6 paragraphs 1(1), 2(1)(c) and 3(1)(e). Existing benefit is defined in section 33(1) of the Welfare Reform Act 2012 as income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, Council Tax Benefit, Child Tax Credit and Working Tax Credit.

input from claimants.<sup>18</sup> The power taken in the Welfare Reform Act 2012 suggested that the same pattern would be followed, at least to some extent.

*We are unclear why in most DWP benefit cases it is not possible for legacy benefit claimants to be simply transferred to universal credit without a need to make a claim. Both the DWP and the local authority will already hold the relevant information on a claimant to make such a transfer...*

*A process of transfer rather than claim will better safeguard all claimants, especially those who have a mental health problem or a disability that causes them difficulty in claiming universal credit online.*

**Disability Rights UK**

When we scrutinised these regulations at our meeting on 20 June 2018, we asked officials why ministers were not using that power to automatically transfer claimants from one benefit to another.

In reply the Department advised us that:

- 1. The process provided an opportunity to ‘cleanse’ personal information and data. Claimants coming on to Universal Credit in this phase of the roll-out programme would, in the large majority of out of work cases, have been on one or more of the legacy benefits for some time. This meant that there was a risk that, over time, the data held could have become inaccurate because of errors, oversights and/or misinformation. Any errors in the system would be eradicated by requiring the claimant to make a claim by entering and providing verifiable evidence of details of personal finances and circumstances. The Department had previously migrated claimants from one benefit to another and inadvertently carried forward corrupt data, prolonging an overpayment or an underpayment in the process. There was therefore an understandable desire to avoid the same mistake.*

However the cleansing of existing data does not necessarily require a new claim. The Department has many other tools at its disposal for achieving the same ends. The Secretary of State can require claimants to provide evidence to substantiate their entitlement to benefit and the accuracy of the amounts in payment. Any failure on the part of the claimant to comply with such a requirement within a prescribed

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<sup>18</sup> For example, people in receipt of child allowances in their income support or Jobseeker's Allowance were automatically transferred on to Child Tax Credit (CTC) rather than being required to make a new claim. On 11 March 2004, the then Paymaster General confirmed in response to a Parliamentary Question that: "The automatic phased transfer onto CTC of the remaining families with children within IS/JSA is planned to begin from October, subject to a final review in the summer. Meanwhile families will continue to receive the same level of support through their benefits as they would from CTC."

period can be met by a suspension of payment, followed by a termination of the award.

- 2. A claim for Universal Credit requires information that is not necessary in claiming some of the legacy benefits. This is particularly the case with tax credits. For instance, anyone claiming tax credits is not asked about capital – information without which a claim for Universal Credit cannot be determined.*

We accept that the most sensible way to proceed for claimants who are solely in receipt of tax credits may be to require a claim for Universal Credit; they will certainly need to provide additional information at some point. However it does not necessarily follow that a new claim is required in all cases. It is likely that there would be many cases where a person with an award of income-related Employment and Support Allowance (ESA), for instance, would not need to provide any additional information in making a claim for Universal Credit. Should they also be entitled to Housing Benefit, the information necessary to determine housing costs within Universal Credit would also be available.

- 3. Universal Credit represents an entirely new approach to benefit entitlement. Whenever a claim is made, the Department requires each claimant, or claiming couple, to engage in a face-to-face conversation with a work coach where the principles of Universal Credit can be explained, the rights and responsibilities of both parties can be set out and questions about what it will mean for the individual(s) in question can be raised and answered.*

However a valid claim for Universal Credit is made when it is completed in accordance with any instructions given by the Secretary of State for that purpose.<sup>19</sup> Having a face-to-face interview with a member of staff is not therefore an integral part of making a claim for Universal Credit. The Department has linked the claiming process for Universal Credit with the introductory interview which includes a discussion about the claimant commitment and allows for it to be drawn up, agreed and signed. However, in law, it is separate. Although it is a condition of entitlement to Universal Credit that a claimant commitment is accepted. Regulation 15(1) of the Universal Credit Regulations 2013 (SI 2013 No 376) provides that:<sup>20</sup>

*“... a person who has accepted a claimant commitment within such period after making a claim as the Secretary of State specifies is to be treated as having accepted that claimant commitment on the first day of the period in respect of which the claim is made.”*

- 4. Some existing claimants may not wish to claim Universal Credit. We could envisage a scenario, for example, where a tax credits claimant might be deterred*

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<sup>19</sup> Regulation 8(1) of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (SI 2013 No 380).

<sup>20</sup> Section 4(1)(e) of the Welfare Reform Act 2012.

*from claiming Universal Credit by the prospect of what the in-work conditionality regime might entail. Similarly, a self-employed worker might be put off by the requirement to make monthly returns (particularly if the potential amount of benefit on offer was marginal or if they had a significant amount of capital behind them). Some of these claimants may be able to, and prefer to, increase their hours and become wholly self-reliant.*

But such arguments have less traction when it comes to recipients of other benefits. The chances of a claimant with a chronic illness, and who is a long-term recipient of ESA and Housing Benefit, not wishing to go on to Universal Credit – the only source of financial help available – must be minimal. But in the event that a claimant was automatically migrated to Universal Credit when they did not want to receive the benefit, case-law supports the termination of such an award.

Another factor may be that the legacy benefit data is held on more than one IT system. We understand that it would not be a simple matter to transfer the data electronically, and that a high level of manual intervention would be required. Nonetheless, as the Department already holds a significant amount of the information required for new claims to Universal Credit, further consideration should be given to whether some pre-population of applications could be made where verified data is already held. In particular, we urge the Department to work with its partners and other Government departments to see what support can be provided to claimants in more vulnerable circumstances to ensure that they are safely migrated.

*Housing associations can work with tenants to prepare for Universal Credit and help support people through the migration process. They will be much more effective if the DWP can share information with social landlords in advance of migration. This would allow landlords to target communications and potentially provide a more personalised form of support.*

**National Housing Federation**

While acknowledging the challenges of bringing together data from various IT systems, we recommend that the Department looks again at the feasibility of treating a claim for 'out of work' legacy benefits as a claim for Universal Credit. Further checking of the accuracy of imported data can be done within the months following the migration. A number of respondents to our consultation have suggested that it be done within the first three months of the award. Given the present approach to an early interview and the acceptance of a claimant commitment, it would make sense to conduct any necessary review of personal information at that stage.



*... it would be preferable to pre-populate initial Universal Credit claims with data from the existing benefit claim(s) which the claimant could then agree and update within, say, three months.*

**Policy in Practice**

*People on ESA – who represent the remaining bulk of those in the managed migration – should be approached differently. They are far less likely to see a change in circumstance during the process (given their low rate of outflow) making them a better fit for a more automated migration. These cases could therefore simply be moved onto the Universal Credit system with the same rate of benefit in payment (with the DWP identifying associated Housing Benefit claims from local authorities) and then Jobcentre Plus advisors could contact them over time to verify and explain the move to Universal Credit.*

**The Resolution Foundation**

The requirement that everyone should make a new claim is not managed migration as many people had expected. As previously stated, we are of the strong view that the responsibility for ensuring that claimants are migrated safely to Universal Credit rests with the Government.

#### **Recommendation 4**

**We therefore recommend that the Department conduct a careful segmented analysis of the claimant groups who will be managed migrated so that any scope for dispensing with the need for a claim can be identified and acted upon. This analysis should be published. Where a claim for Universal Credit is unavoidable, we recommend that DWP pre-populates as much of the digital claim form as possible. Claimants should not be expected to produce data that the Department already holds, particularly if it is information that has been verified and is unlikely to have changed. The Department should also make the claiming process simpler, for example by removing the requirement for people to attend interviews in cases where there are no work-related requirements and so no need to add to the claimant commitment, or where identity has already been established.**

#### **Implicit consent**

Having someone to represent them in their dealings with the Department – whether a friend, family member or voluntary sector worker – is essential for many claimants. At the same time, anyone wanting to be an advocate needs the claimant's consent.

Given the need to safeguard the integrity of an individual's personal information, this is understandable and cannot be avoided. However, many of our respondents raised concerns about how that consent is provided. With legacy benefits, the Department operates on the basis of 'implicit consent'; with Universal Credit, it is 'explicit consent'. Our understanding of the problem is not so much that consent has to be given explicitly. Indeed we would not expect any less. The problem is that consent has to be given repeatedly. The guidance available on the GOV.UK website advises people that:<sup>21</sup>

*Explicit consent does not last forever, it usually lasts until either the specific request is completed or the end of the assessment period, after the one in which the consent was given.*

We understand from the Department that explicit consent can usually be demonstrated by a simple note in the claimant's online journal, confirming:

- *consent for personal information to be shared with the representative*
- *what information the claimant wants to be disclosed*
- *why the information is needed*
- *the representative's relationship to the claimant where the representative is a family member or friend*
- *the name of the representative and the organisation, including the branch where applicable.*

However, a number of respondents to our consultation have raised some of these requirements, and the way that they are administered, as an issue on the basis that they hinder their ability to help, cause distress for some claimants with mental health problems who need a representative to speak for them and create delays. Representative bodies suggest that the 'implicit consent' approach that exists for legacy benefits works well and should be extended to Universal Credit. If not, it should at least be adopted for the duration of the managed migration exercise when the need for representative help will be so much more acute. A related problem is the difficulty corporate appointees are presently facing in dealing with the Department when the claimant for whom they are responsible is in receipt of Universal Credit. This needs to be resolved before legacy benefit claimants with corporate appointees are managed migrated to Universal Credit where making an online claim, and doing so for multiple claimants within a limited period of time is likely to be problematical.

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<sup>21</sup> [DWP Universal Credit consent and disclosure of information](#)

*DWP should suspend explicit consent for the managed migration period. Local advice agencies have advised us that dealing with a Universal Credit case takes four times as long as dealing with the same issue for a legacy benefit. Most of this additional time is taken up by the need to provide explicit consent, or to only undertake casework when the customer is present or available on the phone.*

**BenX**

*Dealing with Universal Credit enquiries and cases can take considerably longer than for legacy benefits not least because the DWP's 'implicit consent' procedure does not apply to Universal Credit.*

*The DWP has refused to apply its 'implicit consent' procedure to Universal Credit. Instead requiring a claimant to provide 'explicit consent' before it will disclose information to a third party.*

**Oxfordshire Welfare Rights**

*The DWP has already highlighted the success of the migration project being dependent upon the support of external partners and others in delivering a smooth transition between different benefit systems for citizens. Currently local authority representatives supporting citizens with Universal Credit applications experience difficulties trying to resolve issues with the DWP due to the confines relating to "explicit consent". Vulnerable citizens who struggle to make the digital application during the managed migration process, may not be in a position to supply the consent via their online account, telephone or attend a Jobcentre. As a result LA representatives may struggle to assist citizens in the required timescales.*

*The Council would suggest that throughout the managed migration process that the Local Authority staff who are representing citizens, are provided with access to discuss the progress of applications, on the basis of the data and Housing Benefit /Council Tax Support consent which it already holds. The DWP should also examine opportunities to simplify the consent process for citizen representatives more widely.*

**Liverpool City Council**

We understand that the Universal Credit Full Service is the Department's first fully digital system, and that it has an important responsibility to safeguard the data held to ensure it is not accessed by unscrupulous people for criminal intent. We understand that it is not uncommon for its staff to have to deal with people trying to access inappropriately data through impersonation. It is therefore important that we proceed with caution to ensure that any recommendation we make does not unwittingly weaken the safeguards the Department has in place. It is a clear priority for the Department to protect the claimant data held on its systems.

Nonetheless there was significant concern and frustration evident in a number of our consultation responses, and we do think that there is a case for exploring what more can be done to address these issues.

For example, we understand that members of the UK Parliament act for their constituents in all benefit-related matters on the basis of implicit consent – in contrast to members of the Scottish Parliament and Welsh Assembly.<sup>22</sup> That would seem to be an inconsistency which could easily be rectified.

### **Recommendation 5**

**We recommend that the concept of ‘implicit consent’ which applies in legacy benefits should be extended to Universal Credit, but with appropriate safeguards in place to ensure that personal data held by the Department are not compromised. This Committee would be willing to work with the Department and other interested parties to identify what those safeguards should be. This work should be completed, and conclusions published, by the end of March 2019.**

### **Defective claims**

The definition of a “qualifying claim” in the proposed new regulation 48 means that a person who makes a defective claim for Universal Credit after receiving the migration notice and before the deadline is effectively debarred from receiving any transitional protection. A person who tries to claim Universal Credit by telephone but fails to give all the requested information over the course of that conversation has made a defective claim and should receive a written appealable decision to that effect. If they then successfully make an in-time online claim for Universal Credit any potential entitlement to transitional protection will have been forfeited. The explanatory material is silent on why that should be so.

*We note at regulation 48 any claim made before/on deadline day will not be accepted where a previous claim was made before/on deadline day was deemed to be defective such that a decision maker does not treat the claim as properly made as per regulation 8(6) of the Social Security (Claims and Payments) Regulations.*

*We would query why such a limitation is placed on managed migration claimants given the requirement to make the claim within the scheduled time limit has been complied with.*

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<sup>22</sup> Universal Credit is a devolved issue for Northern Ireland but the Committee would want to see the same principle of consistency regarding implicit consent applying to Members of the Northern Ireland Assembly.

*Transitional protection should not be removed as a result of a “defective claim” (including where there has been a delay in providing evidence or information) and regulation 48(2)(a) and (b) should be deleted.*

**Unison**

Earlier in the report we noted that a claim is made when it is submitted online. However a number of respondents have suggested that where a claimant fails to book an initial interview for the purposes of verifying their identity and agreeing a claimant commitment or fails to attend the interview when arranged, the claim is “closed”. Individuals are told that they would have to submit a new claim if they want to receive the benefit.

In July 2018, the following Parliamentary Question was submitted to the Secretary of State for Work and Pensions: <sup>23</sup>

*Marsha De Cordova: To ask the Secretary of State for Work and Pensions, what estimate she has made of the number and proportion of universal credit claims started but not completed.*

*Alok Sharma (Minister of State for Employment): Our latest analysis, from management information for Universal Credit Full Service claims made (declared) in November 2017, shows that 29% were closed and not paid, of which the majority were accounted for under the following categories:*

- *failure to attend an initial interview (10%)*
- *Claimant Commitment not accepted (6%)*
- *the claim was withdrawn (4%)*
- *failure to attend a subsequent interview (4%)*

This confirmed what had earlier been revealed in response to a Freedom of Information request where the Department noted that, based on the November 2017 statistics, 71 per cent of claims had led to claimants being paid and the remaining 29 per cent had been ‘closed’. Of the 29 per cent ‘closed’, eight per cent were process compliant but did not lead to an award, either because the claim was withdrawn or because the claimant failed to satisfy the conditions of entitlement. The remainder had their claims:

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<sup>23</sup> Universal Credit: [Written question 166515](#) (July 2018)

*“closed due to non-compliance with the process. This means they failed to meet requirement to produce evidence to support their claim or to satisfy the conditions placed on them to receive benefit, such as making oneself available for, or actively seeking, a job. The claims were closed for the following reasons:*

*10% failed to book an initial interview*

*6% claimant commitment not accepted*

*4% failed to attend an interview.’<sup>24</sup>*

We do not know whether the Department intend to count claims that fail because of, for example, a failure to attend an interview, as ‘defective’. We do know however that this is a concern of a number of respondents. They certainly believe that that is how it is currently understood operationally.

*We have heard of cases where claimants whose claim was wrongly closed due to an error on the part of the DWP were subsequently advised by the DWP to make another claim rather than seek to have this decision revised. There is no justification for the loss of transitional protection in such cases.*

*A terminally ill cancer sufferer’s Universal Credit claim was ceased when he failed to attend an interview. When he contacted the DWP and referred to his DS1500 form (evidence of terminal illness), staff advised him to reclaim rather than revise the decision.*

**CPAG**

This suggests a possible disconnect between the actual policy as reflected in the legislation and its operational delivery. If that is the case, it needs to be addressed. There is a strong case that if the Department has already verified the claimant’s identity for a legacy benefit, and the person is a carer or in the support group, then there would appear to be no need to require them to attend for an interview.

*Regulation 48 paragraph 2 (a) & (b) makes clear that even if someone makes a claim within the time allowed to make a ‘qualifying claim’, it will not count as a ‘qualifying claim’ if they have made a previous claim that is defective or is closed because they didn’t supply the requested evidence in time.*

*It is hard to see the logic underpinning this regulation; why should claimants be denied transitional protection in their current claim purely because of defects in a previous claim? Even if there was some logic to it we believe it to be totally*

<sup>24</sup> [DWP response to Freedom of Information request from CPAG](#) (May 2018)

*disproportionate – it will have a devastating effect on some. There may well be good reason why the evidence was not supplied in time or the claim was incorrect in some way. Our experience is that people with a mental health condition may well start a claim but then find it very difficult to follow through. If they at a later point then seek support and make a correct claim within the time allowed we do not see why it should not be allowed. It is for example common to see vulnerable clients who have had their Universal Credit claims closed because they failed to attend their verification interview and are told to make a new claim or clients having their ESA claim closed because they fail to turn up for a WCA. Even claimants with very good reason for not attending an interview find that the reasons are not accepted by DWP.*

*It is our experience that many people do not seek help with their claim first time round. They come to us in distress because they have found when they rang the helpline that their claim has been closed and they have been advised by the helpline to make a new claim. They have often then made that second claim but come to us either for help ensuring their second claim doesn't fail or because they have got into debt as a result of the gap in their income. The gap in income and the resulting rent arrears are obviously a problem but for those migrating the loss of transitional protection will have a much greater long-term impact.*

**Craven and Harrogate Citizens Advice**

The Department has not referred to the process of moving live service Universal Credit claimants to the full service system in the explanatory material, therefore we do not know how that might impact the managed migration programme. We have, however, been advised of cases where claimants are having payment of their Universal Credit suspended and their award subsequently terminated because they are not inputting their details on the full service system. It would be helpful if the Department could make clear how this process from live service to full service is being operated and how it will fit in with managed migration.

*At present there are three benefit systems, the legacy system, the Universal Credit Live service and the Universal Credit Full service. We do not know if the DWP aim to migrate all Live Service claims to the Full Service before the wider migration of legacy claimants to Full service. In our opinion, it is imperative for the Live Service claimants to be transferred to the Full Service before the migration of legacy claimants. This will condense the benefit systems in place and free up vital resources within the DWP for the Full service.*

**Halton Housing**

As set out above, there are a range of reasons why a claim might not work and the claimant has to reclaim. We are of the view that if a claimant is able to make a successful claim within the time limits, transitional protection should apply.

## **Recommendation 6**

**We recommend that the Department omit the rule that making a defective claim prevents transitional protection in a subsequent successful claim for Universal Credit.<sup>25</sup>**

### **Alternative methods of claiming**

Legislation provides that:

*A claim for universal credit may be made by telephone call to the telephone number specified by the Secretary of State if the claimant falls within a class of case for which the Secretary of State accepts telephone claims or where, in any other case, the Secretary of State is willing to do so.<sup>26</sup>*

We are unaware of the extent to which the Secretary of State has prescribed classes of cases for which a telephone claim for Universal Credit can be made. Neither do we know the extent to which she is currently prepared to exercise her discretion in allowing telephone claims in individual cases. It would appear from the respondents who mentioned the possibility of telephone claims that it is not widely promoted.

*The availability of telephone applications and home visits needs to be clearly advertised in all managed migration communication material. Anecdotal evidence from our members has shown that the ‘digital by default’ approach of Universal Credit can often make it difficult for vulnerable claimants to access these services as service centre operators often insist applications must be made online. Clear training must therefore be provided to service centre staff to ensure vulnerable claimants can easily request home visits or telephone applications where necessary without the current difficulties that many have experienced.*

**London Councils**

Whatever the current situation, we would suggest that a simple and effective way of helping a significant number of claimants through this process would be to allow those migrating from a legacy benefit to make a claim for Universal Credit by telephone. Should the Secretary of State consider that her discretion should be exercised more narrowly, then it would still be appropriate to be transparent about the gateway conditions, whilst publicising more widely the circumstances in which a telephone claim can be made.

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<sup>25</sup> Claims can be defective for several reasons but, for the avoidance of doubt, our use of the term includes circumstances where claimants are advised that their “claim is closed” because they have failed to complete the claiming process.

<sup>26</sup> Regulation 8(2) of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (SI 2013 No 380)



*... DWP [should] publish clear criteria under which home visits will be undertaken and how to request one.*

**Wigan Council**

Several respondents referred to difficulties experienced in navigating the online process. The Universal Credit Full Service Claimant Survey published on 8 June 2018 paints a similar picture:<sup>27</sup>

*Universal Credit is a digital service and 98 per cent of claimants did claim online. Over half (54 per cent) of all claimants were able to register their claim online unassisted, with a further fifth (21 per cent) completing it online but with help. Three in ten (30 per cent) of those who registered a claim online found this difficult and the process of verifying their identity online was seen as particularly difficult. Overall, more than four in ten (43 per cent) of claimants said they needed more support registering their claim for Universal Credit. Three in ten (31 per cent) said they need more ongoing support with using their Universal Credit digital account.*

That research would indicate that there are people who will not be able to manage the online process unaided. Despite the best efforts of the DWP and others willing and able to offer support, there are circumstances where claimants are isolated (either geographically or by circumstances) and will have to manage without help. For them the ability to make a claim by telephone, with adjustments as needed, would be invaluable.

*... we live in an area with lots of rurally isolated areas with poor transport links. This not only means that it can be difficult for tenants to get in for so many appointments, it is also difficult for us to be able to physically visit the number of tenants we may need to with the migration onto Universal Credit. In order to manage our workloads we do often need to do as much as we can over the phone. We feel this should be taken into account by the DWP and allowances made for people to be able to offer telephone appointments when they can who will find it difficult to travel and/or afford to travel long distances (often on a number of buses if using public transport).*

**Cornwall Housing**

*...[an] issue with the application process stemmed from the online format of the application; with some of the most vulnerable claimants struggling to access the technology or simply being computer illiterate. One respondent was living in a women's refuge on and off for 14 months plus sleeping rough. This meant that*

<sup>27</sup> [DWP Research Summary: Universal Credit Full Service Claimant Survey](#) (June 2018)

*they struggled with internet access as the refuge did not have Wi-Fi. The communications from their job coach were coming via the 'e-journal' connected with their Universal Credit account, which meant they were not able to access the messages instantly. Because of the changes in residential address the payment was deferred twice. This claimant had 64 days in-between their initial claim for Universal Credit and receiving their first payment.*

**Trussell Trust**

For claimants with disabilities or health problems which severely restrict their mobility, perhaps exacerbated by living in a rural area, the facility of home visits is also a possibility. It is not entirely clear to us whether a claim for Universal Credit can be taken at a home visit or whether, as one of our respondents understands, it is only there for conducting the follow-up interview and compiling a claimant commitment. There is some uncertainty about the process – some people who are currently unable to make an online claim are being referred to what is called the Assisted Digital Support Universal Support.<sup>28</sup> But it is not clear what they should do if their circumstances mean that they cannot make a digital claim.

*We would like to see the DWP increase their capacity to provide home visits. We would like home visiting officers to offer a wider range of support services including assisting with the actual claim for Universal Credit. At present the only service that appears to be offered by a home visiting officer, is the verification and claimant commitment check. We have been informed by the DWP that home visiting officers are unable update any part of the Universal Credit claim within a claimant's home because the internet network is unsecure. We are unaware of any preparation work taking place to rectify this issue to ensure that home visiting officers are equipped to fully assist claimants while in their home. There is no support offered to assist with the actual application of Universal Credit. This will be an essential service to assist those who are housebound with no internet access, unable to use a computer and unable to use a telephone to contact the Universal Credit service centre.*

**Halton Housing**

Whether or not the problem reported by Halton Housing is widespread, we would suggest that a home visitor should be able to input the necessary claim details in those exceptional cases where someone who wants to claim Universal Credit is unable to use either the online process or manage a telephone conversation.

*Although it is stated that there will be alternatives to the digital process of application, there is no indication of the resources available to support alternative methods, nor how claimants will be able to access these resources. Indeed, in a*

<sup>28</sup> [DWP Guidance: Universal Support](#)

*recent report of whistle-blowers in DWP Service Centres, it is alleged that, claimants are discouraged by staff from phoning in to resolve problems or to book a home visit and instead are actively persuaded to go online, using a technique called “deflection”, even when callers insist they are unable to access or use the internet.<sup>29</sup>*

**Scottish Federation of Housing Associations**

It is therefore important that the Department actively publicises and gives greater prominence to the availability of alternative methods of claiming Universal Credit. We also consider it essential that the current hotline service is appropriately resourced to deal with the increased number of calls that this process is likely to generate. An effective service for claimants and their advisers (including Parliamentarians acting on behalf of their constituents) is essential as they seek assistance with the managed migration process. This should include the ability to deal with queries on Housing Benefit, DWP legacy benefits and tax credits in one call – albeit with a warm handoff where necessary so that the claimant does not have to make more than one call or repeat information given to another operator. Those who find it difficult to manage the digital method of claiming Universal Credit should therefore be pro-actively offered the option of making their claim by telephone. And for those who would find it difficult to make either a digital or telephone claim, the option of a home visit should be pro-actively offered.

Universal Credit has been founded on the principle of ‘digital by default’, and this goes wider than an individual simply entering personal details online and having their claim determined electronically. There are other advantages associated with having a digital approach which extend throughout the life of the award. For that reason it would be understandable if the Department was reluctant to introduce what might inadvertently become a second tier level of service for some claimants. In recommending that alternative methods of claiming be given a higher prominence during the managed migration process, we recognise that there will be a need for the Department to work with those claimants to support them on to the digital platform. Nonetheless we are concerned that some people will struggle with the initial process of making a digital claim, and consider it important that the Department supports them through this process.

While accepting that digital inclusion is important and beneficial to claimants, we are not yet at the point yet where digital capability has reached near universal penetration among all customer groups nor all parts of the country. The Department, therefore, needs to demonstrate greater flexibility in supporting claimants who have difficulty with managing digital engagement.

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<sup>29</sup> The Guardian (Patrick Butler, Social Policy Editor): [Universal Credit IT system ‘broken’ whistleblowers say](#) (July 2018)

## **Recommendation 7**

**We recommend the Department actively publicises and gives greater prominence to the availability of alternative methods of claiming Universal Credit. Those who find it very difficult to manage the digital method of claiming Universal Credit should be pro-actively offered the option of making their claim by telephone. And for those who would find it difficult to make either a digital or telephone claim, the option of taking a claim during a home visit should also be pro-actively offered. In those cases where the Department has identified that someone has found the digital process difficult, they should work with the claimant to provide ongoing support for digital management of their Universal Credit award.**

### **Mitigating the effect of missing the deadline**

The proposed legislation requires that the migration notice gives a minimum of one month in setting the deadline day. This is the day by which the Universal Credit claim must be made, and the point at which entitlement to legacy benefit will end. A longer notice period can be given where it is needed. Paragraph 29 of the explanatory memorandum notes that this will give:

*“... flexibility for this period to be extended, if it is identified that certain claimants require longer timescales to make a new Universal Credit claim, e.g., those who are vulnerable or have complex needs.”*

This may not be straightforward, not least because of a lack of definition or criteria by which to judge vulnerability.

*It is proposed that if claimants have complex needs or are vulnerable they could be allowed a maximum of 3 months to make their Universal Credit claim. However we do not have any criteria for this nor can we see how DWP will be able to identify such claimants from the legacy system information held.*

**Citizens Advice Scotland**

Perhaps the most straightforward way to identify those living in vulnerable circumstances would be to say that everyone in receipt of a disability related benefit such as Employment and Support Allowance, should be treated as falling into this category because of the very nature of the client group.

*We submit that a starting point for identifying claimants who might be vulnerable to the migration process would be those who are in receipt of ESA, limited capability for work national insurance credits, PIP or the disability premium within their legacy*

*benefit. It is those claimants who will need extra support who are among those who will be less likely to self-identify themselves to the Department.*

**Disability Rights UK**

That may seem to be overly generalised however, and a more individualised approach would be preferable. That in turn raises the question of the Department's capacity and ability for identifying claimants who will need more time and help to complete a Universal Credit claim.

*We have serious concerns about the ability of DWP to deliver this kind of tailored service, to identify vulnerable people and to adapt their treatment accordingly. One of the most worrying aspects of the NAO's recent report on Universal Credit was the department's lack of ability to monitor the treatment of vulnerable claimants nationally.<sup>30</sup>*

**Shelter**

*... support for vulnerable clients seems patchy. This seems to be a general problem as the DWP's own research (October 2017) indicates that some advisors say they do not have the time or information to identify those who need additional support whilst others say that they do not have the confidence to exercise their discretion flexibly.*

**Southwark Law Centre**

Even if the Department had a robust method of identifying existing claimants who might need longer than a month, those on tax credits and/or Housing Benefit alone would be outside their reach. Almost all of the local authorities and housing associations who responded to our consultation expressed a willingness to help identify and support claimants in this category, however tax credit claimants would probably need to self-report since HMRC are unlikely to hold much personal data of direct relevance to this issue.

*LA frontline staff and experienced visiting officers will be key in supporting customers through the migration process and have a wealth of knowledge and*

<sup>30</sup> National Audit Office: [Rolling out Universal Credit](#) (June 2018)

*experience of dealing with customers and as such will probably be the first point of contact for a significant number of customers when these letters are received. It is therefore essential that LA staff know and understand the content of these letters thoroughly to support this process.*

**Solihull Metropolitan Borough Council**

This leads to the conclusion that an imaginative approach to working with third sector partners and others to identify those on Housing Benefit or tax credits who might otherwise escape the Department's notice is needed. Many voluntary and charitable bodies acknowledge that, realistically, there are people who need their help but who are likely to remain under the radar. In rural areas the availability of any outside support may be minimal.

*The department has now invited a range of charities, housing associations and other organisations to assist it in ensuring that claimants understand the migration process and encouraging them to claim, acknowledging that 'we also know that some claimants don't respond as planned, and may not read communications from DWP, or might only act at the last moment. Around half of these new claimants won't be existing customers of DWP at all, so may not recognise the relevance of a communication from DWP to them. This is where we need your help'.<sup>31</sup>*

*...is unrealistic to expect that all claimants who will struggle to claim are in contact with these organisations. The most vulnerable may have no such relationship. Yet we know that all are – by virtue of their existing benefit claims – known to one or more of the DWP, HMRC or their local authority. This seems to us to be an abrogation of responsibility by the government.*

**CPAG**

We have previously made the point about the discretion relating to the deadline day being concentrated in the lead-up period. Until the deadline day is reached, there are a number of possible outcomes: a longer notice period can be set at the outset, extensions can be requested and granted (repeatedly) for 'good reason' and the Secretary of State can cancel or extend a deadline day. Once the deadline day has passed however, a single, limited possibility remains – the one month rule for backdating a Universal Claim, supplemented by the additional ground of 'official error'.

Beyond the one month backdating period, all discretion ceases. The consequences of missing the deadline may be devastating for some claimants. Not only would any potential transitional protection be lost (perhaps lasting years and amounting to a

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<sup>31</sup> Letter from Neil Couling to Alison Garnham, Chief Executive of Child Poverty Action Group, dated 16 August 2018.

very large sum), but the gap between the ending of the old award and the date of the Universal Claim, plus the typical five week wait for the first Universal Credit payment, may all combine to have significant adverse financial consequences for a household relying on income from the benefit system.

There will be others for whom the requirements of Universal Credit will expose a vulnerability that would have remained undisclosed had entitlement to legacy benefits continued. Nobody, including possibly the claimant, will be aware of any impending difficulties until it is too late. All of this increases the risk of individuals missing the deadline day.

Under the rules as presented to us, there is an inevitability about some claimants failing to make their Universal Credit claim in time and will therefore lose their transitional protection.

*We know that each year between 300,000 and 400,000<sup>32</sup> tax credit claimants miss the 31 July renewals deadline and HMRC have to restore the claims for the majority of those people. It has been extremely difficult for HMRC to identify why this may be the case and to reduce the number of cases they are required to restore. This is against a backdrop of a familiar system (in place since 2003), large scale advertising campaigns on TV and radio, reminder text messages and paperwork explaining the deadline. Yet despite all of this, a significant number of people do not take the action required.*

**Low Incomes Tax Reform Group**

The NFU has provided an example of a self-employed sheep farmer receiving the migration notice at the start of lambing. The likelihood that he would have the time to engage in the Universal Credit claiming process at that point would be slim. It is not difficult to imagine how others might miss the deadline. Some people are likely to leave their claim to the 'last minute'. Given that it may take two days to register on the secure Government gateway before spending up to an hour making a Universal Credit claim, deferring action is a high-risk strategy – especially if the process is not as straightforward as the claimant had anticipated and further support is required.<sup>33</sup> Despite their best intentions to comply a claimant could well lose out.

Others may miss the deadline without even realising it. Official letters may fail for a variety of reasons. For example, the letter may not be received – a common scenario for some claimants with chaotic lifestyles and who change address regularly.

*People who are homeless may be moving around several addresses, whether they are*

<sup>32</sup> HMRC press release: [More than a million people still need to review their tax credits](#) (July 2018)

<sup>33</sup> The Department estimates that, on average, it takes between 20-60 minutes to make a claim to Universal Credit.

*rough sleeping, sofa surfing, or living in temporary accommodation...There is a risk that people in this situation will miss a letter or DWP will send it to the wrong address.*

**Shelter**

A letter may be correctly delivered but never reach the claimant. Those living in flats where the post may be deposited collectively for all the residents are particularly susceptible to having letters going missing. Claimants away from home for a lengthy period, for example where they are in hospital or staying with family members after a bereavement, may also fail to see the correspondence before the cut-off date.

There will be cases where the letter reaches the claimant, but is not read. Several individual claimants have told us about their fear of being confronted with a brown envelope.

*"It's not understanding the letters, it's actually opening them. Just the sight of a brown envelope sends me into a huge panic."*

*"... everything goes foggy as soon as I see a brown envelope."*

Those reactions may represent the extreme end of the spectrum, but we understand the experience of leaving official-looking letters unopened for several days is far from uncommon.

Finally, the letters may simply not be understood for a variety of reasons. The Department has sought to improve the clarity of its communications in recent years, but many claimants have told us that they can still be difficult to understand:

*"It's all jibberish"*

*"...difficult, confusing and anxiety provoking"*

*"I'm educated to First class degree level and I find it difficult"*

*"Letters from DWP are often poorly written, either using jargon or obscure"*

Because the consequences of missing the deadline are so potentially damaging, many respondents have recommended that the legacy benefit should continue in payment until the Universal Claim has been made. We sympathise with such a recommendation but cannot support it for the simple reason that unless the legacy benefit is stopped some claimants will never be persuaded to move to Universal Credit.



We do however believe that there must be something in place after the deadline date which would link the ending of the legacy award with the beginning of the Universal Credit award. Doing so would close any gap that might otherwise arise and avoid the claimant not getting any potential transitional protection.

Some of the responses we received recommended that the current one month period of backdating be extended to three months.

*...due to the issues that have already arisen where people with mental and physical illnesses are struggling to make and maintain Universal Credit claims, we would like to see an amendment ...in order to extend the period during which a delayed claim can be made from 1 month to 3 months.*

**Brighton Unemployed Centre Families Project**

*...we propose that under managed migration, claims should be capable of being backdated by three months, without loss of entitlement to transitional protection.*

**Riverside Group**

Others have said that the current grounds for back-dating are too restricted and that they need to be relaxed for this process.

*If legacy benefits are stopped due to a failure to claim there should be far wider grounds for backdating the universal credit award put into the regulations (including a lack of understanding of the requirements to claim, or a lack of support to make the claim) and the maximum period of backdating should be extended to at least three months with provision for further backdating in exceptional circumstances.*

**NAWRA**

*Better safeguards are needed against losing transitional protection as a result of just missing the deadline day to make a claim or request an extension. Regulations should be amended to allow backdating according to the 'good reason' principle set out for requesting a deadline day extension, rather than the very limited grounds for backdating under existing Universal Credit regulations.*

**Gingerbread**

Other approaches have been suggested. Housing Rights Northern Ireland have said, for example, that no time limit should be applied when a Universal Credit claim is back-dated on the grounds of official error. CPAG have made the same point but recommend a general six month period of date-dating where good reason is shown.

Another approach would be to prescribe a three month period in which to make the Universal Credit claim on managed migration. That would mean a claim for Universal Credit could be made up to three months after the deadline date had passed without it needing to be back-dated.

A further option commended to us is the approach HMRC use in renewal claims for tax credits. Tax credits awards are made for fixed term periods and often last for a full year beginning on 6 April in one year and ending on 5 April in the following year. Although the period of the award may be less than a full year it will never exceed it. At the end of the award claimants are invited to make a renewal claim. This is followed by a period during which payments continue, but on a provisional basis. In simple terms, an assumption is made that another claim will be submitted and a further award made. If that fails to materialise the provisional payments will be classed as overpayments and the recipient will be asked to pay it back.

If a renewal claim is made and tax credits awarded, any provisional payments will be taken to have been part of the award with any necessary adjustments being made to take account of any over or under estimations. Where this process may be helpful in providing a model for the managed migration exercise is in the fact that, during the renewal process, claimants are given a deadline by which the renewal claim must be received. If no claim is submitted by the deadline, provisional payments stop. It is the actual cessation of benefit which, despite HMRC's best efforts to encourage people to submit their renewal claim within the given deadline, is often the trigger for action. In the case of tax credits however, missing the deadline is not ultimately decisive. Claimants have a further month in which to make their claim and have it backdated without having to prove good cause for backdating. This particular option has the advantage of familiarity for the large number of claimants being migrated from tax credits to Universal Credit.

*We strongly urge the Department to amend the regulations to allow anyone who makes a Universal Credit claim within one month of their deadline date to have their position restored without the need for any evidence or a reason. This mirrors the current tax credit 30-day grace period where someone missed the renewals deadline as it is often only when money stops that claimants are alerted that there is an issue and that they need to take action. Without a provision like this, there is a real risk that people will suffer hardship in both the short- and long-term (through*

*the loss of transitional protection). This is not a situation that is akin to someone making a brand new claim to Universal Credit following a change to their circumstances.*

**Low Incomes Tax Reform Group**

While the potential solutions put forward vary, there is widespread agreement that there is a gap in the provisions which needs to be addressed.

These suggestions focus on moving the start date for Universal Credit back in time so that the gap between awards is closed, mostly through back-dating. It is important to acknowledge, however, that this may create practical difficulties for claimants and the Department alike. The process of providing evidence to demonstrate entitlement throughout the period in question could be difficult for some claimants. The self-employed and those with fluctuating earnings, for example, would need to produce evidence of receipts and expenditure for the past period in question, and any delays in doing so would add to the waiting time before the first payment of Universal Credit can be made. For the Department, this would require consideration by a decision-maker on whether the grounds are satisfied.

An alternative approach would be to run the legacy benefit award forward so that it abuts the Universal Credit award when the claim is eventually made. Payment of the legacy benefit would be suspended at the point at which the claimant missed the deadline. Underlying entitlement would continue but payment would stop.<sup>34</sup> The claimant would then have a period of time in which to make their Universal Credit claim. Should they do so, arrears of the legacy benefit would be paid up to the start of the Universal Credit award when entitlement to the legacy benefit would simultaneously end. A failure to make the Universal Claim within the stipulated period would mean that a retrospective decision ending legacy benefit entitlement on the date from which payments were suspended would be needed.

The Committee accepts that, for some claimants, there has to be a trigger which will prompt them to take action. However the Department's proposal that claimants will lose their entitlement to benefit unless they respond within one month to their invitation letter, or can demonstrate a reason for the delay which falls into a 'prescribed category', is not one that the Committee can support.<sup>35</sup> It again transfers

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<sup>34</sup> Provided that Schedule 6 to the Welfare Reform Act 2012 to terminate an award of an existing benefit under the transitional arrangements was held to include the ability to suspend payment of benefit as a prior step in the process.

<sup>35</sup> For example if:

- official error occurred; or
- the claimant has a disability; or
- medical evidence of an illness that prevented them from making a claim can be provided; or
- the claimant was unable to make a claim by means of an electronic communication because the official computer system was inoperative.

risks to claimants which we think can be ameliorated without outing the overall migration at risk.

### **Recommendation 8**

**We recommend that the Department put in place protection for those who miss their deadline date and who do not qualify for the one month backdating rule in Universal Credit. There are various technical possibilities for such a safety net, but we are drawn to two in particular that we recommend the Department explores further:**

- (i) adopting tax credit practice, by establishing a grace period after the legacy benefit award has been terminated, where the claim for Universal Credit can be made without having to show good cause for backdating; or**
- (ii) suspending payment of the legacy benefit for a period pending receipt of the claim for Universal Credit, without terminating entitlement to legacy benefit so that arrears of the legacy benefit can be paid to an individual when they have made their claim.**

### **Gap to the first payment of Universal Credit**

A number of respondents have commented that claimants moving to Universal Credit from legacy benefits as part of the managed migration process will face a gap in benefit payments until their first payment of Universal Credit is made. The changes announced by the Chancellor of the Exchequer in the Autumn Budget in 2017 sought to deal with a growing concern about the period of time people were expected to wait before getting their first full payment.<sup>36</sup> Whilst the full effect of those measures are yet to be understood, the early indications are that the two week run-on of Housing Benefit and the abolition of the seven day waiting period - coupled with the greater publicity of, and procedural easements around, the availability of advance payments of Universal Credit - are proving beneficial. Nonetheless, because of the way Universal Credit is structured in terms of monthly assessment periods, a gap remains inevitable when people go from fortnightly payments to monthly payments.

The Trussell Trust's recent survey of 284 individuals from 29 foodbanks in the Trussell Trust network, gives us an indication of what a payment gap can realistically mean for individual claimants:

*The delays in claiming the first payments has led to an increase in debt, rent arrears, caused problems with budgeting and increased issues with mental health. There was even a case of an eviction when housing payments were missed. This*

<sup>36</sup> Autumn Budget 2017: [the Chancellor of the Exchequer's statement](#)

*also seems to be disproportionately detrimental to families with children. One respondent explained how it had affected his family, saying “I have fallen in arrears with my rent, my mental health has deteriorated immensely and having young children, it has been difficult”, with another respondent saying that it “[m]essed me and my family up so much, wanted to give kids up so they g[e]t food, [I] couldn’t cope.” It is clear from this data that, in some cases, the prolonged waiting periods for the initial payment is pushing people into issues with debt in such an extreme way that is meaning that people are unable to feed neither themselves nor their children. It is causing distress to the extent that they feel they are unable to care for their own children, with one case of a mother handing her children over to a friend to ensure they were cared for when her income stopped.*

**Trussell Trust**

It is easy to think that the consequences of a gap in payment are simply around trying to make ends meet but, the Trussell Trust’s survey found the impact has a wider reach than that. Claimants with existing medical conditions reported that their conditions deteriorated while waiting for payment, for example an insulin dependent claimant noted that *“not having money to purchase food affects my physical and mental health.”* In another more extreme case we have been told about a person with cancer who gave up work as they started chemotherapy treatment - their application was made on 3 January 2018, but was not finalised until 11 March 2018, resulting in 67 days without any income.

A number of respondents to our consultation have said that, in addition to a two week run-on of Housing Benefit, there should be a fortnight’s run-on of legacy benefits as well. On paper there is no gap – the person gets paid benefit in respect of each day of the period in question. However the reality is that claimants have to wait a fortnight without benefit and then receive a month’s benefit which must last them for the month ahead. The change in periodicity of payment means that out of work claimants without access to alternative funds will have a minimum two week gap in their payment.

In April 2009, the equivalent of a week’s benefit was paid as a one-off extra-statutory payment to those affected by the Department’s decision to move working-age claimants from weekly to fortnightly payments, and assign them a payday based on their National Insurance number.<sup>37</sup> The aim was to minimise disruption and ensure that existing claimants should not be disadvantaged by a decision to change the periodicity of their payments. The principle is the same here – existing claimants will be required to comply with a system that will mean living without money for a period of time. In putting forward the proposals for fortnightly payments in 2008, the Department said that the various implementation approaches being adopted *“had*

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<sup>37</sup> The Social Security (Claims and Payments) Amendment Regulations 2009 (SI 2009 No 604) and the Social Security (Transitional Payments) Regulations 2009 (SI 2009 No 609)

been designed to minimise the adverse impacts on customers during the conversion process”.<sup>38</sup> Ten years on, and claimants who would struggle during the initial period will have the sole option of taking an advance payment – in effect the equivalent of an interest-free loan.

We received responses that asked for a two week run-on of legacy benefits.

*Consideration should also be given to...introduce an automatic 2 week run on for all legacy benefits, similar to the Housing Benefit run on introduced in April of this year. This could significantly help existing legacy benefit claimants to better manage their finances during the initial wait for their first Universal Credit payment, as well as helping them to adjust to a monthly payment cycle. While Advance Payments are available to help people with this initial wait... they are not always the best option for claimants who are already struggling financially.*

**Citizens Advice**

*As these are exceptional circumstances, we recommend that provision is made, in addition to the provision to pay Housing Benefit for a further two weeks, for all legacy benefits to be paid for two weeks after the date of the Universal Credit claim. Although we recognise that this will be a cost to the public purse we believe it is both justifiable and reasonable in order to prevent financial hardship to claimants migrating to Universal Credit, and as a one-off investment to ensure a successful transition.*

**CPAG**

Although the Department has recognised the problem of the wait to first payday and strengthened the procedures for securing an advance payment, there is growing evidence that, whilst alleviating an immediate financial crisis, it defers problems over a longer time-frame. Over the period that the advance payment is recovered, rent arrears may continue to accrue, some people may continue to rely on food banks and other sources of help, and financial hardship is likely to persist.

*Only 1 in 5 of those we interviewed for the study were in debt prior to going onto Universal Credit. After going onto Universal Credit only 2 in 15 remained out of debt. One person told us: ‘I’ve never been so broke.’*

**Citizens Advice Swansea, Neath and Port Talbot**

<sup>38</sup> [SSAC's advice to the Secretary of State for Work and Pensions: The Social Security \(Claims and Payments\) Amendment Regulations 2009 \(SI 2009 No 604\) and the Social Security \(Transitional Payments\) Regulations 2009](#)

*In spite of the welcome introduction of a housing benefit run-on and improved availability of advances, it is our experience that the initial wait for payment still creates difficulties for claimants. First because some experience much longer waits for their full payment than the intended five weeks (as highlighted by the NAO) and second because repayment levels for advances can mean that they simply create hardship later in someone's claim. Some claimants do not accept an advance for this reason. The Secretary of State herself has acknowledged that changes are needed to debt repayments within universal credit.<sup>39</sup> We also know that some claimants refuse advances because they have calculated that repayments will not be affordable, even if this causes them hardship in the first weeks of their claim.*

**CPAG**

*It is very unlikely that the people we represent will have the financial resources required to bridge the gap between applying for Universal Credit and receiving their first payment, as few people who are homeless or at risk of homelessness will have savings or support from family. We have numerous examples of individuals who have become reliant on foodbanks, run up huge arrears, or been served with notices of eviction whilst waiting for their first payment. Many of these individuals will require an advance payment to cover their living costs during the assessment period and may struggle to repay this from their award, particularly if they are subject to sanctions.*

**St Mungo's**

The cost of providing a fortnight's run-on of legacy benefits would involve significant one-off additional expenditure from public funds. However our stakeholders have put forward a persuasive case arguing that, if there is a rationale for running on Housing Benefit for a fortnight, why should living expenses be regarded differently?

An alternative would be to provide a fortnight's run-on for ESA claimants and those whose legacy benefit included a disability related premium. Such claimants would be especially susceptible to the risks incurred by the loss of a fortnight's benefit and a case for preferential treatment could be argued.

*The majority of people receiving ESA have been managing their household income in this way [ie on the basis of fortnightly payments], and so are unlikely to be prepared to manage financially during the initial five-week wait – many may have difficulty adjusting to monthly payments after that. Alternative Payment Arrangements – such as direct payments to landlords or fortnightly payments of*

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<sup>39</sup> [Speech by the Secretary of State for Work and Pensions at Reform Event](#) (19 July 2018)

*Universal Credit – could offer a means of mitigating the impact of the move to the new benefit.*

**Scope**

*Just as the housing benefit has a run on period of 2 weeks, we would recommend that there should also be a run on period for ESA and all disability-related benefits, so there is added financial security for those claimants who are potentially vulnerable.*

**Parkinsons UK**

Several individuals in receipt of ESA who responded to our consultation spoke of the personal difficulties they would face in terms of the prospect of managing this initial period.

*“Waiting for the first payment would be “very, very difficult as I am number dyslexic so both the wait and budgeting would cause anxiety and distress”*

*“I’ve experience of rough sleeping due to the severity of my mental health symptoms. It took a lot of work by a number of good professionals to get my life (and benefits) settled once more. It doesn’t take much to knock all that over.”*

*“I would rather not have an advance as I would find it hard to pay back. It is more likely that I would just stop paying my bills during the five week wait”.*

*“...I am blind and dependent on ESA benefits and I cannot wait 5 to 8 weeks without any money”.*

*“The application was fairly straightforward; however the 8 weeks I had to wait for my first payment caused me anxiety and insomnia. The advance payment I received was £150 which inevitably ran out quickly and I was left with nothing for roughly 4 weeks.”*

We do not believe that out of work claimants whose circumstances have not changed, and who may be completely reliant on benefits paid fortnightly, should bear the risks of the Government’s decision that Universal Credit be paid monthly. The Government is proposing that they be offered a choice between financial hardship as they wait for their first payment, or getting into debt to the Department by requesting an advance payment. We do not believe that this is acceptable.



## **Recommendation 9**

**We strongly recommend that the Department review what steps it can take to mitigate the effects of its policy. Our preference is that out of work benefits should automatically run-on for two weeks, as housing benefit now does. If the Government cannot accept this, then repayment terms for any advance should be more flexible than the current arrangements in recognition of the fact that it is the Government that has put claimants in the situation of needing a loan.**

### **Transitional Protection**

#### ***The £16k capital exemption for TC claimants***

The proposed one year exemption from the capital disqualification rule means that some former tax credit claimants in rented accommodation will receive a bonus in their monthly Universal Credit payments. With capital in excess of £16,000 there would have been no entitlement to Housing Benefit whilst entitlement to tax credits would have continued (capital is fully disregarded for tax credits purposes). On being managed migrated to Universal Credit however, their award will be boosted by the inclusion of housing costs. Although this will only last for a year and will probably affect a relatively low number of claimants, this would nonetheless represent a windfall for claimants that they could not have expected. We recommend that this loophole be closed so that the integrity of the transitional protection arrangements is not compromised.

## **Recommendation 10**

**We recommend that the Department should not allow former tax credit claimants with capital over £16,000 to temporarily receive a higher Universal Credit amount than they were previously getting, simply because their housing costs are now included in their award. We are of the firm view that, whilst transitional protection should ensure claimants do not receive less under Universal Credit than they received under legacy benefits, it should not lead to them receiving more than their entitlement under legacy benefits. We suggest that claimants in such circumstances be treated as having no housing costs.**

#### ***Calculation on Transitional Protection***

There are several different elements that comprise the overall transitional protection package. The basic principle that claimants should not receive a drop in income at the point of migration was a commitment made by Ministers when Universal Credit was first introduced and is secured by the draft legislation presented to the

Committee.<sup>40</sup> For claimants migrating to Universal Credit from legacy benefits other than tax credits, determining the appropriate amount of transitional protection is relatively straightforward, although it requires the conversion of a weekly rate of benefit to a monthly rate and a comparison to be made. A comparison between a tax credit award and a Universal Credit award is more complicated. This is an area where we believe the Department needs to set out a series of detailed examples so that those affected can be assured that, whatever the configuration of individual circumstances, people will not end up with less benefit than they were previously getting when the circumstances have not otherwise changed. There is a particular communications challenge with this aspect of the policy, because the figures that the Department propose to use for the purposes of the comparison will seldom be recognisable to the claimant themselves. For that reason we think there is a strong risk that a significant proportion of tax credit claimants will generate a lot of additional work for DWP and HMRC as they either seek access to the detailed workings behind the transitional element included in their Universal Credit award, or ask to have those detailed workings explained.

*At present, we do not think it is clear what rate of tax credits should be used in the calculation of 'total legacy benefit amount' because it refers to a daily rate of tax credits that is not part of the usual tax credit calculation. Under tax credit legislation, the daily maximum rate of elements is calculated, but income and the thresholds are calculated by reference to a relevant period.*

**Low Incomes Tax Reform Group**

Anything that can be done to present and explain the figure-work in as simple a way as possible would be to the ultimate benefit of the Department and HMRC as well as helping individuals affected. The starting point in such an exercise must be the transparent fairness of the policy itself.

Our main concern is the fact that, as currently presented, transitional protection will be lost in two particular scenarios to do with earnings. In the first instance, someone whose earnings take them off Universal Credit for four successive months would not regain transitional protection of the earnings drop the following month and bring them back into Universal Credit. This would potentially mean that seasonal workers and others who would expect to have short periods of non-entitlement because of higher earnings would lose out. The question arises as to whether a longer linking period should be allowed.

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<sup>40</sup> Lord Freud, the Minister of State for Welfare Reform, said at the [Second Reading of the Welfare Reform Bill](#) on 13 Sept 2011: "...the commitment to transitional protection means there will be no cash losers at the point of transition, all other things being equal."

The second scenario is where someone's earnings drop, for four successive months, below the earnings threshold for exemption from conditionality. This means that they would not only have to start actively looking for work, but they would also lose transitional protection, and see their benefit income fall at the time they most need it. This will again adversely impact seasonal workers and those engaged in zero hours contract work and other forms of work where income is highly variable or uncertain.

We understand from the Department that the rationale for this particular rule is based on an assumption that the increase or drop in earnings represents a change in the work being done – whether in terms of hours, patterns of work or substantial changes in the rate of remuneration. If such a change takes place over a sustained period, the argument would be that that provides the grounds for adjusting the Universal Credit to align with the new circumstances and, in the process, withdrawing the transitional protection previously in payment.

Our concern would be that the rule goes further than intended. It would capture people who had no change in circumstances but who were simply following their previous pattern of work. The following example illustrates the point.

*Take for example a livestock farmer who works year round but only receives income in a few months. They tend and care for their sheep year round but broadly speaking lambs are only born within a limited season during the spring. As a result sales are made in just a few months of the year but expenditure is incurred year round. This does not mean they are not working full time, that their business is unviable, or that their annual profits will be below the MIF. It does however seemingly mean that they will lose their transitional protection in addition to having the MIF applied in the months when they have no sales/income and receiving no award in the months in which their sales are made. This is a wholly unacceptable proposal that completely disregards the practical realities of operating a self-employed farm business and which needs to be urgently addressed.*

**NFU**

The same issue affects seasonal workers who have a clearly defined on and off season where the prospect of holding on to any transitional protection calculated at the point of transfer would appear remote. If, for instance, a self-employed ice-cream salesman is able to get through the higher paid summer months without losing transitional protection, there is every possibility that it will be lost over the autumn and winter anyway. This would appear to be harsh if their pattern of work is unchanged.

The same point was raised in connection with actors.

*If the premise of the transitional protection on offer is to ensure that those transferred do not lost out in cash terms then this will not be the case for many of the self-employed...*

**Equity**

It was also pointed out that the proposed rule on losing transitional protection because of a change of earnings could have an impact on work incentives. The Department has presumably considered whether there should be a longer linking period and has weighed the additional costs against any disincentives for taking on employment and concluded that three months strikes a reasonable balance.

*We are worried that these provisions will make it harder for some people with mental health problems to experiment and take risks when thinking about moving back to work. Under the legacy system a person in receipt of disability premiums would know that if they moved back into work temporarily, but either find the work unmanageable or experience a deterioration in their mental health, they should be able to return to the same level of financial support. However a person receiving transitional protection under the draft regulations does not have this same safety net, as if they work for more than three months they cannot then return to the same level of payment.*

**Mind**

We are concerned about the treatment of people with fluctuating earnings who stand to lose transitional protection if their income takes them off Universal Credit for four months.

### **Recommendation 11**

**We recommend that no-one whose earnings take them off Universal Credit should lose Transitional Protection unless their earnings have been above the Universal Credit threshold for six consecutive months – not the Government’s proposal of four.**

The Government’s challenge in meeting its commitment for people receiving tax credits is particularly difficult. There are a number of different ways in which it can be achieved. We felt that this was an area that required more evidence.

### **Recommendation 12**

**The Department should also, ahead of the Parliamentary debates on these affirmative regulations, publish some worked examples of tax credit claimants with changes in circumstances (particularly in relation to earnings and patterns of working) which have and have not been reported to HMRC,**

**showing how the total legacy amount is calculated. We would like to be assured that the method of calculating this amount achieves the Government's commitment that there will be no cash losers for existing claimants when Universal Credit is implemented.**

## **Conclusion**

We began this report by setting out our criteria for evaluating the policy on managed migration. We are not persuaded that the proposals presented to us yet fully meet those criteria. The policy has many different facets to it, but on the single matter of requiring large numbers of people to make a claim by providing information the Government (and in many cases the Department) already holds and where failure to make that claim in time can result in a significant loss of income over a sustained period, we have reservations. We cannot see that a failure to comply with the obligations being made of existing claimants are either fair or proportionate. Whilst procedures are being put in place to support people through the process, it is inevitable that there will be gaps into which people, often in highly vulnerable circumstances, will fall. Unlike some previous benefit changes, the effect of losing out in this particular exercise is potentially very serious and long lasting.

We also have significant concerns about the scale of the operational challenge facing the Department in terms of the delivery of these proposals. We welcome the Department's commitment to consult, but consider that – if that consultation is to be meaningful and effective – the current timetable is unrealistic. Around three million individuals are relying on the Department to get this right; we strongly encourage the Department to give itself the time it needs to assess robustly its operational readiness, and to adopt a transparent approach going forward so that those who have the expertise and skill to provide support have an opportunity to do so.

We therefore commend this report for the Government's urgent consideration.

## Other Issues for the Department to consider

The main report sets out our primary recommendations. However, we have several concerns about a number of other aspects of the Government's proposals; which we think merit further consideration by the Department.

This Annex explains what they are.

### **Severe Disability Premium**

We welcome the Department's decision to defer migrating claimants who are entitled to the Severe Disability Premium as a component part of their existing legacy benefit. Likewise we welcome the decision that eligible claimants who have been, or will be, migrated naturally and lose their Severe Disability Premium as a result will have access to a transitional payment with arrears payable from the start of the Universal Credit award.

Respondents to our consultation have noted that, following a recent High Court case,<sup>41</sup> which touched on the issue of natural migration and loss of Severe Disability Premium the Department compensated the two plaintiffs for the precise amount they had lost through having to claim Universal Credit. However, the payment being offered to others being naturally migrated to Universal Credit falls short of that level. It also falls short of the level that people who stay on legacy benefits will receive. The Department's position is that the payment is a transitional payment, not a replacement for Severe Disability Premium.

*The Government have excluded any transitional payment for the loss to individuals of their EDP component. There is no explanation as to why they have done this.*

*We are unable to understand the basis on which the Secretary of State is proposing a flat rate £80 transitional payment in cases where the actual loss suffered by individuals who have naturally migrated to Universal Credit is normally around £184.56. This is demonstrated by the clear and stark difference in treatment between the (full) transitional element which those still in receipt of legacy benefits will receive under the draft Regulations and the significantly lower amount which those who have already migrated will get. There is no logical basis for distinguishing between these two cohorts – their need for the transitional element is identical.*

*As drafted, the Regulations, in our view, clearly unlawfully discriminate between those, like our clients, who were in receipt of SDP and prior to the Regulations coming into force have naturally migrated onto Universal Credit and those in*

<sup>41</sup> R (TP & AR) v SoS for Work & Pensions and the Equality and Human Rights Commission [2018] EWHC 1474 (Admin)

*receipt of SDP and have not naturally migrated and under the terms of the Regulations will remain on legacy benefits until they are part of the managed migration programme.*

*If the Regulations come into force as drafted, we consider that there are clear grounds to bring urgent judicial review proceedings challenging the relevant provisions on the basis that they constitute unlawful discrimination contrary to Article 14 read with Article 1 of the First Protocol of the ECHR, on behalf of any affected individual.*

**Leigh Day**

Other respondents have pointed out that the Enhanced Disability Premium has not been included in the proposals for transitional payment and urged the Government to reconsider this point.

*We also recommend that Enhanced Disability Premium be included in the calculations where appropriate. Implementing this recommendation would restore equality and fairness to the system and would reduce the likelihood of future legal challenges.*

**Parkinsons UK**

Other examples have been provided where people have, for instance, been migrated on to Universal Credit but have since had a change of circumstances which means they would not be getting the Severe Disability Premium had they remained in receipt of a legacy benefit. Such people would not be entitled to the transitional payment.

*... there is no backdated or ongoing transitional protection for disabled workers who were in receipt of the disabled workers element in tax credits (worth about £3,000 a year) who have already naturally migrated to Universal Credit. The same is true for ESA claimants who were in receipt of the Work-Related Activity Group element and Enhanced Disability Premium (EDP).<sup>42</sup>*

**GLA**

A number of those commenting on the proposals have argued that the best way to deal with this issue, alongside addressing an already apparent need, is to allow an element to be added to Universal Credit of equivalent value to the Severe Disability Premium and fulfilling a similar function.

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<sup>42</sup>Work and Pensions Committee, 'Oral evidence: Universal Credit Rollout, HC 336', July 2018

*The SDP needs to be restored within Universal Credit. The costs of providing additional care to disabled people is understood and addressed through Carer's Allowance (and the carer's premium within Income Support and income-based Jobseeker's Allowance). Similarly, it needs to be understood that there are even greater costs faced by those without a carer, who have to pay for even simple jobs to be completed.*

**The Children's Society**

*The UK Government should redesign Universal Credit to include severe disability and enhanced disability premiums. This would negate the need for transitional protection and reinstate a fair recognition of the pressures and costs facing disabled people... we are also disappointed that the transitional protection proposals do not recognise the loss of enhanced disability premium and the reduction in value of the lower disabled child element.*

**Glasgow Disability Alliance**

The point has also been made that this cohort of claimants will be among those least able to comply with the obligation to make a timely claim for Universal Credit and therefore most in danger of missing out on transitional protection, regardless of its level.

*Almost by definition, those in receipt of the SDP will have both a severe disability and have no carer and no-one who lives with them who might be able to assist with an administrative process such as claiming a new benefit. They are therefore the group most likely to be affected by missing out on transitional protection and the group less likely to cope with complying.*

**Craven and Harrogate Citizens Advice**

Whilst we consider it unlikely that the Government would wish to change its approach to targeting resources on disabled people within Universal Credit, there is a good case for looking again at the level of the transitional payments being offered following natural migration for those who were previously entitled to a legacy benefit which included the Severe Disability Premium and/or the Enhanced Disability Premium.



## ***Impact on the self-employed***

Establishing a self-employed business can take some time. So the Department gives self-employed people a start-up period of 12 months before the Minimum Income Floor (MIF) is applied. The Minimum Income Floor is in effect a broad test of whether someone is 'gainfully self-employed'. When someone's actual income is lower than the floor, the amount of Universal Credit will be based on the higher 'assumed earnings' of the Minimum Income Floor, not their actual earnings, and they will not be required to look for, and take alternative employment, although they may choose to do so to make up any shortfall in their actual earnings.

The above rules also apply to those who **naturally** migrate onto Universal Credit.

The proposal for **managed** migration is also to have a six month grace period for self-employed people who have already been self-employed for over a year. For those people who started self-employment within 12 months of managed migration, a start-up period of 12 months applies. However, both a grace and start-up period can be cancelled if a decision maker thinks that the self-employed person is not taking active steps to try to increase their earnings to the 'individual threshold'.

The majority of our respondents who commented on the Minimum Income Floor suggested that the grace period for all should be extended from six months to 12 months in managed migration cases, however their main concern was the overall principle of the Floor itself. We have already reported on *The Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015* where the issue of the MIF was a prominent feature.<sup>43</sup> Those regulations have been deferred for a year on two occasions and there remains uncertainty as to the extent to which self-employed workers will be impacted by the legislation.

*Gingerbread would like to see a full start-up period of 12 months for claimants before applying the Minimum Income Floor (MIF), regardless of when they started self-employment (ie even if they have been self-employed for a year). This is important for single parents, giving them a more reasonable chance to build up their business in line with their children's childcare and school hours. In relation to managed migration, this would mean a 12-month grace period, rather than six months, to ensure sufficient protection from potentially significant losses in line with the aims of transitional protection.*

*Extended protection is particularly important for single parents of children aged four and under who would not have been required to be available for work under legacy benefits and may have planned to build their business slowly while they have children of pre-school age. We recommend protection should go beyond a*

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<sup>43</sup> [SSAC's advice to the Secretary of State for Work and Pensions: The Universal Credit \(Surpluses and Self-employed Losses\) \(Digital Service\) Amendment Regulations 2015](#)

*12-month grace period for these parents, with an exemption from the MIF until their youngest child turns five rather than disrupt business and employment plans.*

**Gingerbread**

*It is proposed that the Minimum Income Floor be ignored for six months. Whilst this is welcomed, we feel that this should be extended from six to 12 months.*

**Paragon Housing**

*Universal credit will split my family up, my partner is self-employed and earns more in the summer than the winter, but this is not taken into consideration, and with the MIF we will not be able to survive. He will either have to give up working or move out into a house share. I can't work due to being a full time carer to my disabled son. Transitional protection won't apply to us due to MIF – so for us and many other self-employed it will be doing the opposite and pushing us out of work*

**Individual**

If the problems that many of our respondents anticipate with the MIF materialise, they will become much more evident as managed migration dramatically increases the number of self-employed people on Universal Credit. A number of respondents argue that the Department should undertake a robust evaluation of the policy and its operation. We agree with that view. It is important to determine whether it operates equitably, what effect it has on the self-employed themselves, and what effect it is having on start-ups generally. We also think that evaluation should extend to the related tests of 'gainful self-employment' which underpin the way in which the Minimum Income Floor operates.

*The effects the MIF will have are largely unknown. It has had little evaluation to date and there are no comparable international schemes. It may incentivise self-employed claimants to increase their earnings, but it could also lead to them abandoning otherwise viable businesses that simply require more time to become established or to experience considerable financial hardship. The regulations will greatly expand the number of claimants subject to this, still experimental, policy and reduce the transitional protection offered to many self-employed people. Given we currently know so little about the effects of the policy we would recommend pausing its implementation until it has been fully evaluated.*

**Citizens Advice**

*MIF will not be applied for 6 months... an issue around the impact this will have on the self-employed, who often have low and erratic income levels which cannot be judged by simplistic measures. There needs to be an Equality Assessment of this group to ensure that their position on benefits is not affected by the move to Universal Credit, perhaps including looking at an extension to 12 months so that earnings can be assessed over a yearly period like tax.*

**National Federation of Arms-Length Management Organisations**

### **Capital above £16,000 for former Tax Credit Claimants**

In tax credits, only income derived from capital affects entitlement and the amount of benefit to be awarded. Universal Credit is very different, as capital above £6,000 reduces benefit, and any savings over £16,000 disentitles a household entirely. The Department has advised that a number of options were considered for the purposes of establishing a transitional protection policy. Details of those options are not set out, but the favoured approach was to maintain the Universal Credit rules on tariff income whilst having a 12 month exemption for the disqualification rule on capital in excess of £16,000.

There are a number of difficulties with this approach. Claimants who dispose of capital in order to claim Universal Credit can be treated as still possessing it. This makes for potentially confusing messages in the communications to be given to claimants. The Department will be hard-pressed to explain the rules effectively without inadvertently encouraging claimants to bring their capital below £16,000 as the first anniversary of entitlement approaches. Should claimants do that they would risk being disqualified to benefit because they spent their savings in order to continue to receive Universal Credit. To enforce 'the deprivation of capital' rule rigidly is likely to antagonise those affected by it, while ignoring it would treat managed migrating claimants very differently from other claimants.

There is a further possibility of inconsistency of treatment which we raised with the Department when the proposals were first presented to us. A claimant with capital just over £16,000 who dips below that limit entitlement, only to go above it again within the first year of Universal Credit entitlement, would have their award terminated. Another person with substantially more capital and having a similar dip, but not enough to bring them below the £16,000 limit, would continue to be entitled. The Department argued that having a simple rule meant that there might be some inconsistencies in treatment but that the likelihood would be that few people would lose out in the way suggested.

## ***Loss of Transitional Protection***

Some of our contributors have commented about the erosion of transitional protection. They have, for example, said that it makes little sense that the birth of a child should erode transitional protection whilst an increase in childcare does not. Several Housing Associations and those dealing with housing have also suggested that rent increases should not erode transitional protection. Others have said that uprating should also be exempt. If the Department heeded all these comments there would be no erosion of transitional protection at all and it would continue to be paid with Universal Credit indefinitely. That position is difficult to sustain. We have therefore directed our comments at those circumstances where transitional protection is lost in its entirety.

One example is the loss of transitional protection when couples split or form. The Department's position is that whenever two people come together and make a joint claim for Universal Credit or split and make separate claims, those are significant changes in circumstances and transitional protection comes to an end. In many circumstances this is understandable. The benefit income of two single people may well exceed their previous benefit income as a couple. However, in some circumstances, the loss of transitional protection may have adverse consequences – e.g. deterring two single people on benefit from living together. Particular attention has been drawn to what will happen to someone contemplating leaving an abusive relationship but constrained by the prospect of forfeiting transitional protection. The Department has pointed out that they would receive their full entitlement as a single person. But this would not always be true; someone with savings over £16,000 would lose all entitlement to benefit.

Given the Government's focus on taking steps to deal with domestic violence, there may be grounds for making an exception in cases where abuse is alleged. Although that may raise evidential difficulties they would not be beyond what already exists.

*We are extremely concerned that these proposals could trap victims and survivors of domestic violence in abusive relationships.*

**Women's Aid, NI**

There are ways the Department could revisit the policy of losing transitional protection when couples form or separate. The National Association of Welfare Rights Advisers has suggested a different approach.

*Additionally, NAWRA does not agree with the proposal to end transitional protection on becoming or ceasing to be a couple. This could cause additional stress and anxiety in a situation where a relationship has come to an end, particularly where there are elements of abuse in a relationship. Conversely, it*

*could dissuade two people benefitting from forming a couple. NAWRA recognises that working out the transitional protection element is more complex in these situations but suggests the following –*

- Where a couple forms and only one member has a transitional protection element that is carried forward into the couple award.*
- Where a couple forms and both members have a transitional protection element, the higher element is carried forward into the couple award.*
- Where a couple separates, and the transitional protection element is present because of disability (because of the lack of disability premium equivalents in universal credit), the element is carried forward in the award of the person whose new household includes the person with the disability.*
- Where there is more than one person with a disability the transitional protection element is applied pro rata in the relevant person's award.*

**NAWRA**

The case of a couple where both partners were entitled to the SDP as a component part of their legacy system and, on natural migration to Universal Credit, to transitional protection has been cited. If one partner suffers a deterioration in health which requires admission into a residential care home they become separate benefit households for Universal Credit purposes. Under these proposals the partner still at home would lose the transitional protection of their SDP. The same would be true if one of the partners died. Similar concerns about fairness of treatment arise in the example of two individuals, both entitled to the SDP in their own right, forming a couple. Both would lose their transitional protection.

*Imagine a couple where one partner receives the SDP component of transitional protection, whose partner brings in earnings and also qualifies for the carer element. If the couple separate, the disabled person will be left without their partner's earnings, without the carer element, and without their transitional protection, living solely on their individual element, at a time when they have also lost the support and care of their partner. This is unjustifiable. The SDP top-up should remain with the disabled person through changes of circumstance as long as they remain eligible.*

**CPAG**

We believe that the Department should devise a number of different case studies where transitional protection will be lost under these proposals, including instances of couples splitting where a disabled child is involved, domestic violence is alleged or

where one member of the couple dies. We understand that wherever a couple form or split, an existing award of benefit must be terminated and a new one must begin, sometimes without a claim being required. We also understand that the ending of an existing award traditionally means the end of any associated transitional protection. However, we cannot see that there is anything which necessarily prevents transitional protection from attaching to more than one award and believe that there is scope for the Department to examine the hard cases that seem likely to emerge as a result of this rule and make provision for the transferring of the transitional protection where it is justified.

## Summary of ‘managed migration’ proposals

A summary of the main features of the proposals presented to the Committee are as follows<sup>44</sup>.

1. **The setting of an individual deadline date** by which time a claim for Universal Credit must be made. A preparation period of around four to six months will precede the deadline date, alerting claimants to the need to make a claim, warning them that their existing entitlement to legacy benefits would be ending and preparing them for the migration process. Claimants will receive at least one month’s notice of their individual deadline date and the Department will seek to engage with claimants to help them through the process.
2. **Extension of the deadline date**, if the claimant has good reason or at the discretion of the Secretary of State. Repeated requests for an extension can be made, so long as good reason is shown.
3. **Ending the legacy benefit** – will occur either on the day before the Universal Credit claim is made, or on the day before the deadline date if no successful claim for Universal Credit has been made in time. Back-dating of the Universal Credit claim is possible for up to a month in certain circumstances, including for the additional ground of official error.
4. **Missing the deadline date** will mean that any new claim for Universal Credit would not have any of the transitional protections available to those who make a claim unless the claimant can back-date their new Universal Credit claim to the deadline date.
5. **Making a defective claim** will mean that no transitional protection will be available if subsequent Universal Credit claims are made.
6. **Transitional protection** consists of the following elements –
  - a monetary sum within the Universal Credit award to top it up to the level previously paid under legacy benefits. A formula is applied in tax credit cases to give a snapshot of entitlement based on circumstances at the point of change;
  - tax credit claimants with capital in excess of £16,000 would have their capital above £16,000 disregarded for 12 months in order to avoid being disentitled to Universal Credit on the grounds of failing to meet the financial conditions of entitlement. However, if the claimant’s capital falls to £16,000 or below, it would not be re-applied if it subsequently rose above this level if it was made within 12 months of the Universal Credit award commencing;

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<sup>44</sup> A more complete description is provided in the Department’s Explanatory Memorandum at annex F.

- students currently entitled to a legacy benefit who would not normally be entitled to Universal Credit would be treated as meeting the Universal Credit condition to not be receiving education until they complete their course;
- Housing Benefit claimants would get an additional 'run-on' of two weeks' payment on migration to Universal Credit; and
- self-employed claimants who were found "gainfully self-employed" would have a grace period of six months before the minimum income floor rule was applied.

**7. Transitional protection is lost** when –

- a sustained (3 months) drop in earnings below the Administrative Earnings Threshold and the claimant had earned above that threshold in the first Assessment Period of their Universal Credit award;
- the formation or separation of a couple;
- the ending of the Universal Credit award, except where this was due to earnings and the claimant returned to Universal Credit within three months.

**8. Transitional protection is eroded** when a change of circumstances would otherwise increase entitlement (eg a rent increase or benefit uprating). But increases in childcare costs are an exception.

**9. Severe Disability Premium (SDP)** – claimants entitled to the SDP as a component part of their existing legacy benefit will not naturally migrate to Universal Credit but will only move to it through managed migration. Those now in receipt of Universal Credit who were previously entitled to the SDP will be considered for a transitional arrears payment payable from the start of their award and an additional on-going transitional payment.



**List of respondents<sup>45</sup>**

A2 Dominion (Housing Association)

Advice NI

Anglia Revenues Partnership

Aspire Housing

Aster Group

Bath University

Benefits Liaison

BenX

Brighton & Hove City Council

Brighton Unemployed Centre Families Project

Centrepont

Children Society

Citizens Advice

Citizens Advice Caterham & Warlingham

Citizens Advice Coventry

Citizen's Advice Craven, Harrogate and District

Citizens Advice Gateshead

Citizens Advice Motherwell and Wishaw

Citizens Advice Swansea, Neath & Port Talbot

Citizens Advice Scotland

City of London Welfare Rights

Clarion Housing Group (Housing Association)

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<sup>45</sup> A small number of organisations have submitted more than one response, for example where different teams within that organisation are providing evidence from a different perspective.

Community Housing Cymru (representing Housing Associations in Wales)

Community Links

Contact (Charity for families with disabled children)

Conwy County Borough Council

Cornwall Housing

COSLA (representing Scotland's 32 LAs)

CPAG

Crisis

Curo

Derby Homes

Derbyshire County Council

Disability Action

Disability Benefits Consortium

Disability Rights UK

Employers for Childcare

Enable Scotland

Equality & Human Rights Commission

Equity

Gingerbread

Glasgow City Council

Glasgow Disability Alliance

Greater London Authority (GLA)

Guinness Partnership

Gwent Welfare Reform Partnership

Halton Housing

Home Group

Homeless Action Scotland

Homeless Link  
Homes in Sedgemoor  
Housing Rights NI  
Housing Systems  
Inclusion London  
Institute of Revenues Rating and Valuation  
Interlink Foundation  
Inverclyde Council  
Islington Council  
Jewish Community Council of Gateshead  
Joseph Rowntree Foundation  
Law Centre (Northern Ireland)  
Leigh Day Solicitors  
Leicester City Council  
Low Income Tax Reform Group  
Liverpool City Council  
London Councils  
Macmillan Cancer Support  
Mencap  
Middlesex University & Derbyshire Unemployed Workers Centre  
Mind  
Mind Campaign  
Money Advice Service  
Money and Mental Health Policy Institute  
Motor Neurone Disease Association  
National Federation of Arm's Length Management Organisations (ALMOs)  
National Housing Federation

National Association of Welfare Rights Advisers  
Newcastle City Council  
National Farmers Union  
Nuneaton and Bedworth Borough Council  
Oxford City Council  
Oxfordshire Welfare Rights  
Paragon Asra Housing  
Parkinson's UK  
Peabody Trust  
London Housing Association  
Policy in Practice  
Public & Commercial Services Union (PCS)  
Radian  
Residential Landlords Association  
Resolution Foundation  
Rethink Mental Illness  
Riverside Group Ltd (Housing Association)  
Scope  
Scottish Federation of Housing  
Scottish Government  
Shelter  
Shelter (Lancs)  
Slough Foodbank  
Solihull Metropolitan Borough Council  
Southwark Borough Council  
Southwark Law Centre  
South Lanarkshire Council Money Matters Advice Service

South London and Maudsley NHS Foundation Trust

St Mungo's

Stockport Homes & Stockport Council

Surrey Welfare Rights Unit

Taxpayers against Poverty

Tenovus Cancer Care (Wales)

Thirteen Housing Group Ltd

Trafford Council

Trafford Housing

Trussell Trust

TUC

Turn2us

UK Finance

Unison

Unite

USDAW

Welsh Government

Westminster City Council

Wigan Council

WinVisible

Women's Aid NI

Women's Resource and Development Agency (NI)

Yorkshire Housing

Your Homes Newcastle

Responses were also received from 328 individuals, of which 211 formed part of an organised campaign and were submitted using an identical template.

**Social Security Advisory Committee: membership**

Professor Sir Ian Diamond (Chair)

Bruce Calderwood

David Chrimes

Carl Emmerson

Chris Goulden

Philip Jones

Dr Jim McCormick

Professor Grainne McKeever

Dominic Morris

Seyi Obakin OBE

Judith Paterson

Charlotte Pickles

Liz Sayce OBE

Victoria Todd

**Secretariat**

Denise Whitehead (Committee Secretary)

Paul Mackrell

Ateeqa Khan

## **Social Security Advisory Committee meeting on 20 June 2018: extract from minutes**

### **3. The Universal Credit (Transitional Provisions) (Managed Migration) Amendment Regulations 2018**

3.1 The Chair welcomed the following officials to the meeting: Neil Couling<sup>46</sup> (DWP, Director General, UC Programme), Dr James Bolton (DWP, G5 UC Policy Deputy Director), Peter Loosely (DWP, G5 UC Programme, Head of Strategic Design), Dave Higlett (DWP, G6 UC Policy, Legislation), Nina Young (DWP G7, UC Policy, Disability) and Mick Ney (HMRC G7, Tax Credits, UC Transition).

3.2 The Department's aim in bringing forward these draft regulations was to have them in place for the start of 2019 when the process of testing the managed migration process was set to begin. Roll-out was planned over a four-year period concluding in 2023, by which time claimants in receipt of one or more of the six income-related 'legacy' benefits for working-age people (i.e., income-based Jobseeker's Allowance, income-related Employment and Support Allowance (ESA), Income Support, Housing Benefit, Working Tax Credit and Child Tax Credit) would have been migrated to Universal Credit (UC). The Department had estimated that, by the end of the process, 2.09m households would have been migrated, involving 2.87m individuals, the majority of whom would have come from either tax credits (54 per cent) or ESA (36 per cent). The draft regulations were subject to the affirmative resolution procedure in Parliament and would therefore need to be debated in both Houses before becoming law.

3.3 The main features of the proposals included the following aspects:

- a preparation period of around four to six months to be given for individual claimants alerting them to the need to make a claim for UC, warning them that their existing entitlement to legacy benefits would be ending and preparing them for the migration process. Subsequently, a deadline date of at least one month would be set by the Department who would engage with claimants to help them through the process of claiming UC;
- the deadline date could be extended at the request of the claimant for good reason. The Secretary of State could also extend the date or cancel the notification altogether if she so decided. Up to one month's backdating of a late claim for UC was available, including for the additional ground of official error. If, however, no claim for UC had been made by the deadline date (extended by a possible one month if grounds for backdating could be established), any award of an existing legacy benefit would be terminated. Any subsequent claim for UC

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<sup>46</sup> Because of an important prior commitment, Neil Couling could only attend the session until mid-way through the question and answer part of the discussion.

would be dealt with in the normal way, but would not have any of the transitional protections available to those who made an in-time claim;

- transitional protection (TP) meant that a monetary sum would be included within the UC award to ensure that, in cases where UC entitlement would otherwise have been less than the entitlement to legacy benefits at the point of change, entitlement would remain the same level. Tax credit claimants with capital in excess of £16,000 would have their capital above £16,000 disregarded for a period of 12 months in order to avoid being disentitled to UC on the grounds of failing to meet the financial conditions of entitlement. Students currently entitled to a legacy benefit would also not be required to meet the UC condition of entitlement that recipients should not be receiving education for the remainder of their course of study. Also Housing Benefit claimants would be entitled to the additional two weeks' payment on migration to UC. Finally self-employed claimants not in the "start-up period" but found to be genuinely self-employed would have a grace period of six months before the minimum income floor rule was applied;
- TP would be retained if a successful repeat claim to UC was made within three months of the cessation of the original award because of a 'spike' in earnings. It would be lost however if the UC award was terminated for other reasons or if earnings took a person off UC for longer than three months. Couples who separated or individuals who formed a couple would also lose entitlement to TP. Although changes of circumstances otherwise resulting in a higher award of UC would normally erode TP entitlement, there was an exception for changes on account of increased earnings or because of an increase in the element included in the UC award for child-care costs; and
- claimants entitled to the Severe Disability Premium (SDP) as a component part of their existing benefit would not be migrated to UC. Those who had been migrated naturally and had lost their SDP would be considered for a transitional arrears payment payable from the start of the UC award.

3.4 Opening the session Neil Couling explained that, although the draft regulations provided the backbone to the process of migration, the Department's aim was to deliver migration with the help and support of third parties and others. The Department was currently half-way through its programme of rolling out UC to every Jobcentre and aimed to complete the task by December 2018. At that point the process of moving claimants with an ongoing award to one of the legacy benefits to UC would begin. This was a process the Department had termed "managed migration". The intention behind the TP rules was to follow the UC ethos of keeping it simple, so that, although the amount could be recalculated if required, a straightforward one-off comparison between legacy benefit entitlement and an indicative UC entitlement at the point of migration would provide the basis for the TP calculation. The TP would become part of the UC maximum amount, which would mean that work incentives were preserved. As with the UC programme itself, a 'test and learn' approach would be applied to the migration process with small volumes in



the initial phase, followed by a slow but increasing acceleration over time when considered safe to do so.

3.5 Neil advised the Committee that the most difficult challenge for the Department was to ensure that claimants engaged with the Department, particularly claimants who might not have had any previous contact with DWP, or who were anxious about the move. Such engagement was vital to making a smooth transition, and DWP would need help from external partners to achieve it. Tax credit claimants who would be subject to work search requirements for the first time might need particular help. The Department would be working closely with external partners over the summer to see how co-operation on this task could be secured. A conference in early autumn was also to be held, for that purpose.

3.6 The following main questions were raised in discussion by Committee members:

#### The Overall Migration Timetable

- (a) **It was understood that the Department had previously advised that there would be a testing period of 12 months before the main stage of roll-out would begin. The explanatory memorandum however referred to the testing period lasting from January 2019 to July 2019. Had the plan changed?**

The Department originally intended to bring the draft regulations to the Committee earlier in 2018, so that the legislation could be passed and testing begin in July 2018. Although the plans had had to be changed on the timing of the legislation, the principle that there should be 12 months of testing was unchanged. July 2019 would mark the start of an increase in numbers being rolled out but the onward period would still be a period of testing, albeit with slightly higher numbers. Volumes would not pick up significantly until the end of 2019 and the beginning of 2020. The lessons from the test and learn approach would have to be absorbed and time was needed to make any necessary changes which emerged. That required the Department to work with a small volume initially; otherwise staff would be swamped by numbers, particularly as much of the work would have to be done clerically at that stage.

- (b) **But did the Department not require a critical mass in order to make the test and learn approach fully effective?**

Much of the test and learn would be focused on assessing claimant behaviour and reactions with a view to ensuring that they do the right things at the right time. It would also be used for developing and improving operational processes. For these purposes high numbers were not needed in the test and learn phase.

- (c) **Would the Department be making public the results of its monitoring and evaluation? It would be helpful to know what measures were being used and what data was being examined. Useful data from third parties was often available, for example. The Committee would like to see specific examples of the metrics and data points that the Department would be using to monitor the migration process.**

The Department would be making available metrics and the data on the managed migration. DWP have published a considerable amount of data already. Third parties have also published data but caution had to be exercised in using it. The important lesson from that experience had been to test and learn as progress was made without setting artificial deadlines. The Department did not want to commit to a detailed timetable until it was known how people responded to the migration process.

- (d) **The Department's desire to use the test and learn approach to make this process of migration work as efficiently as possible was appreciated. Were there limits to the extent to which changes could be made as a result of test and learn?**

There were some fundamental principles within UC which were set and could not realistically be changed. The monthly assessment period was an example of that. The principle of digital by default would also continue. In the face of the ever-increasing use of digital technology, it would be inappropriate at this stage to row back on this point. Evidence, for example, showed that nine out of ten adults were recent internet users. There were other principles within UC, such as claimants taking responsibility for managing their own financial affairs, where there was some scope for manoeuvre for vulnerable claimants who may need additional support or coaching. The Department would need to see what the evidence uncovered. As far as the managed migration exercise was concerned, there were few aspects to it which would not be open to adjustment to some extent under the test and learn approach.

- (e) **Would the basic administration be in place and stable enough to allow for the proposed ramping up of numbers being migrated from 2020 onwards?**

The Department would be setting entry and exit criteria for each stage of the process. The criteria would have to be met before going on to the next phase. The details of those criteria had yet to be determined but would be structured in accordance with the nature of the caseload as established by the evidence as it began to emerge during the testing phase.

- (f) Why had the Department decided to do everything up-front, instead of getting people on to UC first and then applying UC principles at a later stage?**

The decision to require people to make a claim for UC rather than simply transfer them had been taken because the Department wanted to make sure that a claimant's circumstances had been accurately captured at the start of their UC award. Indeed it was possible that the information held in relation to existing awards of legacy benefits would be insufficient for the Department to make a UC assessment. For example, no information on capital or other benefits received was held in respect of claimants in receipt of tax credits. The information provided in connection with a new claim for UC might also bring out some existing errors where, for example, previous changes of circumstance had not been declared. It would also allow the Department to inform claimants more fully as to what the new UC regime would entail for them, since it was likely to be very different from their existing benefit regime. Additionally, the Department could not simply assume that all existing claimants would want to claim UC - some form of formal consent from a claimant was needed, and requiring a claim did that. Requiring a claim at the outset which, in terms of the specific question about doing every up-front, also avoided double-handling.

- (g) The Department would be moving claimants from existing benefits to UC at a time when others, who had already been migrated, would be losing their TP due to changes in circumstances such as working more hours and coming off UC for a longer period than would enable them to retain the TP. This would present a difficult communications challenge.**

The rules on TP had been designed so that, once the UC award was up and running, the amount of management involved in the TP aspect would be minimal. There were only a few change of circumstances which would mean that TP reduced or ended.

- (h) In the managed migration process would there be a point at which the Department would consider that all the testing and learning had been done and that it was time to 'turn on the tap'?**

No. The emphasis would begin to shift after the first 12 months of testing but there would never be a point at which the testing and learning could be said to be over. There would always be a place for continuing to learn and responding appropriately. This had been the approach throughout the UC experience. On some occasions an issue had arisen and the flexibility of the system had allowed a solution to be found and put into operation in a matter of a few days. On other occasions it had led to a period of careful thought and further testing.

- (i) **On the issue of landing claimants ‘safely’ on to UC, would the Department be getting data on fall-out rates? And if so, would it be publicly available?**

It was important that the Department should collect evidence in relation to fall-out rates. In particular it was necessary to know if the Department was doing anything which could contribute to a failure on the part of claimants to make a UC claim in time. Any attempt to improve the take-up rate would need that basic information as a starting point, although it had to be borne in mind that some claimants may choose not to claim UC. The Department would consider publishing the data when gathered.

#### Claimant Contact

- (j) **Mention was made of the success of the project being dependent upon the support of external partners and others in delivering a smooth transition between different benefit systems for claimants. Were any negotiations with external partners under way on this issue?**

Nothing had been set in motion as yet but the Department would be looking to do what it could to secure the assistance of outside bodies. The Committee had heard earlier in the meeting that a conference was to be convened in early autumn. That conference would be largely focusing on the practical aspects of how such help could be usefully employed for the benefit of claimants.

- (k) **Those external partners and outside bodies would probably look to the Department for some flexibility around the rules before agreeing to assist in the way the Department would like. If it was felt that the Department were creating ‘no-go areas’ where there was a determination not to row back, it might lead to a break-down in any negotiations. The relationship between the Department and external partners varied around the country, but there were parts where it was quite poor and the Department was considered to be ‘not listening’. If outside organisations were to be given the opportunity to contribute to the process and know that their intelligence would be heard, considered and, if necessary, acted upon by the Department, it would go some way to putting the relationship on a far better footing.**

Thank you. It was certainly true that colleagues in operations were keen to build good and lasting relationship with relevant third party bodies.

- (l) Would communications to claimants about the migration process from tax credits to UC be DWP branded, HMRC branded or a joint branding?**

This had yet to be determined but the presumption would be that, because it was a DWP exercise, it would have DWP branding, but that the content would require considerable input from HMRC. Communications were being tested through moving people from live to full service. Any communications needed to be simple, clear and engaging.

- (m) Would the 'warm-up' letter, the notification itself and subsequent reminder letters referred to in the explanatory memorandum be available for the Committee to see and comment upon?**

Yes, the Department would make those documents available to the Committee.

- (n) Would claimants get a single letter if they were in receipt of more than one legacy benefit?**

Yes. The process was being centrally managed to avoid the kind of confusion that could arise if claimants got multiple letters in respect of different legacy benefits.

- (o) Would HMRC be doing any warming up of tax credits claimants who might have difficulties with the process?**

HMRC colleagues were heavily involved with DWP to determine a communications strategy, although no details had been finalised. The managed migration process allowed the Department to contact individuals to warm them up to the process. This was different to natural migration. More information about what would be happening would become available over time as plans developed.

- (p) It was noted that of the group subject to managed migration, 36 per cent of them would be coming from ESA. When it came to communications some of that group would have access requirements which were commonly overlooked by members of staff. Using the example of a visually impaired person being sent a letter, would that constitute 'official error'?**

The intention was that the Department would check a person's requirements using information on the system before terminating entitlement to a legacy benefit. The Department would use different contact methods. Flexibility had been built into the regulations to make allowances for claimants' needs. The Secretary of State also had powers to slow or halt the migration process if, at any point, it was considered appropriate to do so.

- (q) **The broad circumstances in which a person might have a good reason for having the deadline extended in their case by the Secretary of State were set out in paragraph 36 of the explanatory memorandum. Decisions on this issue might be taken by several thousand people administering the test for around three million people. There was therefore considerable scope for discrepancies and variations in decision making to arise. Would it be appropriate to have more specific and relevant circumstances set out in the legislation?**

That point was acknowledged, but it was the very reason why the test and learn approach was considered so important by the Department. The intention was to carry out small scale testing across a range of different people. This was the kind of area where adjustments in the light of experience could be considered.

- (r) **Would the Department be contacting third parties known to be supporting claimants in order to help them through the migration process? If so how would the Department circumvent the problem of requiring the claimant's consent before sharing information with the support worker?**

That aspect of the process had still to be looked at. The Department would need to consider this issue although it should be mentioned that the Secretary of State could always intervene to halt or delay the process.

- (s) **Paragraph 106 of the explanatory memorandum referred to the migration process as it involved claimants engaged in caring duties where entitlement to the Disability Living Allowance, the Personal Independence Payment was an issue and where entitlement to SDP was relevant. How would this work in Scotland where benefits for disability and for caring duties were a devolved matter and where different provisions for carers planned by the Scottish Government would take an estimated two years to roll-out?**

There were two main things that this part of the legislation did: implement a gateway to hold people with the SDP on legacy benefits; and carry out a one-off check on former recipients of SDP who had already migrated to UC. For claimants in the latter group, the Department would consider paying a one-off lump sum covering the period that they had been on UC and also give on-going payments. The question as to the stage at which the devolutionary process had reached should not therefore be relevant.

- (t) **Would a person who had previously been in receipt of a legacy benefit which included the SDP element but whose UC entitlement had ended prior to the regulations coming into force be eligible for the additional payments?**

No. The principle behind the transitional payment was that it should apply to current cases where the individual circumstances meant that the person concerned would have satisfied the conditions for the SDP had they been on a legacy benefit.

### Transitional Protection

- (u) The requirement to make a new claim was unique in migrating claimants from one benefit to another. Given the prospect of a claimant missing the deadline and losing a substantial amount of benefit for a very long time, could the Department not have provided more generous backdating provisions? An alternative might be to provide an extended back-dating or linking rule, where people subsequently made a late UC claim after missing the deadline.**

The Department had taken the view that a deadline was needed in order to achieve the desired result. The approach was therefore to provide the necessary support before the deadline was reached at the same time as building in some safeguards which would allow the deadline to be extended or the notification cancelled if that was considered necessary. Existing circumstances in which a claim for UC could be back-dated were considered sufficient in these circumstances, except for the addition of a further prescribed category for back-dating – that where ‘official error’ had occurred. The categories for back-dating would not be outside the scope of change if the test and learn process found it to be necessary.

- (v) The experience of ‘natural migration’ to UC had shown that mistakes had been made and were continuing. An example of this was where ESA claimants with limited capability for work were, on claiming UC, being subjected to conditionality requirement erroneously.**

The Department was aware that the UC journey for individuals with health conditions and disabilities could be improved. There was a lot of focus on this at the moment.

- (w) In comparing the legacy amount with the indicative UC amount for the purposes of determining the TP element, was there any human involvement in the matching?**

The Department’s intention was to draw as much information as possible from the legacy system, but there may be some gaps in information, which needed to be obtained from the claimant, e.g., such as the need to submit a declaration of the amount of capital held.

- (x) **Would UC decision notices include details as to how an individual's TP had been calculated, so that the comparison between the different benefits at the point of change could be seen?**

This aspect of the communication was still being considered. However, the assumption was that people would need to know how much TP they had.

- (y) **On the 12 month protection for tax credit claimants with capital in excess of £16,000, the TP rule meant that someone marginally over the threshold and whose capital dipped below the threshold before rising above it again would lose entitlement to the TP. In contrast, someone whose capital exceeded the threshold by a substantial margin would not be affected in the same way by any such fluctuations. In this scenario the better-off claimant would fare better.**

The Department was aware that the communications about the rules around capital and dropping below £16,000 needed to be clear. The Department had considered drawing up entirely new rules, but discounted that option on the grounds that it would add another layer of complexity in circumstances where only a relatively small number of claimants were likely to be affected. The rule by which tariff income would be calculated would continue to apply in all cases. The Department did not see a difference between claimants affected by fluctuating capital around £16,000 and new UC claimants in terms of no longer having entitlement to benefit if their savings increased above £16,000.

- (z) **Did the Department have any information on the vulnerable claimants in this group who had low income and substantial capital who would be affected by the capital disregard rule?**

No. HMRC did not record data on capital as it was not relevant to the tax credits calculation of entitlement, but it was not expected to be many. DWP do not have much data on these claimants as they had no contact with them which is why it was taking a test and learn approach.

- (aa) **Could the Department explain how draft regulation 55(1)(b) should be interpreted?**

Regulation 55 provided for the determination of the amount of the transition element to be awarded once the comparison calculation between the total existing award and the indicative UC amount had been carried out.

Regulation 55(1)(b) provided for those managed migration cases where the earnings or unearned income the claimant had been receiving would have reduced the UC indicative amount to a figure below zero. In these cases it would be necessary to take the amount where the UC indicative amount would have fallen below UC in calculating the amount of the TP element to



ensure that the claimant's benefit entitlement was fully transitionally protected.

Where it was earnings that would have reduced the UC indicative amount below zero, the amount of the transition element should be the amount of the legacy entitlement plus 63 per cent of any of the earnings that fell to be deducted in calculating the UC indicative amount. This would take into account the UC earnings taper. And where it was unearned income that had resulted in the UC indicative amount falling below zero, it would be by 100 per cent of the unearned income that so fell to be deducted.

**(bb) What was the Department's intended approach to in-work conditionality? Would it be light-touch until 2023? When would in-work progression come in?**

The assumption was that the current system would continue to apply for now, although there were some on-going labour market trials on this which might inform subsequent decisions.

**(cc) The explanatory memorandum referred to the impact of the proposals on equality and diversity. Would a fuller version be available in due course? There would appear to be a number of areas where one could envisage these proposals having a disproportionate impact upon claimants with protected characteristics.**

A full Equality Impact Assessment (EIA) was produced at the time the Welfare Reform Bill, which introduced UC, and was put through Parliament and made publicly available. Since then equality impacts have continued to be considered.

**(dd) The uniqueness of these proposals with a deadline which, if missed, could have a significant and long-lasting impact upon a claimant meant that a separate EIA was appropriate for these specific provisions. In some ways the term 'migration' is inappropriate because the responsibility for making the transition is ultimately with the claimants themselves. In the past people were passive in being migrated from one benefit to another. In these circumstances where claimants are required to be active, perhaps a term other than 'migrated' should be found.**

The Department would happily consider an alternative term, but until something more apt emerged, would continue to refer to migration. The Department was continuing to iterate the equality impacts and would welcome any additional information the Committee would like to provide.

**(ee) Had the Department assessed the impact upon the loss of TP for a member of a couple whose partner die or who went into a hospice?**

Yes. In those circumstances the single person would be entitled to a benefit run-on during which time TP would continue. Once that had ended, however, it would mean they would have to claim UC as a single person, as they would under the legacy system. That would, in turn, mean the cessation of TP, which would have been based on a couple award.

- (ff) Would this still apply if, for example, a member of the couple had died and the couple had been in the 12-month period during which the capital disregard rule entitled them to UC?**

Yes. The claimant would still be entitled to the benefit run-on during which the capital disregard would continue. At the end of the run-on the capital disregard would stop and so, if the remaining member of the couple had capital exceeding £16,000, there would be no entitlement to benefit. If the capital had fallen below £16,000, the remaining member would claim UC as a single claimant and any TP would cease.

- (gg) The principle in the recent judgment affecting ESA claimants with an element for SDP who moved address to an area where they had to claim UC, and who lost their SDP as a consequence, could be applicable in other instances where SDP was lost. Would the Department be looking at those other groups and making similar provision for those who lose SDP because of a change of circumstances?**

No. The Department saw the group of claimants who were the focus of these draft regulations as being in a unique position. Committee members would wish to know that the Department were actively considering seeking leave to appeal against the judgment in question.

- (hh) Protection had been provided in these provisions for students who would otherwise be adversely and disproportionately affected after moving to UC. However there were other groups who might similarly be impacted. An example would be claimants who did not require a right to reside in order to access tax credits, but did for UC. Had the Department considered this?**

The Department had fully considered the impact of the regulations and would be willing to address any further concerns that the Committee might wish to raise.

3.7 The Chair thanked the officials for attending the meeting and answering the questions that had been put to them. After a time of private deliberation he advised them that the Committee had decided that the draft regulations should be subject to the formal reference procedure. The Committee would launch a public consultation exercise before the end of the week which would seek information and evidence in relation to the proposals. The Committee would also wish to undertake a small

number of stakeholder workshops as part of its consultation process. To ensure that interested stakeholders had an opportunity to comment over what would be a peak holiday period, the public consultation exercise would run over two months until 20 August. The Committee would endeavour to submit its report to the Secretary of State by the end of September.

 Department for Work & Pensions	<table border="1"> <tr> <td data-bbox="729 539 1034 965">           Universal Credit            Policy Division             3<sup>rd</sup> Floor             Caxton House             6-12 Tothill Street.             London. SW1H            9NA.         </td> <td data-bbox="1034 539 1543 965">           Phone: 020 7449 7286   <b>Email:</b>  <a href="mailto:DAVID.HIGLETT@DWP.GSI.GOV.UK">DAVID.HIGLETT@DWP.GSI.GOV.UK</a> </td> </tr> </table>	Universal Credit Policy Division  3 <sup>rd</sup> Floor  Caxton House  6-12 Tothill Street.  London. SW1H 9NA.	Phone: 020 7449 7286  <b>Email:</b> <a href="mailto:DAVID.HIGLETT@DWP.GSI.GOV.UK">DAVID.HIGLETT@DWP.GSI.GOV.UK</a>
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Denise Whitehead Secretary, Social Security Advisory Committee Caxton House Tothill Street London. SW1H 9NA.	<table border="1"> <tr> <td data-bbox="729 1272 727 1494"> <b>1 June 2018</b> </td> </tr> </table>	<b>1 June 2018</b>	
<b>1 June 2018</b>			

Dear Denise

**THE UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) (MANAGED  
MIGRATION) AMENDMENT REGULATIONS 2018**

In accordance with section 172 of the Social Security Administration Act 1992, I am putting the above Regulations before the Committee for consideration. The Regulations (“the 2018 Regulations”) make a number of amendments to the Universal Credit (Transitional Provisions) Regulations 2014 (‘the 2014 Regulations’).<sup>47</sup> The Committee is invited to consider whether the Regulations may be made without formal referral.

<sup>47</sup> [http://www.legislation.gov.uk/uksi/2014/1230/pdfs/uksi\\_20141230\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/1230/pdfs/uksi_20141230_en.pdf)

We have scheduled a slot at the meeting on the 20<sup>th</sup> June to talk through these changes. These Affirmative Regulations provide for the requirement for claimants on existing benefits to make a claim for Universal Credit (UC), the closure of their existing benefit and the calculation, award and ongoing treatment of any transitional protection.

The effects of the proposed amendments are summarised as follows:

**Regulation 2(3)** will amend regulation 8A of the 2014 Regulations (transitional housing payment) to allow payments of Housing Benefit (HB) to continue for a further 2 weeks where existing benefit claimants were entitled to HB prior to making a new UC claim once they have complied with the managed migration process, i.e., made the new UC claim by the deadline day.

**Regulation 2(4)** will amend regulation 11(1) of the 2014 Regulations (ongoing awards of tax credits) to expand the circumstances covered by this regulation to cover claimants who enter the managed migration process. By doing so, it allows claimants, whose entitlement to tax credits has not yet been determined, to be treated as entitled to an award during the tax credits renewal period at the start of the tax year. This expansion allows tax credits to be terminated as part of the managed migration process and then finalised under regulation 12A of these Regulations.

**Regulation 2(5)** will amend regulation 15 of the 2014 Regulations (Modification of the Claims and Payments Regulations in relation to Universal Credit claimants) to extend the time for claiming UC for up to a month if the claimant's delay in making a claim under the managed migration process is attributable to official error.

**Regulation 2(6)** will insert new regulations 44 – 62 into the 2014 Regulations to provide for:

- the process which claimants with an award of an existing benefit will follow when they are managed migrated to UC;
- the termination of entitlement to existing awards if claimants or claimants and/or their partners fail to make a claim for UC within the deadline that they are given; and
- the ability to consider, calculate, pay and administer additional amounts of UC (referred to as transitional elements) and other provisions, designed to provide transitional protection for those existing benefit claimants who, upon managed migration, would otherwise have a lower entitlement to UC (including a nil entitlement) than had been their total entitlement to their existing awards.<sup>48</sup>

**Regulation 2(6)** will also insert regulation 63. This regulation will introduce a Gateway Condition into the 2014 Regulations so that claimants who are receiving:

- income-related Employment and Support Allowance (ESA(IR));

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<sup>48</sup> Income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit and tax credits.

- income-based Jobseeker's Allowance (JSA(IB));
- Income Support (IS); or
- HB;

and have the Severe Disability Premium (SDP) included in their award will not be able to claim UC. Instead, rather than naturally migrate to UC, they will remain on their existing benefit if they have a change of circumstance that would require a new claim for a benefit that UC is replacing to be made.

This regulation will also introduce a transitional payment within UC for claimants who have already naturally migrated to UC, and prior to that migration had qualified for SDP as part of their JSA(IB), ESA(IR), IS or HB awards. This payment can be 'backdated' to the start of the UC award if certain conditions are met, and is based broadly on the amount of SDP that the claimant(s) were receiving prior to natural migration.

**Regulation 3** will make a consequential amendment to allow existing benefit claimants who are in receipt of SDP and therefore can no longer make a new claim to UC, to make new claims to existing benefits.

Along with the draft regulations, I enclose an Explanatory Memorandum which gives more detail of the proposed amendments and provides background to the regulations as well as a Keeling Version.

I hope this letter and enclosures will be helpful to the Committee. Officials will attend the Committee's 20<sup>th</sup> June 2018 meeting to answer any queries that members may have and I would be happy to provide any further information that the Committee may require in the meantime.

Yours sincerely,

*By email*

Dave Higlett

<p><b>Universal Credit Policy Division</b></p>	<p><b>EXPLANATORY MEMORANDUM FOR THE SOCIAL SECURITY ADVISORY COMMITTEE</b></p>
	<p><b>THE UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) (MANAGED MIGRATION) REGULATIONS 2018</b></p>
<p><b>For the meeting of the Social Security Advisory Committee on 20<sup>th</sup> June 2018</b></p>	<p><b>DWP</b> Department for Work and Pensions</p>

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# EXPLANATORY MEMORANDUM FOR THE SOCIAL SECURITY ADVISORY COMMITTEE FROM THE DEPARTMENT FOR WORK AND PENSIONS

## THE UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) (MANAGED MIGRATION) AMENDMENT REGULATIONS 2018

### INTRODUCTION

1. One of the main elements of the Welfare Reform Act 2012 (WRA 2012) was the introduction of Universal Credit (UC), which:
  - improves work incentives by removing the need to claim different in- and out-of-work benefits and reducing the risks associated with moving from benefits into employment; and
  - simplifies the way existing benefits are calculated and delivered by replacing income-based Jobseeker's Allowance (JSA(IB)), Housing Benefit (HB), Child Tax Credit (CTC), Income Support (IS), Working Tax Credit (WTC), and income-related Employment and Support Allowance (ESA(IR)) into a single credit for people both in- and out-of-work.
2. The initial roll out of UC began in April 2013 and targeted a small subset of the unemployed population in the North West of England<sup>49</sup> who had to meet certain Gateway Conditions. This was to allow the core structure, functionality and capability of UC to be tested in a live environment.
3. However, as announced to Parliament on 5<sup>th</sup> December 2013,<sup>50</sup> the Department reshaped its approach to UC roll out:
  - to widen the Gateway Conditions and extend the original Live Service areas to new postcode districts; and
  - to start testing and learning from the introduction of an enhanced online digital service (Full Service),<sup>51</sup> which would replace Live Service and deliver the full scope of UC for the full range of claimants' circumstances.
4. Since this announcement, the 'test and learn' approach to the implementation of UC has continued, and it is expected that UC will be fully rolled out across Great Britain by December 2018.<sup>52</sup>
5. Once UC is completely rolled out, it will not be possible to make new claims to any existing benefits. Instead, if claimants want to access financial support via

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<sup>49</sup> Tameside, Wigan, Oldham and Warrington.

<sup>50</sup> <https://www.gov.uk/government/news/universal-credit-progress>

<sup>51</sup> From 26<sup>th</sup> November 2014.

<sup>52</sup> By December 2018 the majority of claimants will not be able to make new claims for the benefits UC is replacing. However, those claimants with more than two children who want to make a new claim for financial support will still need to claim the old benefits until January 2019.

benefits, they will have to make a claim for UC.

6. Claimants who are entitled to one or more of the existing benefits and who have a change of circumstances that would otherwise have triggered a new claim to a different existing benefit will not be able to claim that different benefit, but, instead, their existing benefits would terminate and they would 'naturally' migrate to UC. Similarly, claimants who are entitled to one or more existing benefits and who form a couple with an existing UC claimant will also naturally migrate onto UC.
7. Between July 2019 and 2023, the final phase of UC roll out will take place. During this phase, the Department will manage the migration of all the remaining claimants with awards of existing benefits to UC.
8. From January 2019, we intend to start testing the full managed migration process on a small scale, with the intention to increase volumes by July 2019. This will enable us to evaluate the initial process to ensure that it supports claimants effectively. This 'test and learn' approach will allow us to change the process, where necessary, before larger volumes of claimants are managed migrated to UC.
9. As a result, the Department proposes to introduce regulations that cover the process of managed migration. These are designed to be flexible enough to allow changes to the managed migration process without the need to make further legislative changes, and also to cater for the diverse needs of the different claimant groups that will be moved to UC.
10. During the passage of the Welfare Reform Act 2012, the Government also announced that existing benefit claimants who move to UC as part of the managed migration process (i.e., they are wholly migrated to UC by the Department rather than because of a change in their circumstances) who would otherwise be entitled to less UC at the point of their managed migration will be transitionally protected.<sup>53</sup>
11. Again the Department proposes to introduce regulations to consider, calculate and, where appropriate, pay and manage any award of transitional protection (TP). The Department has also reviewed the TP policy and made the following changes to ensure that work incentives are maintained. Consequently:
  - claimants whose UC award terminates due to their receiving additional earnings in an assessment period will be re-awarded the transitional element if they make a new claim to UC within 3 months. This will benefit

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<sup>53</sup> <https://www.gov.uk/government/publications/transitional-protection-universal-credit-policy-briefing-note>

those, for example, who have a salary payment cycle whereby they sometimes receive two 'pay packets' in the same assessment period or received an additional payment such as a bonus; or

- claimants who are receiving the childcare element will not have their transitional element eroded if there is any increase in this element.

12. Provision has also been made so that full-time students in receipt of an existing benefit and tax credit claimants who have more than £16,000 capital can be entitled to UC even though these circumstances would normally mean that this would not be the case. For students, this easement will last until the end of their course, and, for those with capital, for 12 months.

13. For more information on why these refinements were made, please see **paragraphs 93 and 119 to 128** below. Also the regulations that cover the managed migration process and TP are explained in more detail below.

14. As well as providing for the managed migration and TP process, the regulations will also make provision for:

- claimants who are entitled to an award of JSA(IB), IS, HB or ESA(IR) that includes the SDP; and
- claimants who have a change of circumstance that would otherwise have triggered a new claim to an existing benefit that UC is replacing and thus caused them to 'naturally' migrate to UC.
- certain former SDP recipients who have already naturally migrated to UC.

15. More detail on why this has been made can be found at **paragraphs 129 to 132**.

## **COMMENCEMENT AND APPLICATION OF THE PROPOSED CHANGES**

16. The overall effect of the proposed amendments before the Committee is outlined below. The Regulations will be subject to the affirmative resolution procedure and, as such, will need to be debated in both Houses of Parliament.

## **EXPLANATION AND EFFECT OF THE PROPOSED CHANGES**

### **Amendment of the Universal Credit (Transitional Provisions) Regulations 2014**

17. **Regulation 2** will insert new provisions into the 2014 Regulations to provide for the managed migration process and also the administration of TP. These are outlined in more detail below.

18. **Regulation 2(2)** would insert relevant definitions into the main interpretation provision in the 2014 Regulations. Most are only applicable to managed migration and the award and maintenance of TP, but some have a wider application, e.g., official error. Official error is based on an existing definition in the UC etc. (Decisions and Appeals) Regulations 2013,<sup>54</sup> but is widened to cover Local Authorities.
19. As the Committee members are aware, legislation<sup>55</sup> was brought before them at the December 2017 meeting, to introduce a transitional housing payment for claimants who naturally migrate to UC.<sup>56</sup> This legislation inserted regulation 8A into the 2014 Regulations to allow claimants who were receiving HB immediately prior to that migration to continue to receive HB for their full eligible rent for the first two weeks of their UC award.
20. These payments are disregarded as unearned income for UC purposes so would not reduce the first UC payment. This will provide claimants with additional financial support until they receive their first payment of UC. Although this is the case, the amount being paid is still be subject to any change of circumstances that a claimant may have during that two-week period.
21. **Regulation 2(3)** will amend regulation 8A of the 2014 Regulations to mirror this approach for claimants who are being managed migrated to UC. In such cases, it also allows:
- for HB to continue for the full eligible rent;
  - for the first two weeks of their UC award;
- if the claimant was receiving HB immediately prior to making a new UC claim and had complied with the managed migration process. However, in these cases, the amount being received will not be subject to any change in circumstances during the two-week period but be 'frozen' from the point that they manage migrated to UC.
22. **Regulation 2(4)** will amend regulation 11(1) of the 2014 Regulations to expand the circumstances that it covers to include those claimants who undergo the managed migration process. By doing so, it will provide for claimants, whose entitlement to tax credits has not yet been determined, to be treated as entitled to an award of a tax credit during the tax credits renewal

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<sup>54</sup> [http://www.legislation.gov.uk/uksi/2013/376/pdfs/uksi\\_20130376\\_310515\\_en.pdf](http://www.legislation.gov.uk/uksi/2013/376/pdfs/uksi_20130376_310515_en.pdf)

<sup>55</sup> The Universal Credit (Miscellaneous Amendments, Saving and Transitional Provision) Regulations 2018 <http://www.legislation.gov.uk/uksi/2018/65/made>

<sup>56</sup> Natural Migration claimants are those who have had a relevant change of circumstances, including forming a couple with an existing UC claimant, that would cause a new claim to be made for an existing benefit, but they cannot make such a claim to existing benefits, because these have been replaced by UC.

period at the start of the tax year.<sup>57</sup> The expansion allows HMRC to terminate the tax credit award in line with regulation 46 and In-Year Finalise the tax credit award.

23. **Regulation 2(5)** will substitute a new paragraph (2) into **regulation 15**. It will modify the way that the regulation 26 of the UC (Claims and Payments) Regulations 2013<sup>58</sup> currently applies to claimants who have been on existing benefits. The existing paragraph (2) of regulation 15 simply adds another ground for backdating the UC claim for claimants transferring from existing benefits, if the claimants could not have been expected to claim sooner because they had not been notified of the expiry of an existing benefit.
24. The new paragraph (ii) covers that scenario, but will also add another ground for extending the time for claiming UC if official error occurs during the managed migration process, e.g., if the notice was sent to the wrong address. As with the other prescribed criteria, the overall limit of one month still applies.
25. We feel that providing this extra safeguard would be prudent based on the numbers of claimants we expect to go through the managed migration process each month between July 2019 and 2023 (see **paragraph 100**).

### **Migration notice**

26. The high-level design for managed migration includes a comprehensive preparation period for claimants,<sup>59</sup> which will last about four to six months. During this period, claimants will receive initial communications (which will be generic in content) to warm them up to the fact that their existing benefits will be ending and that they will have to make a claim for UC.
27. These communications will also outline any additional support that claimants can access during their migration to help them make a UC claim and what activities they can undertake prior to that migration to help them make their new UC claim, e.g., open a bank account or ensure that they have appropriate means of identification. Further information on the development of these communications is at **paragraph 138 to 143**.
28. Once this 'warm up' period has ended, new **regulation 44** (as inserted by regulation 2(4) of this package) will make provision for the Secretary of State to issue a notification to claimants of existing benefits informing them that they will need to make a new UC claim by a specific day (see **Annex 1** for the potential content of the notification), if they wish to continue to receive welfare support.

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<sup>57</sup> At the end of the tax year, payments continue during the tax credits renewal period while the previous year's award is finalised while a determination of entitlement in the current tax year is made.

<sup>58</sup> <http://www.legislation.gov.uk/uksi/2013/380/contents/made>

<sup>59</sup> Including their partner where appropriate.

29. The notification will give the existing benefit claimants a timescale in which to make their UC claim. This will be a minimum of one month, but there is flexibility for this period to be extended, if it is identified that certain claimants require longer timescales to make a new UC claim, e.g., those who are vulnerable or have complex needs. A maximum period of 3 months will be contained in guidance.

30. Although not contained in the regulations, during the notification period, claimants who have not already made a UC claim by a certain point will also be reminded that they will have to make a UC claim by their specified day. Claimants will be reminded 2 weeks after the notification has been sent and then 1 week before the day that they need to make a UC claim.

31. Regulation 44 will allow for the cancellation of a notification if:

- The notice was issued in error;
- the Secretary of State makes a determination under regulation 4 of the 2014 Regulations that UC claims should cease to be accepted in an area or category of case to safeguard the efficient administration of UC, or to ensure the effective testing of systems for the administration of UC; or
- the Secretary State considers it necessary in other circumstances to cancel the notification in the interests of any claimant or class of claimant, or to safeguard the efficient administration of UC, e.g., where it is identified that a claimant has complex needs that would make it impossible to complete the managed migration at that time, or it had been discovered that the claimant has gone abroad temporarily.

32. Using notifications to roll out managed migration differs from the current migration approach of using Commencement Orders. This is because it gives the Department:

1. operational control of the 'flow' of notifications and, as a result, control of the volumes of claimants entering the migration process;
2. the capacity to deal with certain claimants in alternative ways: e.g., if a claimant is in hospital or falls into another vulnerable group;
3. the ability to sift out cases that may initially be complex to migrate, for example, cases where an application for mandatory reconsideration is outstanding in relation to an existing benefit so that they can be migrated at a later date once the reconsideration has been completed; and
4. the ability to ensure notifications are not issued to some claimants whose entitlement to existing benefits is time limited, e.g., where they are an EEA jobseeker.

33. For information, the Department is currently investigating whether it is possible to identify those in groups 2 to 4 before they are managed migrated to UC. If not, then they will be treated the same as other claimants and issued

a notification.

### **Extension of the deadline day**

34. Once a notification has been issued, **regulation 45** will make provision so that the deadline day for making the new UC claim can be extended. Regulation 45(1)(b) will ensure that claimants who contact the Department because they:

- are having trouble completing the UC claim; or
- cannot make a UC claim by the deadline day, e.g., because they have to go or have gone into hospital;

will be able to ask for the deadline day to be extended as long as they have a good reason for doing so. There is already guidance on 'good reason' for other benefit requirements and we anticipate guidance in this instance will be in line with those circumstances.<sup>60</sup>

35. Regulation 45(1)(a) will also allow DWP staff to extend the deadline day if they also feel that there is a good reason to do so (see below), but will also allow them to extend the deadline day if a claimant asks for an extension on or before the deadline day and it is not possible, for example, either to:

- get the information needed to help make a determination on whether they have good reason (or not) to the Department by the deadline day; or
- consider the request until after the deadline day due to resources.

36. Circumstances that may be treated as good reason may include the claimant:

- having a mental-health condition;
- being disadvantaged, e.g., the claimant:
  - is homeless;
  - has a disability;
  - has learning difficulties;
- having a domestic emergency; or
- having caring responsibilities.

37. This list is not exhaustive and each case will be considered on its individual

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<sup>60</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/618970/admk2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/618970/admk2.pdf)



circumstances and merits.

38. Having such provision will allow the Department to tailor the process more effectively for claimants, especially those who have complex needs or fall into a vulnerable group. It also allows the Department to react to unexpected situations that a claimant may have and gives DWP staff the ability to extend the deadline day if they discover a claimant needs extra support at the reminder stage.
39. There is no limit to the number of times an existing benefit claimant can ask for an extension. However, on each occasion they will still have to demonstrate a good reason for the extension to be agreed.
40. In exceptional circumstances, if it was felt that a claimant was not in a position to make a UC claim, even if an extension can be applied, the Department would cancel the notification (using regulation 44(5)) and arrange to contact the claimant at a future date to check whether it is appropriate to re-issue a notification inviting the claimant to re-enter the managed migration process. This process will be contained in guidance.

#### **Termination of existing benefits if no claim before the deadline**

41. **Regulation 46** will provide that if existing benefit claimants or their partner do not make a new UC claim by the deadline day, their existing benefit(s) will terminate by action of law and will be paid up until the day before that day.<sup>61</sup>
42. However, before the existing benefits are stopped, agents will check for evidence of complex needs or vulnerability to safeguard these claimants. If it is considered that a claimant has complex needs or is vulnerable (as outlined above), the agent has the option either to suggest an extension of the deadline day, arrange a home visit, or remove the claimant from the managed migration process by cancelling the notification and re-issuing it at a later date.
43. As mentioned, if claimants do not make a UC claim by their deadline day, their existing benefits will end from the day before this day. However, if they do not make a claim but:
  - a) contact the Department within one month of their existing benefits ceasing to make a UC claim; and
  - b) the reason that they could not make a UC claim by the deadline day fell within a prescribed category of case (within regulation 26 of the UC

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<sup>61</sup> In line with regulation 8 for tax credits, income support or housing benefit and under section 150(3) of the Act for income-related employment and support allowance or income-based jobseeker's allowance.

(Claims and Payments) Regulations 2013 (as will be modified by regulation 2(3) of these draft regulations), e.g.:

- if official error occurred; or
- they have a disability; or
- they can supply medical evidence that they had an illness that prevented them from making a claim; or
- they were unable to make a claim by means of an electronic communication because the official computer system was inoperative;

they could ask for the date of their UC claim to start from their deadline day.

44. If they were successful, and it was decided that their new UC claim could start from the deadline day, claimants will be treated as complying with the managed migration process and, if appropriate, TP would be applied to the UC award. If, however, it was decided that the new UC claim could not start from an earlier date, claimants would not be treated as complying with the managed migration process, and, as a result, TP will not be applied to their new UC award.

45. For information, if claimants or their partners do make a claim by the deadline day, the current provisions within regulations 8 and 8A of the 2014 Regulations or under section 15 of the WRA 2012 would apply. As a result, if existing benefit claimants make a new UC claim on or before their given deadline day, their JSA(IB), ESA(IR), IS and tax credits will be paid up until the day before they make their UC claim at which point their awards will terminate. For example:

- a claimant is notified on 31.10.19 that they need to make a new UC claim by 30.11.19;
- as a result, they make a new UC claim on 15.11.19.
- their UC award starts on 15.11.19, and their existing benefits will end on 14.11.19.

46. However, as mentioned earlier, if claimants are entitled to HB and make a new claim for UC by the deadline day, their HB will continue for a further 2 weeks. Also, where claimants are in receipt of HB because they are in specified or temporary accommodation this would also not be terminated.

### **Single Universal Credit claim where a notified person was part of a couple**

47. **Regulation 47** provides that where claimants are in receipt of an existing benefit as a couple, but for the purposes of UC may claim as single

claimants<sup>62</sup> as they are not part of the same benefit unit, e.g., the members of the couple live at a different address or polygamous marriages, the existing benefit awards will end:

- from the day before the first member of that couple makes a claim for UC; or
- on the day before the deadline day, if they have not made a UC claim by the deadline day.

48. Regulation 47(3) will also provide that if a member of the existing benefit couple makes a new UC claim as a single person:

- on or before deadline day; or
- after the deadline day and has had the time for claiming UC extended in line with regulation 26 (**see paragraphs 34 to 40**);

both UC awards will start on the same day, i.e., the day after the award of existing benefit ends.

49. This will prevent payment gaps for claimants who make a UC claim as a single person on a later date than the other member of that couple (but within the deadline).

### **The meaning of ‘qualifying claim’**

50. **Regulation 48** provides where TP can apply. As a result, paragraph (1) sets out what a qualifying claim for TP is, i.e., the claimant(s) must make a new UC claim:

- on or before the deadline day specified in the migration notice; or
- after the deadline day, but have the time for claiming UC extended back to the deadline day or before.

51. Regulation 48 will also set out circumstances where TP would not be applied to a UC award. As a result, paragraph (2) will provide that:

- the new UC claimant(s) must comply with The UC, PIP, JSA and ESA (Claims and Payments) Regulations 2013 and:

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<sup>62</sup> See regulation 3 of the UC Regulations 2013.

- make the UC claim correctly; and
- provide all the necessary information needed to substantiate their UC claim within the relevant timescales;

for TP to be applied to a UC award. If they do not comply and their UC claim is disallowed, no TP would be applied to any subsequent UC award, even if another new UC claim is submitted by or before the original deadline day specified in the migration notice; and

- the claimant(s) should not fall within the definition of a prisoner on termination day.<sup>63</sup>

### Meaning of “migration day”

52. **Regulation 49** defines “migration day” with reference to regulation 46 and regulation 8A and states that this day is the last day of entitlement to an existing benefit.

### Secretary of State to determine whether transitional protection applies

53. **Regulation 50** will allow the Secretary of State to determine whether a claimant qualifies for UC as a managed migration case. To do so, the Secretary of State must first consider whether:

- the transitional capital disregard applies (see **regulation 51**); or
- the claimant is entitled to a transitional element (see **regulations 52 to 55**).

54. Regulation 50 outlines where the Secretary of State does not need to consider whether TP applies to a qualifying claim. These are where a new UC claim is made by:

- a single person who was treated as a member of a couple whilst receiving an existing benefit;
- a single person who is a member of a polygamous marriage;
- a claimant who was a member of a couple in an existing benefit award but is no longer a member of a couple, i.e., the couple has separated when the claimants migrate to UC.

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<sup>63</sup> See regulation 2 of the UC Regulations 2013.

## The transitional capital disregard

55. **Regulation 51** will disregard any capital over £16,000 for the purposes of section 5(1)(a) and 5(2)(a) (Financial conditions) of the WRA 2012 and for regulation 72 of the UC regulations 2013 (Assumed yield from capital) for those claimants or joint claimants who were previously receiving tax credits who move to UC as part of the managed migration process.<sup>64</sup>

56. The regulation will provide that this disregard will not apply for more than 12 Assessment Periods. Also, the disregard ceases to apply if the claimant's capital falls to £16,000 or below; it would not be re-applied if it subsequently rose above this level even if it was within 12 months of the UC award commencing. See **paragraph 119 to 122** for more details on why this has been included.

57. As a result, when tax credit claimants have their UC awards assessed, they will be treated the same as any other UC claimant, i.e., any capital up to £16,000 that they have will be taken into account, but they will also have access to the support that UC provides. This includes access to the Housing Element, even though they would not have access to such support previously via HB. For example:

(i) Jared is a lone parent who has one child and is receiving CTC of £277.08 a month. He has no housing costs. Jared also has £20,000 in capital and, therefore, does not have access to JSA(IB), ESA(IR) or IS, as these benefits are not available to claimants who have more than the £16,000 capital limit.

Jared makes a claim for UC as part of the managed migration process and has capital above £16,000 disregarded. As a result, he can be awarded UC, but will have any capital in excess of £6,000 and up to £16,000 is treated as yielding an income of £4.35 per month for each complete £250 over £6,000. The capital deduction is therefore  $£10,000 \div £250 \times £4.35 = £174$ .

Jared's award of UC would be:

Child Element	£277.08 +
Standard Allowance	£317.82 +
Capital deduction	£174 -
	_____
<b>Total monthly UC</b>	<b>£420.90</b>

<sup>64</sup> There is no capital limit in tax credits.

(ii) Gillian is a lone parent with one child and receives tax credits. She earns £936 a month and has £17,000 capital and £975 housing costs. Prior to the managed migration process, she was receiving £472.12 tax credits every 4 weeks.<sup>65</sup> She cannot claim HB because it has a capital limit of £16,000.

As with Jared, her capital deduction is £174. However, Gillian also has her UC reduced because of her earnings. This is calculated as follows: £936 - £192 (work allowance) = £744. The taper of 63% is then applied, and this is deducted from £744 = £468.72 earnings deduction from UC.

Gillian's award of UC is:

Child Element	£277.08 +
Standard Allowance	£317.82 +
Housing Element	£975.00 +
Capital deduction	£174 -
Earnings deduction	£468.72 -
<b>Total monthly UC</b>	<b>£927.18</b>

(iii) Ava is single and earns £936 a month. She has no housing costs, and has £18,000 in capital. As a result she does not have access to JSA(IB), ESA(IR) or IS as these benefits are not available to people who have more than the £16,000 capital limit. Prior to the managed migration process, she was receiving £61.35 tax credits every 4 weeks.<sup>66</sup>

As with Jared and Gillian, her capital deduction is £174. However, Ava also has her UC reduced because of her earnings. This is calculated by applying the taper of 63% to her earnings i.e.  $63\% \times 936 = £589.68$  earnings deduction.

<sup>65</sup> This equates to £511.46 a month.

<sup>66</sup> This equates to £66.46 a month.

## The transitional element

58. **Regulation 52** will allow for inclusion of a transitional element (TE) in the UC award. Where appropriate, the TE is to be included in the calculation of the UC maximum amount when determining the UC award once a comparison has been made between:

- the total amount of all relevant existing benefits to which the claimant(s) are entitled at the point of managed migration, i.e., termination date of the existing benefit (the total legacy amount – **see regulation 53**); and
- the total amount of UC to which the claimant(s) would be entitled if calculated based on their circumstances at the point of managed migration on their termination day as reported in their existing claim (the UC indicative amount – **see regulation 54**).

59. The difference between these amounts is then calculated and if the amount paid via existing benefits is greater than the amount paid in UC, then a TE will be awarded as calculated by **Regulation 55(1)**.

60. An example of how the comparison will be made without earnings can be found at **Annex 2**.

## The transitional element – total legacy amount

61. **Regulation 53** will provide for the calculation of a representative monthly rate of existing benefits so this can be used in the calculation to ascertain whether any TE is payable. The representative monthly rate is calculated thus:

### ***Tax credits***

- the daily rate of the tax credits award (as determined by HMRC) for the existing benefit claimant on the migration day, i.e., a snapshot of entitlement based on the circumstances on that day is converted to a monthly figure by multiplying it by 365 and dividing it by 12;

### ***IS, ESA(IR), JSA(IB)***

- the weekly rate of IS, ESA(IR) or JSA(IB) to which the existing benefit claimant is entitled on the migration day is converted to a monthly figure by multiplying it by 52 and dividing by 12;

## **Housing Benefit**

- the weekly rate of HB to which the existing benefit claimant is entitled on the termination day is converted to a monthly figure by multiplying the total amount of HB by 52 and dividing by 12;
- Regulation 52(5)(b) also modifies the calculation to take into account any rent-free weeks that HB claimants may have. To convert weekly entitlement in these cases to a monthly figure, multiply the weekly rate by the number of weeks in the year for which the claimant is liable to pay rent and then divide by 12.

Regulation 52 (6) will also provide that in cases where an HB claimant managed migrates to UC during one of the rent-free weeks, the weekly amount to be taken into account for the purposes of determining the total amount of existing benefits will be the level of entitlement in the last complete week that was not a rent-free period.

62. The above amounts are then added together to give the monthly total legacy amount, which will be used in the calculation to determine whether any TE is payable. For example:

**(i)** John is a lone parent who has one child and is in receipt of IS, CTC and HB. On the day before he makes his UC claim, he is entitled to:

CTC daily rate of	£9.11
IS weekly amount of	£73.10
HB weekly rate of	£225

These are then turned into monthly amount as follows:

CTC daily rate	$£9.11 \times 365 \div 12 =$	£277.09
IS weekly amount	$£73.10 \times 52 \div 12 =$	£316.77
HB weekly rate	$£225 \times 52 \div 12 =$	£975.00
		<hr/>
<b>Total monthly legacy amount</b>		<b>£1,568.86</b>



## **Benefit cap**

63. Regulation 53(8) also caters for the application of the benefit cap where existing claimants had not been in receipt of HB at the point of their managed migration, or for cases where the benefit cap has been applied to existing claimants' HB, but they have been left entitled to the minimum amount of HB under regulations 75 and 75D of the Housing Benefit Regulations 2006.<sup>67</sup>
64. In these cases, regulation 52(8)(b) provides that the total existing benefit amount cannot be above the benefit cap's "relevant amount" as prescribed by section 8 of the Welfare Reform and Work Act 2016.

## **The transitional element – indicative UC amount**

65. **Regulation 54** provides for the calculation of an indicative UC monthly amount, which will be compared with the total legacy amount to ascertain whether any TE is payable. The UC indicative amount will represent the amount of a UC award if that was calculated by reference to the claimant's or joint claimants' circumstances on their last day of entitlement to existing benefits (the day before their claim to UC starts). For example:

Harsha is a lone parent who on her last day of entitlement to existing benefits has one child and rental liability of £225 a week, (£975 a month). Based on these circumstances, her UC indicative award would be as follows:

Standard Allowance	£317.82
Child Element	£277.08
Housing Element	£975.00
	_____
<b>Total monthly UC indicative amount</b>	<b>£1,569.90</b>

66. The regulations prescribe a number of assumptions that should be made in calculating the UC indicative amount. These are:
- if claimants have an award of CTC, they are responsible for any child or qualifying young person in respect of whom the individual element of CTC is payable;
  - that where claimants have had childcare costs, a rental liability or cost and earnings taken into account in the calculation of their total legacy amount

<sup>67</sup> [http://www.legislation.gov.uk/uksi/2006/213/pdfs/uksi\\_20060213\\_300617\\_en.pdf](http://www.legislation.gov.uk/uksi/2006/213/pdfs/uksi_20060213_300617_en.pdf)

as per regulation 53, the same amounts are to be used to calculate the UC indicative amount. This is so a like-for-like comparison can be made when calculating the TE;

- defining a claimant's earned income that will be used as part of the calculation based on what existing benefit a claimant is receiving:
  - if the claimant is in receipt of a tax credit, the annual employed or trading income is taken and a monthly representative figure taken by converting it to a net monthly amount by dividing it by 12 and deducting amounts for income tax and national insurance contributions;
  - if the claimant is in receipt of IS, JSA(IB), ESA(IR) or HB, the earnings applied are those used to calculate the monthly representative rate as per regulation 53, converted to a monthly figure by multiplying it by 52 and dividing it by 12.

67. Regulation 54 also provides for cases where a claimant does not meet the UC financial conditions prescribed in section 5(1)(b) and 5(2)(b) of the WRA 2012, e.g., where earnings (or other income) would mean that the claimant would not be entitled to UC. In these cases, the regulation will prescribe that the claimant's or joint claimants' indicative amount should be considered as nil. The amount of the TE will be adjusted to take into account the amount that the UC indicative award would have fallen below zero if it were possible. See 2<sup>nd</sup> bullet, **paragraph 70**. An example of how this comparison will be made can be found at **Annex 3**.

68. Regulation 54(6) prescribes that if a claimant's or joint claimants' earnings as prescribed in regulation 54(2)(d) are equal to or above the earnings level for exemption from the benefit cap as provided by regulation 82(1)(a) of the UC Regulations 2013, the benefit cap should not be applied to the calculation of the legacy amount. This is intended to mirror the HB provisions that provide that HB claimants should be exempt from the cap if entitled to WTC.

69. The regulation will allow the Secretary of State to use any evidence or information that was used to calculate the legacy amount and to supplement that as necessary. This will allow the Department to gather data from the legacy benefits but where certain information is unavailable, for example, request further information from the claimant, e.g., details of claimants' capital would not be available in their tax credit data if that is the only benefit that they receive.

### **The transitional element – initial amount and adjustment where other elements increase**

70. **Regulation 55** will establish how the initial award of the TE should be calculated having established the total legacy amount and the UC indicative amount. This would be calculated as follows:

- if the UC indicative amount is greater than zero, the TE should be the amount by which the legacy amount might exceed the UC indicative amount (i.e., the difference between the legacy amount and the UC indicative amount).
- if the income, earned and/or unearned bring the indicative UC amount to nil, the TE should be the amount of the legacy amount plus 63% of any of the earnings that fell to be deducted in calculating the UC indicative amount (in accordance with section 8(3) of the WRA 2012 and by 100% of any unearned income that so fell to be deducted).

71. This will ensure that the first UC award equals the amount that the claimant would have received on legacy benefits if they had remained in receipt of the same level of earnings and/or unearned income. Without this regulation, the claimant would receive a lower UC award at the end of their first assessment period, as it would be reduced by the amount that fell below zero.

72. The regulation will also ensure that once the TE is calculated it becomes part of the calculation of the UC Maximum Amount and that it is treated the same as other elements when the award of the UC is calculated after deductions are applied to the UC award.

73. This means that when earnings are applied to the UC Maximum Amount (once it has been calculated), TE will not erode or increase where a UC claimant's earnings fluctuate. Instead, the amount of TP included in the UC Maximum Amount will remain the same. See **Annex 4** for an example.

74. However, if earnings do cause the UC award to reduce to zero, and as a result the UC claim is terminated for more than 3 months, TP will cease to be applied to the UC award as this is one of the circumstances that causes TP to cease under **regulation 56**.

75. Regulation 55 will also allow the TE to be eroded by:

- an increase in the second or subsequent assessment period in an amount included in the UC award (except for the childcare costs element); (see **paragraph 123 to 126** for more details on why changes in the childcare element have been excluded); or
- a new UC element is applied to the UC award;

76. Where there is more than one change in an assessment period, i.e., there is an increase in one element but a decrease in another, it is **not** the net effect of these changes that reduces the TE, but the total increase in the relevant element. For example:

Anna lives in Greater London and is in receipt of £1,901.57 UC, which is

made up as follows:

Child Element for 2 children	£277.08 + £231.67
Standard Allowance	£317.82
Housing Element	£975.00
TE	£100.00
	_____
<b>Total monthly UC indicative amount</b>	<b>£1,901.57</b>

However, in an assessment period, she reports that one of the children that she is receiving the Child Element for has left the household and she has had her rent increased by £25 to £1,000. Based on this, her UC is adjusted as follows:

Child Element	£277.08
Standard Allowance	£317.82
Housing Element	£1000.00
TE	£75.00
	_____
<b>Total monthly UC indicative amount</b>	<b>£1,669.90</b>

77. Regulation 55 will also ensure that if the TE is reduced to nil, it is not to be included in the calculation of UC entitlement in any subsequent assessment period.

78. Further examples can be found at **Annex 5**.

### **Circumstances in which transitional protection ceases**

79. **Regulation 56** provides other circumstances where the TE will cease to be applied to the UC award. The circumstances are:

- there is a sustained drop for more than 3 months where the claimant's or joint claimants' earned income is less than the relevant earnings threshold (as provided for by regulation 99(6)(a) or (b) of the UC Regulations 2013) and, in their first assessment period, their earnings or joint earnings had been equal to or above that threshold;
- the formation or separation of a couple;
- the termination of the UC award.

### **Application of transitional protection to subsequent awards**

80. **Regulation 57** will ensure that where a UC award terminates, no TP should be applied to the calculation of any subsequent award except in the circumstances set out in regulation 57(2). It will also provide that, in cases where the transitional capital disregard (as provided by regulation 51) had been applied on a previous award, this would not be reapplied if claimants claim UC again even if that is within 12 months' assessment periods of their original UC award commencing, i.e., the maximum duration of the disregard.

81. However, in cases where the UC award or the transitional capital disregard is no longer applicable because earned income has increased (i.e., the claimant or joint claimant's earnings are such that they no longer meet the financial conditions in section 5(1)(b) and 5(2)(b) of the WRA 2012), TE can be re-awarded and the TE or the transitional capital disregard can be re-applied if the claimants or joint claimants reclaim and they are awarded UC within 3 months of the end of the assessment period in which the earnings originally increased.

82. Any time spent off UC in these cases will not be taken into account for determining whether the claimant has reached the maximum duration of 12 assessment periods for the application of the transitional capital disregard. This is to ensure that claimants with varying wage frequency do not lose out when they receive, for example, two 'pay packets' in the same UC assessment period (see **paragraphs 127 to 128** for more details).

### **Qualifying claim – Secretary of State may set later commencement day**

83. **Regulation 58** will allow the Department to defer the start day of a UC award to a later date no later than one month from the day the UC claim was made.

84. We have included this because it would offer further legislative flexibility so that the UC start days could be deferred if, for example, the number of claims that need to be assessed would put undue pressure on operational capacity thus threatening service delivery to claimants.

85. This regulation will be used sparingly, but if it were used, we would inform claimants that there would be a delay in the start day of their UC claim, and

that their existing benefits would remain in payment until the start day came into force.

### **Minimum income floor not to apply for first 6 months**

86. **Regulation 59** will make provision for self-employed claimants who are managed migrated to UC and are found to be ‘Gainfully Self-Employed’ (GSE).
87. Currently, anyone with a work expectation who makes a new UC claim and has self-employed earnings needs to have the extent of their self-employment assessed to determine their Labour Market conditionality requirements. Those who are found to be GSE, i.e., self-employment is their main employment and the work is organised, regular, developed and in expectation of profit, are exempt from work-search requirements, but may be subject to the Minimum Income Floor (MIF).<sup>68</sup>
88. Those who commenced their self-employment a year or less before they were found to be GSE will benefit from a “Start-up Period”, i.e., a period of up to 12 months during which the MIF is not applied. This means that self-employed claimants with a work expectation who managed migrate (the bulk of these will be receiving tax credits) will need their GSE, and any entitlement to a Start-up Period, assessed before they are asked to agree a claimant commitment in readiness for setting that commitment.
89. Where self-employed claimants are managed migrated and found to be GSE, and are not entitled to a Start-up Period, they will be allowed a 6-month ‘grace period’ before the MIF will be applied to them, regardless of how long the claimant has been in self-employment prior to managed migration. This means the MIF will not be applied to their UC award for the first 6 assessment periods.
90. This includes existing benefit claimants who are self-employed and are not found to have been GSE when they initially make their UC claim, but are found to have been GSE at a later point in the 6-month ‘grace period’. For example, self-employed existing benefit claimants who upon migration:
- are not subject to the MIF because there is no work expectation on them; but
  - within a short period of time do have such an expectation placed upon

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<sup>68</sup> The MIF is an assumed level of income that is designed to encourage individuals to increase their earnings by developing their self-employment. It is determined by multiplying the number of hours claimants can reasonably be expected to work or be looking for work by the relevant national minimum wage or National Living Wage for their age, minus notional income tax and National Insurance contributions that would be payable on actual earnings at that level, to produce a net figure.

- them; and
- are therefore required to undergo the GSE test and could have the MIF applied to their UC award.

91. Where this is the case, the balance of time of the 'grace period' will be applied to their UC award before the MIF is applied. For example, if a new UC claim is made on 01.04.19 and the claimant is found to have been GSE 2 months after that day, then the remaining 4 months of the 6-month 'grace period' would apply to the UC award.

92. Once the 6-month 'grace period' ends, the UC claimant would be subject to the MIF and the overall UC award (that may include TP) would be reduced accordingly (see UC Regulations 2013, regulation 62).

## Students

93. **Regulation 60** will ensure that where claimants are receiving an existing benefit and are also undertaking a full-time course of education, but upon managed migration:

- do not meet the UC entitlement conditions, i.e., because they come within section 4(1)(d) of WRA 2012 ('WRA 2012'); as they
- fall within the definition of receiving education;<sup>69</sup>

they would be treated as meeting that condition and, therefore, be able to make a claim for UC. Once they do make a claim, they would also be entitled to UC including TP if applicable. The exemption from section 4 of the WRA 2012 would last until the course that they were on at the point of their managed migration ends.

## Rounding

94. **Regulation 61** will ensure that where a calculation relating to TP results in an amount that contains a fraction of a penny, regulation 6 of the UC Regulations 2013 would apply and that fraction is to be disregarded if it is less than half a penny or otherwise treated as a penny.

## Effect of revision, appeal etc. of an existing award

95. Finally, **regulation 62** will provide that where it is discovered that the information used to calculate the total legacy amount (**regulation 53**) or the indicative amount (**regulation 54**) was incorrect where there:

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<sup>69</sup> See regulation 12(2) of the UC Regulations.

- has been misrepresentation or;
- has been a failure to report information where that failure was advantageous to the claimant; or
- had been official error; or
- has been a revision of or successful appeal on an earlier existing benefit decision on an outstanding mandatory reconsideration or appeal.

these amounts could be revised or superseded and the result applied to the new UC claim or an existing award of UC.

96. For information, if a claimant wishes to dispute the amount of the TE then this can only be done by disputing the UC decision – done under normal dispute rules. Once the migration decision has been made, the legacy amount used in the calculation cannot be changed through the normal disputes process as it is not an appealable decision.

### **Claimants in receipt of severe disability premium: restriction on new claims for UC and transitional payments**

97. New **Regulation 63** has been introduced to address the specific circumstances of disabled people who:

- live alone, and who have no carer; and
- are in receipt of the Severe Disability Premium (SDP) in JSA(IB), IS, HB or ESA(IR).

98. As UC does not have an equivalent to the SDP, claimants who are receiving the SDP are likely to lose the most in monetary terms should they migrate naturally to UC. If they were managed migrated to UC, they would have access to TP. Ministers have decided that they wish to offer transitional payments to those in this group who have already naturally migrated to UC to help mitigate some of the financial loss and to prevent such losses for existing claimants.

99. This is in recognition of the very specific circumstances of this group of claimants, who experience a significantly less favourable financial outcome than other groups. The SDP claimant group is notable not least because most live alone and have no carer and are less likely to have had any recent connection with the labour market.

100. New regulation 63 introduces provision for claimants who:

- are entitled to the SDP in JSA(IB), IS, HB or ESA(IR); and
- have a change of circumstances that would otherwise have triggered a new claim to an existing benefit UC is replacing and thus caused them to migrate 'naturally' to UC.



101. In these cases, regulation 63 introduces a Gateway Condition so that claimants who would normally have naturally migrated to UC, will no longer be required to do so. They will remain on their existing benefits or be able to claim another existing benefit instead.

102. This protection will not extend to wider changes of circumstance, i.e., the formation of a new benefit unit: for example, existing benefit claimants who form a partnership with a UC claimant will still have to make a joint UC claim with that claimant.

103. The formation of a couple in the legacy benefits might have meant the cessation of entitlement to the SDP. The protection provided is aimed at claimants whose circumstances, other than the trigger for natural migration, remain the same.

104. Regulation 63 will also make provision so that claimants:

- who have already been naturally migrated to UC and who are still entitled to UC; and
- who were entitled to the SDP via JSA(IB), HB, IS or ESA(IR) immediately prior to migration;

can have transitional payments added to their UC award.

105. The regulation provides for a one-off check, which would:

- a. ensure that the transitional payment would be restricted to claimants who are still entitled to UC. This is because claimants who have ceased to be so entitled would have had changes of circumstance which means that they cannot be considered as being in an equivalent position to someone still on UC and requiring support;
- b. would exclude claimants who, since they migrated naturally to UC, have formed a couple or become single. They would be excluded on the basis that such wider changes would have been likely to affect entitlement to the SDP had they remained on legacy benefits, and that protection should not cover such wider lifestyle changes;
- c. both the above criteria are also criteria by which it is proposed to end transitional protection for the managed migration cases, thereby providing a continuity of treatment.

106. There would also be a check as to whether:
- a. the claimant (or partner) has, since natural migration, got a carer who gets either Carer's Allowance or the carer element of UC in respect of them. This is because their care needs would be met elsewhere in the benefit system; and
  - b. the claimant/partner is still getting Disability Living Allowance or Personal Independence Payments, the main qualifying benefits for SDP.
107. These are designed as a necessarily broad brush check to shadow some of the basic qualifying conditions for the SDP and as such, had they still been on legacy benefits, SDP would not have ceased.
108. The payments themselves would be broadly based on the amount of SDP that the claimant(s) were receiving prior to naturally migrating, but would also take account of whether they are in the UC Limited Capability for Work and Work-Related Activity Group (LCWRA), and thus receiving an additional amount for having LCWRA as part of their UC award. The amounts would be:
- a flat rate of £280.00 a month for claimants not in the UC LCWRA group (i.e. the broad monthly equivalent of lower rate SDP at £64.30 a week); or
  - a flat rate of £80.00 a month where the UC claimant has been determined as having LCWRA.
109. As the Committee can see, the amount payable to those who have been determined as having LCWRA is lower. This is to reflect the policy design of UC for claimants with health conditions where the LCWRA rate was set at a much higher rate than its ESA equivalent to ensure that financial support was targeted more effectively at claimants who are severely disabled.
110. The calculation methodology is based upon the lower rate entitlement of SDP. There is a higher rate, where couples both satisfy the qualifying conditions. In those cases, the proposed flat rate would be £360 a month. There is only one rate for the couples who got the higher rate of SDP in legacy, as we consider it highly unlikely that in such cases, where both members of the couple were deemed as requiring assistance with care costs in existing benefits that neither partner would be in the UC LCWRA group. A summary of the proposed rates is in the table below:

<b>Single People</b>	
Not getting UC LCWRA <sup>70</sup> element	£280.00
Getting LCWRA element	£80.00
<b>Couples (got lower rate SDP in legacy)</b>	
Not getting UC LCWRA element	£280.00
Getting LCWRA element	£80.00
<b>Couples (got higher rate SDP in legacy)</b>	
	£360.00

111. As with TP applied upon managed migration, there will be circumstances that end the additional payment. These are where a UC claimant:

- forms a couple or separates from their partner; or
- entitlement to UC ends.

112. These mirror some of the conditions where TP would end. However, the circumstance that ends TP where there has been a 3 month sustained drop in earnings, has not been applied in this case because it is unlikely that claimants previously receiving the SDP would be engaged in such work.

113. Regulation 63 also makes provision to backdate entitlement to the additional payment where JSA(IB), ESA(IR), IS or HB claimants who had been receiving SDP have naturally migrated to UC. In these cases, they will receive a lump sum payment of the relevant flat rate determined upon their circumstances at the one-off check stage to cover the period from the date of their UC claim to the date from which additional monthly payments are made. This is as long as they had not had a change of circumstances that would end the additional payment immediately prior to the date upon which it comes to the attention of the Secretary of State that the claimant is a former SDP recipient.

114. As some of these backdated payments could be substantial, regulation 63 ensures that any lump sum that is paid can be disregarded for the purposes of UC for a duration determined by the period covered by the arrears payment, or 12 months, whichever is longer. For example, if a claim receives an arrears payment for 14 months, the lump sum will be disregarded for a 14-month period. If a claimant receives an arrears payment for 9 months, the lump sum will be disregarded for 12 months.

115. These transitional payments will eventually be converted to payments of TP at some point in the future, to be decided by the Secretary of State, after the managed migration of existing benefit claimants begins in July 2019. Once these payments have been converted they will be subject to the usual rules associated with TP and will erode (if their UC award rises) or end in

<sup>70</sup> Limited Capability for Work and Work-Related Activity.

certain circumstances. See **paragraph 70 to 79**.

### **Amendment consequential on restriction on claims by certain severely disabled persons**

116. **Regulation 3** will make a consequential amendment to allow existing benefit claimants who are in receipt of SDP and therefore can no longer make a new claim to UC to be able to make new claims to existing benefits.

### **Existing provisions to apply to claims by notified persons**

117. The current provisions for claimants who naturally migrate to UC that are contained in the 2014 Regulations; the WRA 2012 (Commencement Order No. 9 etc. (Amendment) Order 2013; and Schedule 2 of The Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regulations 2017;<sup>71</sup>

will continue to apply to those existing benefit claimants who are managed migrated to UC (see **Annex 6**). For example this covers:

- transfer of certain aspects of an existing benefit award, e.g., any sanctions or loss of benefit penalties applied to existing benefit awards are applied to the UC award;
- protection for claimants who are disabled or have a health problem when they transition to UC from ESA or incapacity benefits. Such protections include:
  - ensuring that a capability for work determination for ESA can automatically be applied to the UC award; and
  - paying the Limited Capability for Work addition in UC if they have been continuously entitled to ESA and entitled to the Work-Related Activity Component in ESA prior to 3<sup>rd</sup> April 2017.

### **Impacts of the proposed changes**

#### ***Managed migration volumes***

118. Between January 2019 and 2023 there will be approximately 2.09 million households (2.87 million individuals) who will managed migrate from existing benefits to UC. This equates to 69,000 households (95,000 individuals) per month when migrating at pace. Of those being managed migrated, the bulk

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<sup>71</sup> [http://www.legislation.gov.uk/uksi/2017/204/pdfs/uksi\\_20170204\\_en.pdf](http://www.legislation.gov.uk/uksi/2017/204/pdfs/uksi_20170204_en.pdf)

will be those receiving ESA(IR) and tax credits. See **table 1** below.

**Table 1. Breakdown of claimants being managed migrated to UC by existing benefit group**

Existing Benefit	Number	Percentage
JSA (JSA only / JSA & CTC and/or HB)	39,000	2%
ESA (ESA only / JSA & CTC and/or HB)	745,000	36%
IS (IS only / JSA & CTC and/or HB)	119,000	6%
CTC (CTC only / CTC & HB)	395,000	19%
WTC+CTC (WTC & CTC only / WTC & CTC & HB)	620,000	30%
WTC (WTC only / WTC & HB)	102,000	5%
HB (HB only)	72,000	3%
<b>Total</b>	<b>2,092,000</b>	<b>101%</b>

**Note:** Percentage exceeds 100% due to rounding.

### Transitional Protection

#### Capital above £16,000

119. Having considered the possible provision of TP more fully, the Department has made some refinements to the policy intention as announced in 2011 – 2012. Part of this has focused on those tax credit claimants who have more than £16,000 in capital at the point of managed migration, as in UC there would normally be no entitlement if capital exceeds that amount.

120. The Department considered various options but decided the most efficient was to legislate to disapply the capital limit' in these cases and apply a deduction for these claimants' "assumed yield" from their capital based on the £16,000 threshold.

121. However, as these claimants will have a level of resource that can be used to help support themselves whilst out of work or when in receipt of low

earnings, access to UC will only be permitted for 12 months while their capital exceeds £16,000. This will give them time to adjust before the Department notifies them that their UC award will end. Later, if their capital falls to £16,000 or below, subject to their meeting UC's other conditions of entitlement, UC will be available to them and they can make a claim.

122. The number of tax credit claimants with capital in excess of £16,000 likely to be managed migrated is relatively small. It is estimated, across Great Britain, to be around 50,000 and analysis shows that approximately 80% of these are estimated to have capital over £20,000, with approximately 50% estimated to have capital greater than £40,000.

### ***Childcare***

123. Once a TP award has been made, the announced policy was that it would be eroded if a new UC element was awarded or an existing one increased. This would include terminating the TP award if there was a sufficient increase in another element of the UC award. If that other UC element were subsequently withdrawn or reduced, the TP award would not be restored to its previous level.

124. The Department has reviewed this intention with respect to TP's interaction with the UC childcare element. The childcare element will either be initially awarded because claimants have started work that has led to them incurring childcare costs, or have increased their hours of work and so increased their childcare requirement.

125. Reducing or terminating the TP element in these circumstances would likely be a major disincentive for UC claimants to start work or increase their hours, since any increase of their UC award for additional childcare costs would simply be correspondingly reduced from their TP award. This disincentive would only be intensified if the claimants were aware that their TP would not return to its original level if the hours and the childcare costs (and so their childcare element) would fall again shortly in the next or any subsequent assessment period.

126. The Government has, therefore, decided that either the new award of the childcare element or any changes in the amount will be disregarded with regard to the calculation and maintenance of the TE. The childcare element will, however, impact on the overall award of UC.

### ***Wage payment frequency***

127. UC claimants receiving earnings weekly, fortnightly or four weekly could receive an additional wage payment in one assessment period from the amount they would normally receive. As a result, this may result in their UC award terminating if total net earnings received in that assessment period reduce their UC award to nil. For example:

**(i) Earnings paid weekly**

<b>AP1</b>	<b>AP2</b>	<b>AP3</b>	<b>AP4</b>	<b>AP5</b>	<b>AP6</b>
4 x 1 weeks UC paid	4 x 1 weeks UC paid	5 x 1 weeks Reduced/ No UC paid	4 x 1 weeks UC paid	5 x 1 weeks Reduced/ No UC paid	4 x 1 weeks UC paid
<b>AP7</b>	<b>AP8</b>	<b>AP9</b>	<b>AP10</b>	<b>AP11</b>	<b>AP12</b>
4 x 1 weeks UC paid	5 x 1 weeks Reduced/ No UC paid	4 x 1 weeks UC paid	5 x 1 weeks Reduced/ No UC paid	4 x 1 weeks UC paid	4 x 1 weeks UC paid

**(ii) Earnings paid fortnightly**

<b>AP1</b>	<b>AP2</b>	<b>AP3</b>	<b>AP4</b>	<b>AP5</b>	<b>AP6</b>
2 x 2 weeks UC paid	2 x 2 weeks UC paid	2 x 2 weeks UC paid	2 x 2 weeks UC paid	3 x 2 weeks Reduced/ No UC paid	2 x 2 weeks UC paid
<b>AP7</b>	<b>AP8</b>	<b>AP9</b>	<b>AP10</b>	<b>AP11</b>	<b>AP12</b>
2 x 2 weeks UC paid	2 x 2 weeks UC paid	3 x 2 weeks Reduced/ No UC paid	2 x 2 weeks UC paid	2 x 2 weeks UC paid	2 x 2 weeks UC paid

**(iii) Earnings paid four weekly**

<b>AP1</b>	<b>AP2</b>	<b>AP3</b>	<b>AP4</b>	<b>AP5</b>	<b>AP6</b>
1 x 4 weeks UC paid	1 x 4 weeks UC paid	1 x 4 weeks UC paid	1 x 4 weeks UC paid	2 x 4 weeks Reduced/ No UC paid	1 x 4 weeks UC paid
<b>AP7</b>	<b>AP8</b>	<b>AP9</b>	<b>AP10</b>	<b>AP11</b>	<b>AP12</b>
1 x 4 weeks UC paid	1 x 4 weeks UC paid	1 x 4 weeks UC paid	1 x 4 weeks UC paid	1 x 4 weeks UC paid	1 x 4 weeks UC paid

128. Having reviewed the TP policy interaction with wage payment frequency, the Department has decided that TP will be re-awarded if UC terminates in these circumstances as long as the new UC claim is made within 3 months of the previous UC award ending. It has also been decided that TP can be re-awarded in those circumstances where UC entitlement ended due to any 'spike' in earnings received, such as the receipt of a bonus or a period of overtime.

### **Claimants receiving Severe Disability Premium**

129. In addition, existing DWP benefit claimants receiving the SDP, part of the protected characteristics (disability) group, who naturally migrate to UC are likely to experience or have already experienced a significantly less favourable financial outcome than other groups. The SDP claimant group is notable not least because most live alone and have no carer and are less likely to have had any recent connection with the labour market.

130. It was, therefore, decided that some provision should be included in the draft Managed Migration Regulations to provide that these claimants will not naturally migrate to UC and so are always managed migrated and, consequently, always have the amount of their awards protected.

131. There are a number of claimants in this situation who were receiving the SDP and who have already migrated naturally (c. 4,000 claimants at February 2018). Transitional payments will be introduced for this group to help mitigate the financial loss.

132. These transitional payments will be paid retrospectively for the period from when they were first awarded UC and on an on-going basis. These claimants will, at some point, have their payment converted to a TE which will be awarded where applicable to those that are managed migrated, and which will then be subject to the usual rules of TP erosion and cessation.

### **Impact on equality and diversity**

#### ***Managed migration process***

133. During the managed migration process a large proportion of the caseload being migrated from existing benefits will have a disability or health condition. To give an indication of this, an estimated 36% of those being managed migrated to UC will be ESA(IR) claimants.<sup>72</sup>

134. In recognition of this, we have made the process and legislation as flexible as possible to accommodate the varying needs of claimants when they are managed migrated to UC. This will entail not only providing different levels of support throughout the claim process, but also making it possible to adapt the

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<sup>72</sup> Other existing benefits could also have claimants who have a disability or health problem but it is not currently possible to identify how many.



process easily if it is identified that this needs to be done through the 'test-and-learn' approach.

135. From an operational perspective, UC currently accepts claims from all claimant types, including those with a disability or health condition. Most claims are made via the online channel. However, claimants have an option to claim via telephone and face-to-face channels. Arrangements are also in place (using the DWP Visiting Service) for claimants who are not able to use any of these channels and do not have an appointee to administer their claim to enable them to claim UC.

136. As mentioned in **paragraph 98**, as part of the managed migration process, we will also mirror the approach being taken via natural migration for certain vulnerable claimants. As a result:

- claimants who rely upon an appointee to administer their existing benefit claims, because they suffer from particular health conditions, including mental health problems, which makes communication with the Department or HMRC difficult, will be able to have their appointee administer their move from existing benefits to UC when they are notified that they need to make a new UC claim. This is covered by regulation 16 (Persons unable to act) of the 2014 Regulations;
- regulations 19 to 24, 26 and 27 will continue to protect claimants who are disabled or have a health problem when they transition to UC from ESA or incapacity benefits. Such protections include paying the Limited Capability for Work element in UC if they have been continuously entitled to ESA and entitled to the Work-Related Activity Component in ESA prior to 3<sup>rd</sup> April 2017 and are migrated to UC.

137. Finally, we have put in a number of safeguards so that:

- claimants with health conditions can extend the time by which they need to make a new UC claim, if they are finding it difficult to complete the claim within the timescales they have been given;
- where it is identified that existing benefit claimants are vulnerable or have complex needs and they have not made a new UC claim by the deadline day, their existing benefit claims are not terminated immediately but can be delayed until such time that it is felt that the claimant is capable of continuing with the managed migration process or for a home visit to be arranged to help them make a new UC claim.

## **Communications and notifications**

138. Communications and notification products have been developed using an Agile process, which is an iterative, or test-and-learn, approach. To do so, user researchers have been speaking to claimants to validate assumptions.

139. Qualitative testing is still being carried out on the main products in the customer journey so that claimants can:

- express their views on the content;
- understand what they are being told; and
- suggest improvements to make them more effective.

140. This is being carried out by a mixture of:

- 'Lab sessions' where user researchers have recruited claimants; and
- 'Pop-up testing' where researchers have visited Jobcentres, HMRC offices and support organisations (e.g., homeless shelters, parent and child organisations) to talk to claimants and staff.

141. So far, over 25 visits have been made to stakeholder organisations to carry out consultations on the products listed below. These products have already undergone a number of iterations after user researchers, business analysts and content designers have reviewed claimants' understanding of the current versions and developed a revised version for further testing:

- 'Warm up' letter 3 versions (version 4 out for testing currently);
- Notification letter 4 versions ;
- Poster (awareness product) 4 versions.

142. As well as the above communications, future testing will also be carried out on:

- Pre-awareness – messages that educate about UC and managed migration prior to the start of migration;
- Reminders; and
- What TP a claimant is receiving and how it was calculated.

143. Work is currently in hand to consider the extent and nature of the communications needed for claimants affected by the SDP provisions.

## **Monitoring and evaluation**

144. The continuing roll out of the Full Service in this final phase will be closely monitored. We will continue to take a 'test-and-learn' approach to managed migration and will start testing this process on a small scale with the intention to increase volumes to full operational capacity by July 2019.

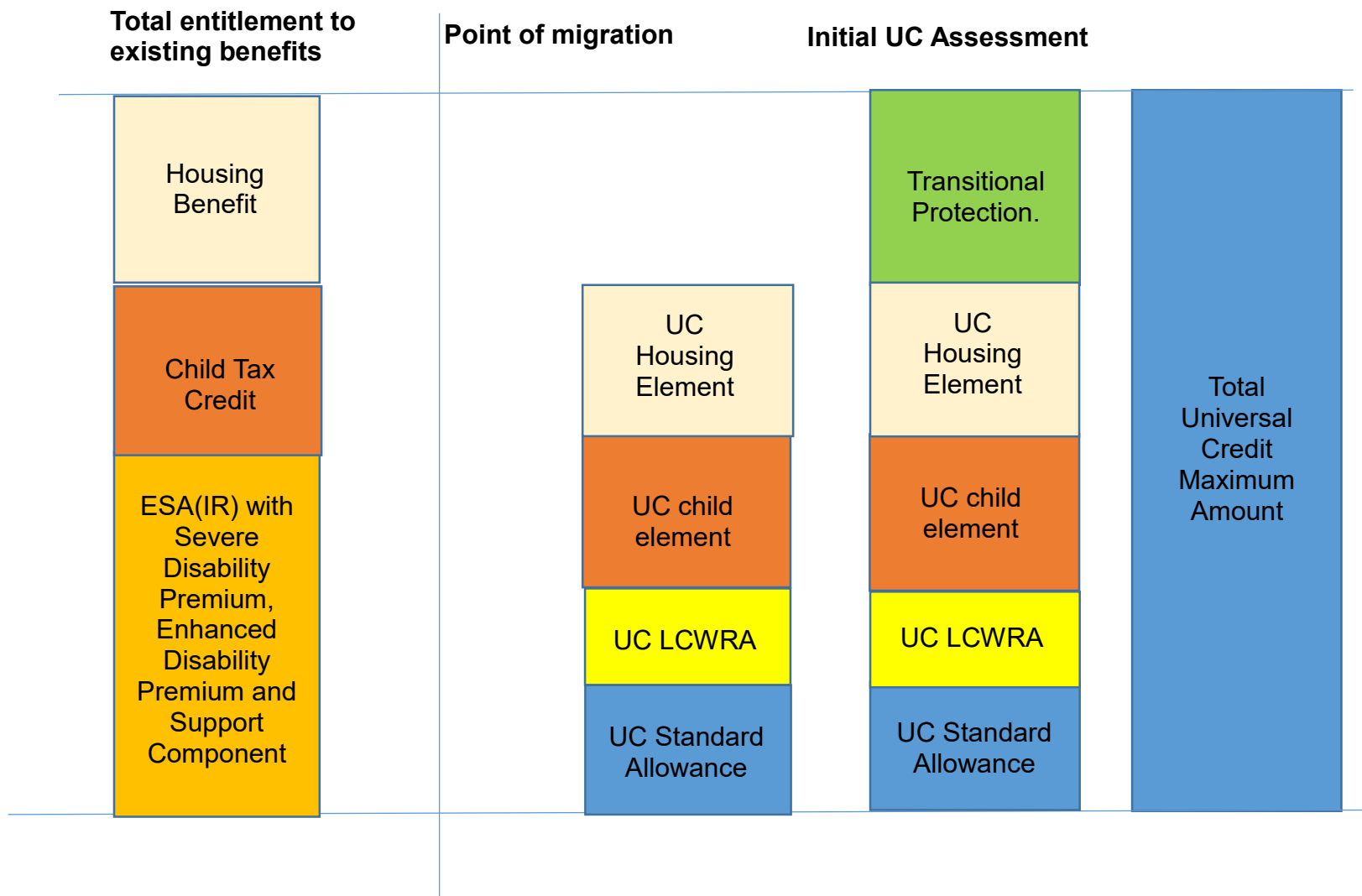
145. Using a 'test-and-learn' approach will enable the Department to evaluate the managed migration process robustly to ensure it supports claimants effectively. Where it is identified that changes are needed, it will allow the Department to do so before larger volumes of claimants are managed migrated to UC.

## CONTENT OF THE NOTIFICATION

The notification will provide the claimant (and partner if part of a couple) with the following information:

- the list of applicable benefits that will end to enable claimants/partners to understand that if they are receiving any of these benefits they will be terminated and the migration process is applicable to them;
- if they wish to continue to receive welfare support they will have to make a new UC claim by a specified day to:
  - a. ensure there is no gap in benefit entitlement; and
  - b. receive any TP if they are eligible for it;
  
- if they are part of a couple, both members will need to apply to make a joint claim;
- if they are part of a couple and have lived apart or are likely to live apart for at least 6-months they will each have to make a separate claim to UC;
- if they make their new UC claim by the specified day their existing benefits will end from the day before their UC claim was made (except HB);
- they will be able to extend the time that they have to make the new UC claim if they fall into certain criteria;
- if they fail to make a new UC claim by the specified day, all their existing benefits will end from the day before that day;
- what will happen if they have a change of circumstances between receiving the notification and making a UC claim; and
- we will notify them of the day that their UC award will start from.

TRANSITIONAL PROTECTION CALCULATION NO EARNINGS

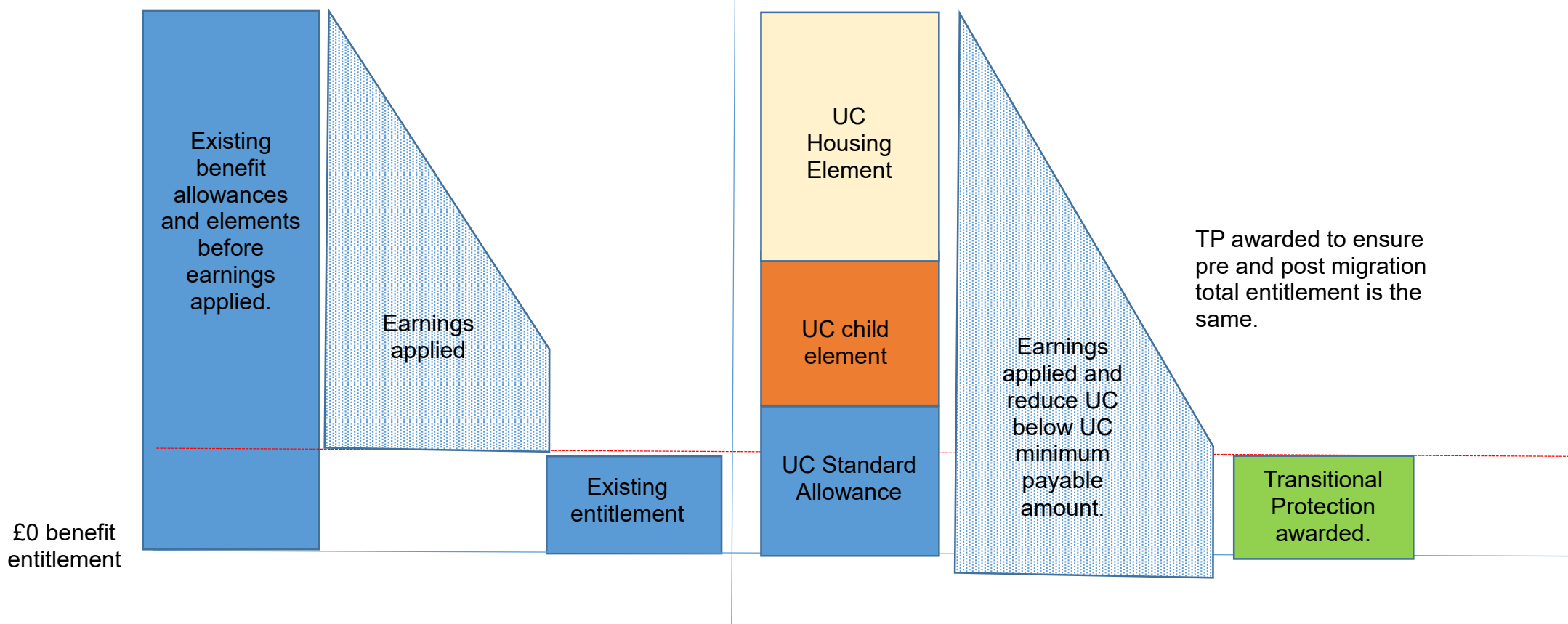


TRANSITIONAL PROTECTION CALCULATION WITH EARNINGS

Existing claim

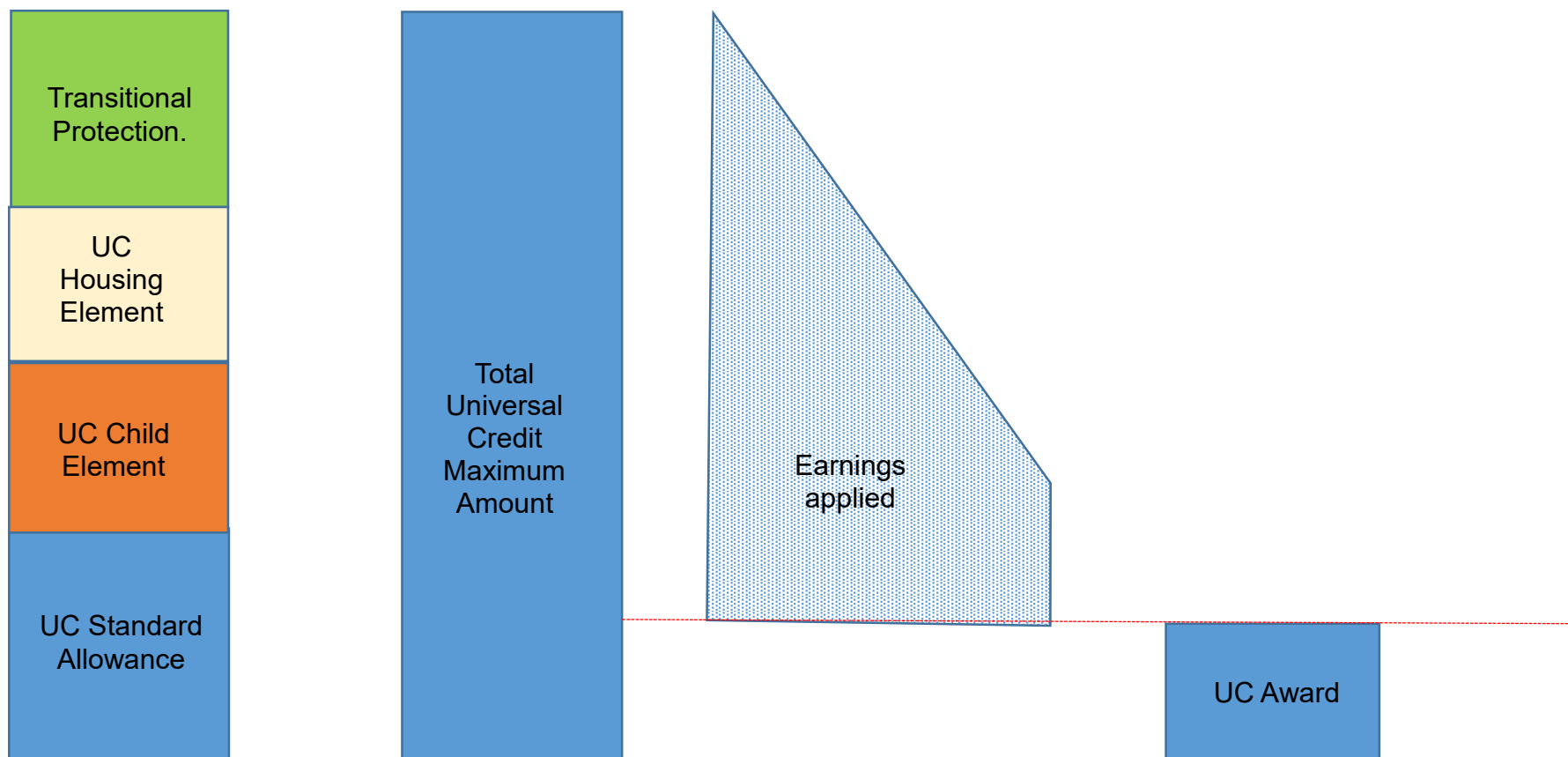
Point of migration

UC Assessment based on existing benefit circumstances



### TRANSITIONAL PROTECTION AND EARNINGS

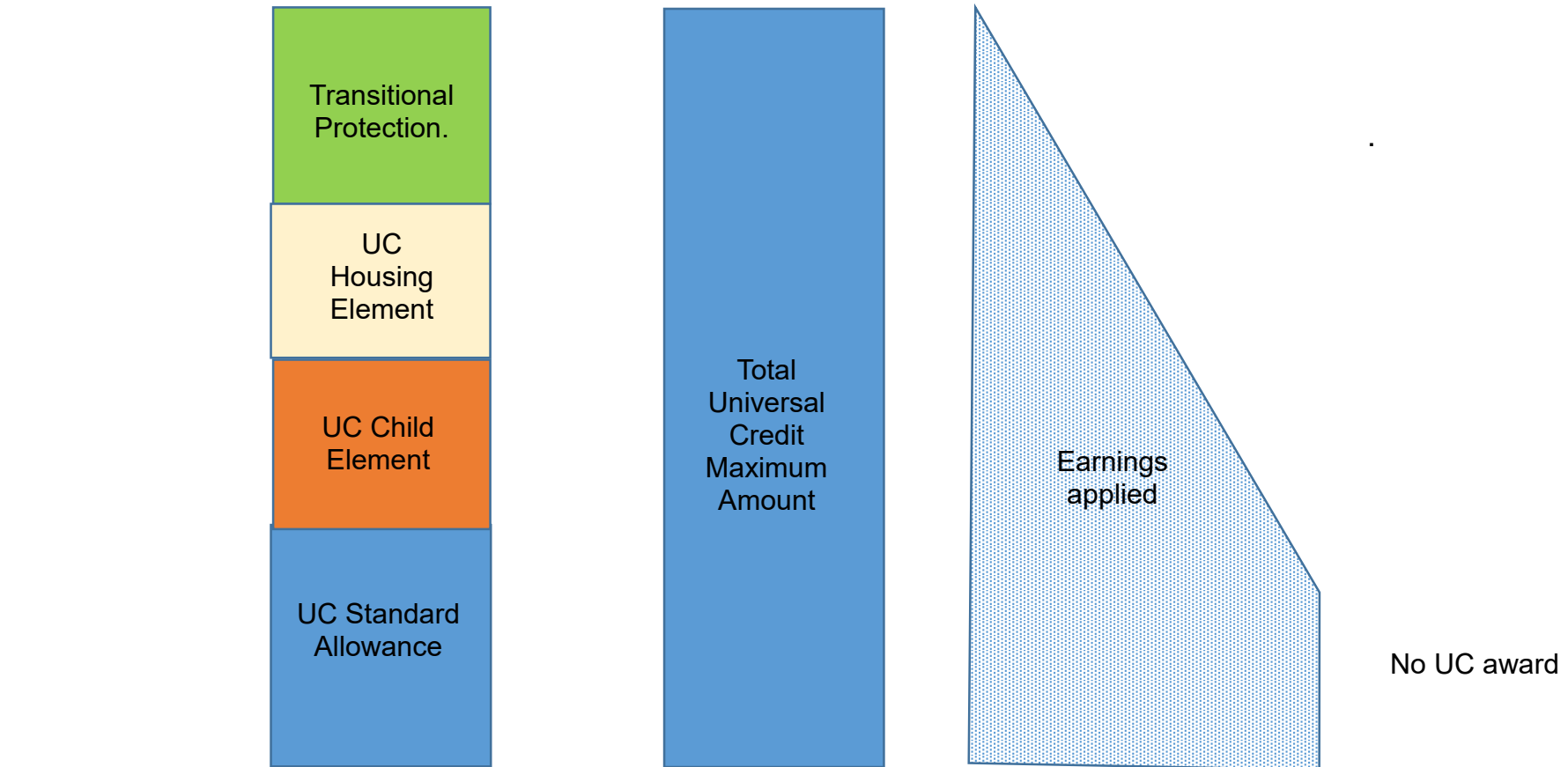
Earnings at the end of assessment period 1



Earnings in assessment period 3 increase and reduce UC entitlement to £0 for 1 month

TP element is the same as assessment period 1

End of assessment period 3

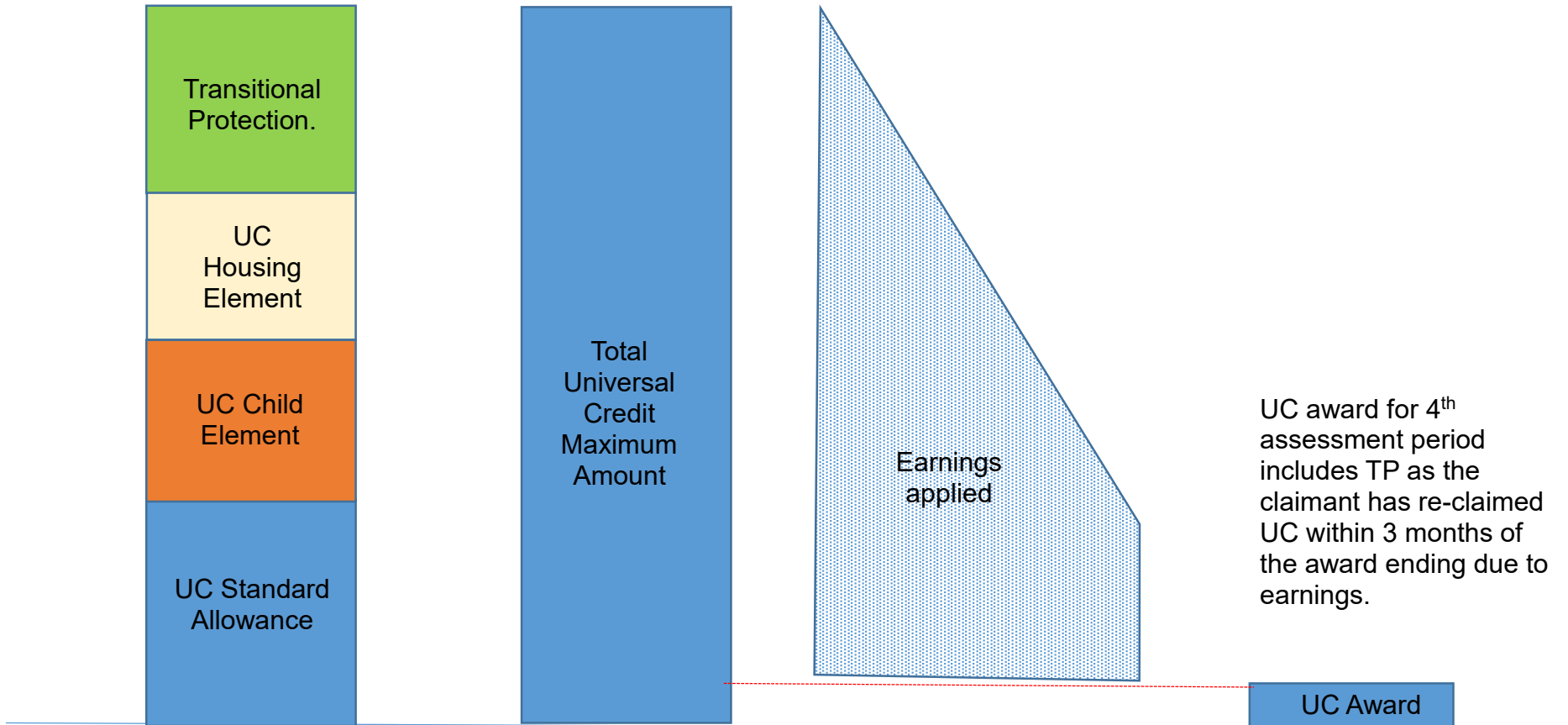




### Application of earnings in assessment period 4

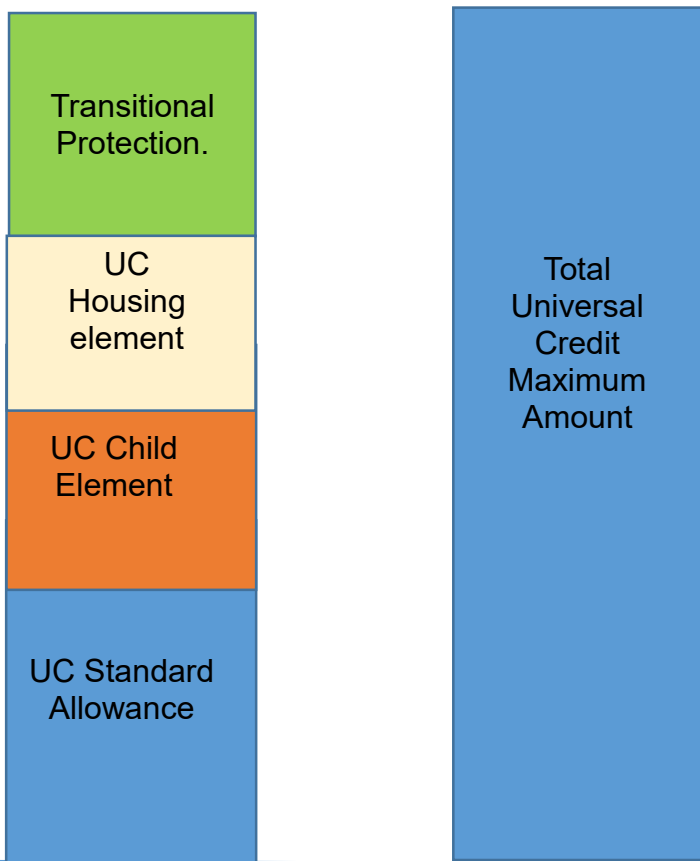
TP element is the same as assessment period 1

End of assessment period 4

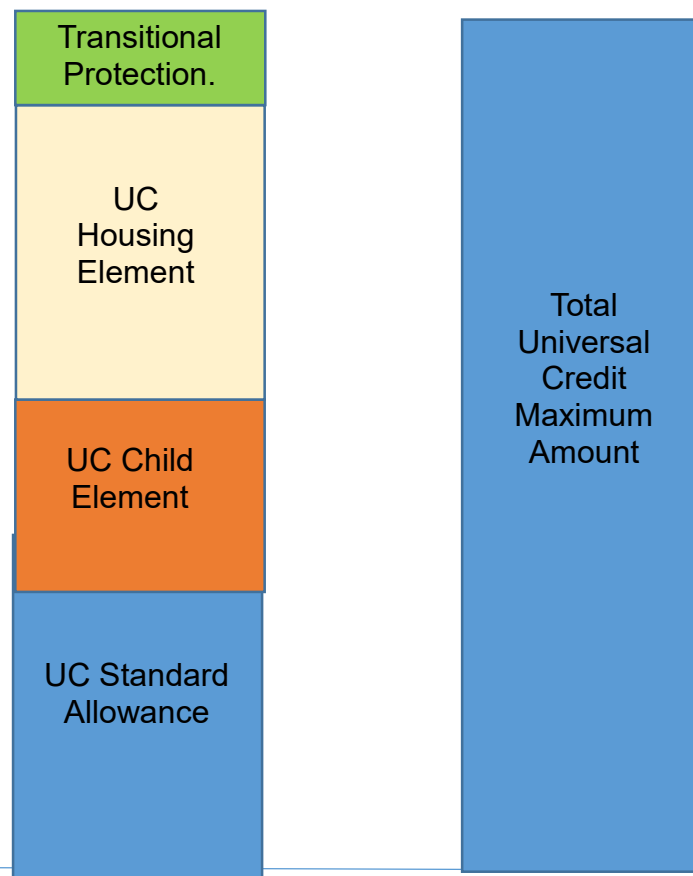


MAINTENANCE OF A UC AWARD WITH TP IF AN ELEMENT IS INCREASED

UC assessment for assessment period 1

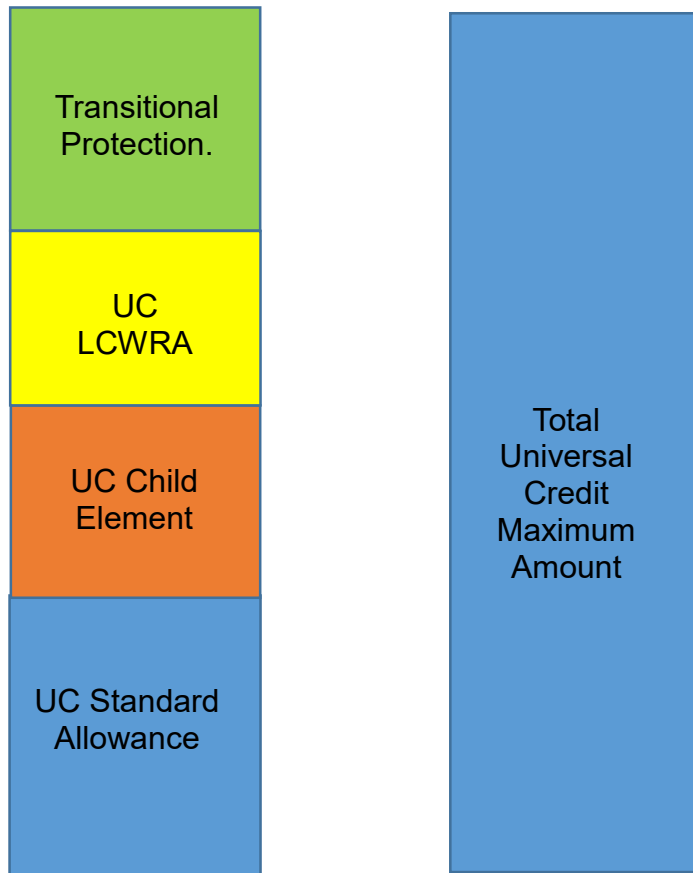


UC assessment for assessment period 2 – Housing Element increased

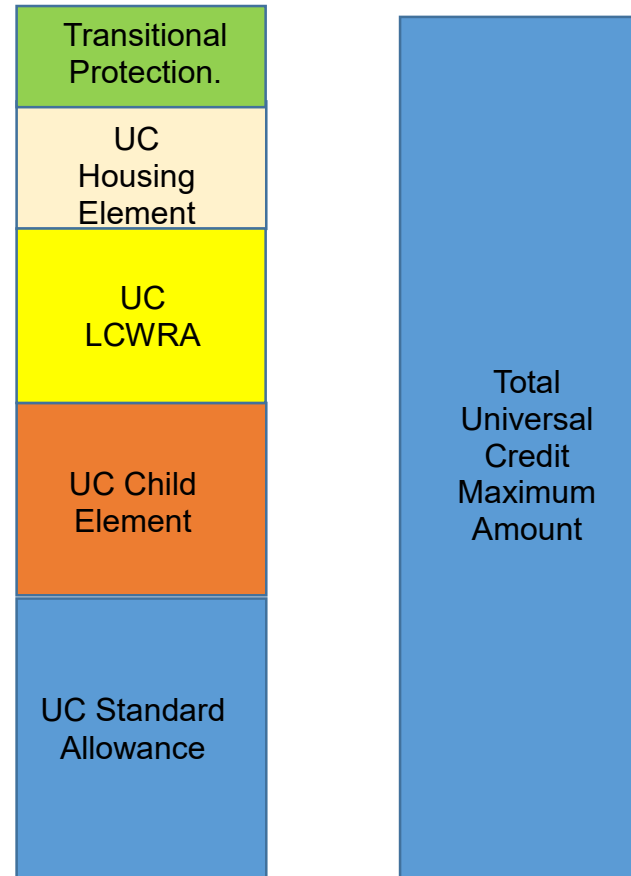


## MAINTENANCE OF A UC AWARD WITH TP IF A NEW ELEMENT AWARDED

UC for previous assessment period



UC assessment for assessment period 2 – Housing Element awarded





**ANNEX 6**

**CURRENT NATURAL MIGRATION PROVISIONS TO BE MIRRORED AS PART OF MANAGED MIGRATION**

<p><b>UC (Transitional Provisions) Regulations 2014</b></p>	<p><b>Provision</b></p>
<p>Regulation 9</p>	<p><b>Benefit Cap – benefits that have previously been taken into account</b></p> <p>Ensures that benefits are not taken into account more than once for the purposes of the benefit cap. It provides that if a claimant successfully backdated a claim for UC or is a new claimant partner and was entitled to HB during the first assessment period for UC, any benefits which they had been entitled to during this period will be disregarded for the purposes of calculating whether the benefit cap should be applied.</p>
<p>Regulation 10</p>	<p><b>Treatment of Overpayments of existing benefits</b></p> <p>Provides for circumstances where an overpayment of an existing benefit (as defined in regulation 2 but excluding tax credits or joint-claim JSA) arises as a result of payment of that benefit in respect of a period when the claimant is entitled to UC. Such an overpayment will be offset against entitlement to UC by treating it as unearned income, but with special provision dis-applying regulation 73 of the UC Regulations 2013 so that only the actual amount is offset.</p>

<b>UC (Transitional Provisions) Regulations 2014</b>	<b>Provision</b>
Regulation 11	<p>Ongoing awards of tax credits</p> <p>Provides for a claimant to be treated as entitled to an award of a tax credit where at the end of the tax year, payments continue during the tax credits renewal period while the previous year's award is finalised and until a determination of entitlement in the current tax year is made.</p>
Regulation 12	<p><b>Modification of tax credits legislation – overpayments and penalties</b></p> <p>Ensures that a tax credits penalty may be applied to a part-year award, and that any overpayments of tax credits may be recovered from payments of UC.</p>
Regulation 12A	<p><b>Modification of tax credits legislation: finalisation of tax credits</b></p> <p>This applies when a claim for UC is made and the Secretary of State is satisfied that the claimant meets the basic conditions of entitlement. Once the claim UC is made, regulation 12A allows the tax credits award to be finalised during the tax year (i.e., in-year), rather than after the end of the tax year. However, amendments have been made as part of the UC (Transitional Provisions) (Managed Migration) Regulations 2018 to extend this to claimants whose claimants have been terminated because they have not made a new UC claim by the deadline day.</p>
<p>Regulation 13.</p> <p>Article 24 of the No. 9 Commencement Order 2013.</p>	<p><b>Appeals etc. relating to certain existing benefits</b></p> <p>Allows the outcome of the appeal or revision in respect of a previous IS, HB or tax credit claim to be applied, where appropriate, to the UC award.</p> <p>Allows the outcome of the appeal or revision in respect of a previous JSA or ESA claim to be applied, where appropriate, to the UC award.</p>

<b>UC (Transitional Provisions) Regulations 2014</b>	<b>Provision</b>
Regulation 16.	<p><b>Persons unable to act</b></p> <p>Deals with cases where a person has been appointed to act on behalf of an existing benefit claimant who migrates to UC; appointees can be treated as if they were so appointed to deal with the UC claim and award.</p>
Regulation 17.	<p><b>Advance payments of Universal Credit</b></p> <p>Ensures existing benefit or tax credit recipients will be able to request an advance payment of UC in the first month they are migrated to UC to support the move from weekly, fortnightly or 4 weekly payments to monthly payments of UC.</p>
Regulation 19 and 2017 Regulations savings.	<p><b>Transition from Employment and Support Allowance</b></p> <p>Deals with cases where ESA claimants had the Support Component (SC) or Work-Related Activity Component (WRAC) applied to their award immediately before they make a claim for UC. In these cases, if ESA claimants have the SC applied to their ESA award the Limited Capability for Work and Work-Related Activity (LCWRA) element in UC would be applied to their UC award, without the need for a Work Capability Assessment (WCA), from the start of their first assessment period.</p>
Regulations 20.	<p><b>Transition from Employment and Support Allowance before the end of the assessment phase</b></p> <p>Deals with cases where the ESA assessment phase has not ended at the point the claimant claims UC. It ensures that any unspent portion of the 13-week ESA assessment phase is carried forward and, if awarded, the appropriate UC element will apply from the start of the first assessment period that follows the day on which that 13-week period expires.</p>

<b>UC (Transitional Provisions) Regulations 2014</b>	<b>Provision</b>
	Where the ESA assessment phase has not ended at the point that the claimant becomes entitled to UC but has already lasted for more than 13 weeks; it also ensures that, if awarded, the LCWRA or LCW element will apply from the start of the first UC assessment period.
Regulations 20A.	<p><b>Transition from Jobseeker’s Allowance following an extended period of sickness</b></p> <p>Ensures that if claimants are in the JSA extended period of sickness, i.e., a period expected to last more than two weeks but less than 13 weeks), and they migrate to UC where they decide to enter the UC relevant period upon that migration, i.e., decide to claim UC because they are not fit for work, they will enter the UC relevant period and have time spent in the JSA extended period of sickness counted towards time in that period.</p>
Regulations 21 and 2017 Regulations savings.	<p><b>Other claimants with limited capability for work: credits only cases</b></p> <p>Provision to safeguard the position of claimants who, at the point they claim or are treated as claiming UC, are entitled to a National Insurance Credit on the grounds that they have LCW, but who are not entitled to any award of ESA if they make a new UC claim. This regulation ensures that, for the purposes of any award of the appropriate elements in UC, these claimants are treated in regulations 19 and 20 in the same way as their counterparts, who are entitled to benefit.</p>
Regulation 22 and 2017 Regulations savings.	<p><b>Transition from Income Support payable on the grounds of incapacity for work or disability and other incapacity benefits</b></p> <p>Deals with cases where claimants are in receipt of Incapacity Benefit (IB), Severe Disablement Allowance (SDA) or Income Support on the grounds of incapacity for work or disability (IS) whilst or prior to making a new UC claim. In these cases, no element will be paid in the UC award initially. However, if, following a UC WCA, it is subsequently determined that the claimant</p>



<b>UC (Transitional Provisions) Regulations 2014</b>	<b>Provision</b>
	has either LCW or LCWRA, the claimant will not have to serve the UC relevant period in the normal way, rather, the appropriate element will be awarded from the start of the first UC assessment period.
Regulation 23 and 2017 Regulations savings.	<p><b>Transition from other incapacity benefits: assessment under the 2010 Regulations</b></p> <p>Deals with cases where claimants are in receipt of Incapacity Benefit (IB), Severe Disablement Allowance (SDA) or Income Support on the grounds of incapacity for work or disability whilst or prior to making a new UC claim and are undergoing conversion to contributory ESA. Once they have completed conversion and the relevant component is applied to their ESA award, the LCW or LCWRA element in UC will be applied to their UC award as per regulation 19.</p>
Regulation 24 and 2017 Regulations savings.	<p><b>Transition from other incapacity benefits: claimants approaching pensionable age</b></p> <p>Deals with cases where claimants are in receipt of IB or SDA who are within a year of pension age who are not undergoing conversion to contributory ESA, when they make a new UC claim. As they are not undergoing conversion, entitlement to the LCW or LCWRA element in UC is determined if they are entitled to certain components of Disability Living Allowance, Attendance Allowance, Personal Independence Payment, Constant Attendance Allowance or the Armed Forces Independence Payment.</p>
Regulation 25.	<p><b>Transition from other incapacity benefits: supplementary</b></p> <p>Deals with cases where an award of UC is made to a person who is also entitled to IB or SDA, so the amount of that benefit being received will be taken into account as unearned income when calculating the amount of UC the claimant(s) are entitled to.</p>
Regulation 26 and 2017 Regulations	<p><b>Other claimants with incapacity for work: credits only cases where claimant is approaching pensionable age</b></p>

<b>UC (Transitional Provisions) Regulations 2014</b>	<b>Provision</b>
savings.	This provision applies to claimants who, when they claim or are treated as claiming UC, are entitled to a National Insurance Credit on the grounds that they have incapacity for work, but are not entitled to any award of Incapacity Benefit and are not subject to the ESA conversion process because they are approaching pension age, who make a new UC claim. In these cases, the effect of regulation 26 mirrors that in regulation 24.
Regulation 27 and 2017 Regulations savings.	<p><b>Other claimants with incapacity for work: credits only cases</b></p> <p>This provision applies to claimants who, when they claim or are treated as claiming UC, are:</p> <ul style="list-style-type: none"> <li>• entitled to a National Insurance Credit on the grounds that they have incapacity for work;</li> <li>• not entitled to any award of Incapacity Benefit (and, as a consequence, are not subject to the ESA conversion process); and</li> <li>• not approaching pension age who make a new UC claim.</li> </ul> <p>This maintains parity of treatment between these claimants and claimants receiving Incapacity Benefit who are subject to ESA conversion, i.e., they would have to undergo a Work Capability Assessment to qualify for the appropriate element from the beginning of their first assessment period.</p>
Regulation 28.	<p><b>Meaning of “qualifying young person”</b></p> <p>Ensures that, where a person is entitled to an existing benefit in their own right, that person cannot be treated as a qualifying young person for the purposes of the UC Regulations 2013.</p>
Regulation 29.	<p><b>Support for housing costs</b></p> <p>Currently covers the application of days served or payments being made towards Support for Mortgage Interest in existing</p>

<b>UC (Transitional Provisions) Regulations 2014</b>	<b>Provision</b>
	benefits to the UC award. This will change to loans from April 2018, but SMI service charges will still need to be carried over. After discussing with Housing colleagues, we feel no changes are required to these regulations to allow for this. For information, provisions for claimants who transfer from one benefit to another will be contained in the 'loans' legislation. This is because a loan is not a payment of UC.
Regulation 30.	<p><b>Sanctions: transition from Employment and Support Allowance</b></p> <p>Applies existing sanctions applied to an ESA award to the UC award.</p>
Regulation 31.	<p><b>Escalation of sanctions: transition from Employment and Support Allowance</b></p> <p>Where an existing benefit sanction is applied to the UC claim it will also count towards the escalation of sanctions in UC.</p>
Regulation 32.	<p><b>Sanctions: transition from Jobseeker's Allowance</b></p> <p>Applies existing sanctions applied to an old style JSA award to the UC award.</p>
Regulation 33.	<p><b>Escalation of sanctions: transition from Jobseeker's Allowance</b></p> <p>Where an existing benefit sanction is applied to the UC claim it will also count towards the escalation of sanctions in UC.</p>
Regulation 35.	<p><b>Loss of benefit penalties: transition from existing benefits other than tax credits</b></p> <p>Where JSA, ESA, HB, IS, or Pension Credit claimants have a fraud loss of benefit penalty applied to their award and they make a UC claim within 1 calendar month of their existing benefit claim ceasing, the fraud loss of benefit penalty will be transferred to</p>

<b>UC (Transitional Provisions) Regulations 2014</b>	<b>Provision</b>
	the UC award in a particular way.
Regulation 36.	<p><b>Loss of benefit penalties: reduction of Universal Credit</b></p> <p>Ensures that where more than one fraud penalty has been applied to an existing benefit or credit award upon the transition to UC, these penalties will not exceed the amount of the UC standard allowance in any assessment period.</p>
Regulation 37.	<p><b>Loss of benefit penalties: transition from Working Tax Credit</b></p> <p>Where WTC claimants have a fraud loss of benefit penalty applied to their award and they make a UC claim, the fraud loss of benefit penalty will be transferred to the UC award.</p>
Regulation 38.	<p><b>Loss of benefit penalties: maximum total reduction</b></p> <p>Ensures that where more than one fraud penalty has been applied to an existing benefit or credit award upon the transition to UC, i.e., a fraud penalty that has been applied to a WTC and a DWP benefit award, such as Housing Benefit, that the combination of these penalties will not exceed the amount of the UC standard allowance in any assessment period.</p>
Regulations 40 to 42	<p><b>Claimants with more than two children</b></p> <p>These set out the circumstances in which a child or qualifying young person, who is the third or subsequent child or qualifying young person in the claimant's household, is transitionally protected for the purpose of entitlement to the child element.</p> <p>Different criteria apply during and after the interim period. During the interim period (as for Child Tax Credit (CTC)), the protection depends on the child or qualifying young person being born before 6th April 2017. After the interim period it also depends on their having been part of an award of UC since the end of the interim period or part of an IS or JSA in the 6 months</p>

UC (Transitional Provisions) Regulations 2014	Provision
	<p>before becoming part of a UC award.</p> <p>Those who are not protected by these regulations will only receive the child element for a maximum of 2 children, unless an exception applies..</p>
Regulation 43.	<p><b>Abolition of higher amount of the child element for first child or qualifying young person – saving where claimant responsible for a child or qualifying young person born before 6th April 2017</b></p> <p>This regulation provides that the higher amount of the child element in respect of the first child or qualifying young person continues to be payable to claimants who are responsible for a child or qualifying young person born before 6<sup>th</sup> April 2017. Those who are not protected by this regulation will not receive the higher amount of the child element in respect of the first child or qualifying young person.</p>

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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

**SOCIAL SECURITY**

**The Universal Credit (Transitional Provisions) (Managed Migration) Amendment Regulations 2018**

*Made* - - - - **\*\*\***  
*Coming into force* - -

In accordance with section 43(3) and (6)(b) of the Welfare Reform Act 2012<sup>(73)</sup> a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 42(2) and (3) of, and paragraph 4(6) of Schedule 1 and paragraphs 1(1), 4(1), (2)(a) and (3) and 6(a) of Schedule 6 to the Welfare Reform Act 2012<sup>(74)</sup>.

[In accordance with section 172(1) of the Social Security Administration Act 1992<sup>(75)</sup>, the Secretary of State has referred the proposals in respect of these Regulations to the Social Security Advisory Committee.]

**Citation and commencement**

1. These Regulations may be cited as the Universal Credit (Transitional Provisions) (Managed Migration) Amendment Regulations 2018 and come into force on the day on which they are made.

**Amendment of the Universal Credit (Transitional Provisions) Regulations 2014**

2.—(1) The Universal Credit (Transitional Provisions) Regulations 2014<sup>(76)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) insert at the appropriate places—

“childcare costs element” has the meaning in the Universal Credit Regulations;

“deadline day” has the meaning in regulation 44;

“earned income” has the meaning in Chapter 2 of Part 6 of the Universal Credit Regulations;

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<sup>(73)</sup> 2012 c.5.

<sup>(74)</sup> 2012 c.5.

<sup>(75)</sup> 1992 c.5.

<sup>(76)</sup> S.I. 2014/1230. Regulation 42 was inserted by ...

- “HMRC” means Her Majesty’s Revenue and Customs;
- “housing costs element” has the meaning in the Universal Credit Regulations;
- “indicative UC amount” has the meaning in regulation 54;
- “migration notice” has the meaning in regulation 44;
- “migration day” has the meaning in regulation 49;
- “notified person” has the meaning in regulation 44;
- “official error” means an error that—
- (a) was made by an officer of, or an employee of a body acting on behalf of, the Department for Work and Pensions, HMRC or a local authority that administers housing benefit; and
  - (b) was not caused, or materially contributed to, by any person outside that body or outside the Department, HMRC or local authority;
- “prisoner” has the meaning in the Universal Credit Regulations;
- “qualifying claim” has the meaning in regulation 48;
- “severe disability premium” means a premium under paragraph 6 of Schedule 4 to the Employment and Support Allowance Regulations 2008<sup>(77)</sup> or any corresponding premium in relation to income support, old style JSA or housing benefit;
- “total legacy amount” has the meaning in regulation 53;
- “transitional capital disregard” has the meaning in regulation 51;
- “transitional element” has the meaning in regulation 52;
- (b) in the definition of “existing benefit” before “regulation 25(2)” insert “paragraph (3) and”;
  - (c) after paragraph (2) insert—
    - “(3) For the purposes of these Regulations,—
      - (a) references to an award of an income-based jobseeker’s allowance are to an award of an old style JSA where the claimant is, or joint claimants are, entitled to the income based allowance; and
      - (b) references to an award of an income-related employment and support allowance are to an award of an old style ESA where the claimant is entitled to the income-related allowance,
 and references to an award of an existing benefit are to be read accordingly.”.
- (3) In regulation 8A (transitional housing payment)<sup>(78)</sup> at the end of sub-paragraph (a) omit “and” and at the end of sub-paragraph (b) insert—
- “; and
- (c) if a claim for universal credit is made by a notified person, then notwithstanding anything in the Housing Benefit Regulations 2006, the weekly amount of housing benefit to which the person is entitled for that period of two weeks is the same as the weekly amount they were entitled to on the day mentioned in regulation 8(2)(a) or (b) (whichever is applicable).”.
- (4) In regulation 11(1) for “regulations 7(7) and 8(4)” substitute “these Regulations” and after sub-paragraph (b) add the following full out words—
- “and references to an award of a tax credit are to be read accordingly.”.
- (5) In regulation 15 (modification of the Claims and Payments Regulations in relation to universal credit claimants)—
- (a) for paragraph (2) substitute—
    - “(2) In paragraph (3) of that regulation (circumstances in which the claimant could not be expected to have made a claim earlier), insert—

<sup>(77)</sup>

<sup>(78)</sup> Regulation 8A was inserted by S.I. 2018/65, regulation 6(8).

- (aa) the claimant was previously in receipt of an existing benefit (as defined in the Universal Credit (Transitional Provisions) Regulations 2014) and—
  - (i) notification of the expiry of entitlement to that benefit was not sent to the claimant before the date that the claimant’s entitlement expired; or
  - (ii) in a case where the Secretary of State has sent a migration notice (as defined in those Regulations) to the claimant, there was an official error (as defined in those Regulations) which caused or contributed to a delay in making the claim.”; and
- (b) after paragraph (2) insert—
 

“(3) References in these Regulations to a claim being backdated are to the time within which a claim must be made being extended under regulation 26 of the Claims and Payments Regulations (as modified by this regulation).”.
- (6) After regulation 43<sup>(79)</sup> insert—

## PART 4

### MANAGED MIGRATION TO UNIVERSAL CREDIT

#### *The migration process*

#### **Migration notice**

**44.**—(1) The Secretary of State may, at any time, issue a notice (“a migration notice”) to a person who is entitled to an award of an existing benefit—

- (a) informing the person that all awards of an existing benefit to which they are entitled are to terminate and that they will need to make a claim for universal credit; and
- (b) specifying a day (“the deadline day”) by which a claim for universal credit must be made.

(2) The migration notice may contain such other information as the Secretary of State considers appropriate.

(3) The deadline day must not be within the period of one month beginning with the day on which the migration notice is issued.

(4) If the person who is entitled to an award of an existing benefit is, for the purposes of that award, a member of a couple or a member of a polygamous marriage, the Secretary of State must also issue a migration notice to the other member (or members) specifying the same deadline day.

(5) The Secretary of State may cancel a migration notice issued to any person—

- (a) if it has been issued in error;
- (b) if the Secretary of State has made a determination in accordance with regulation 4 (discretion to determine that claims for universal credit may not be made); or
- (c) in any other circumstances where the Secretary State considers it necessary to do so in the interests of the person, or any class of person, or to safeguard the efficient administration of universal credit.

(6) A “notified person” is a person to whom a migration notice has been issued.

#### **Extension of the deadline day**

**45.**—(1) The Secretary of State may determine that the deadline day should be changed to a later day either—

- (a) on the Secretary of State’s own initiative; or
- (b) if a notified person requests such a change before the deadline day, where there is a good reason to do so.

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<sup>(79)</sup> Regulation 43 was inserted by S.I.2017/376, regulation 3(1).



(2) If a determination is made under paragraph (1) the Secretary of State must inform the notified person or persons of the new deadline day.

#### **Termination of existing benefits if no claim before the deadline**

**46.**—(1) All awards of an existing benefit to which a notified person is entitled that have not already terminated by virtue of the provisions mentioned in paragraph (2) or regulation 47(2) are to terminate on the day before the deadline day.

(2) The provisions are—

- (a) in the case of an award of a tax credit, income support or housing benefit, regulation 8 (termination of awards of certain existing benefits: other claimants); or
- (b) in the case of an award of income-based jobseeker's allowance or income-related employment and support allowance, the order under section 150(3) of the Act which brings section 33(1)(a) or (b) of the Act (abolition of benefits) into force in relation to that award<sup>(80)</sup>.

(3) Paragraph (1) does not affect the continuation of housing benefit by virtue of paragraph (2A) (two week extension) or paragraph (3) (specified accommodation or temporary accommodation) of regulation 8<sup>(81)</sup>.

(4) Where paragraph (1) applies to an award of income-based jobseeker's allowance or income-related employment and support allowance "terminate" in relation to that award means treating it as if section 33(1)(a) or (b) of the Act had been brought into force.

(5) For the avoidance of doubt, the day on which a benefit terminates is the last day of entitlement to that benefit.

#### **Notified persons who claim UC as a different benefit unit**

**47.**—(1) This regulation applies where—

- (a) notified persons who are a members of a couple for the purposes of an award of an existing benefit are single persons for the purposes of a claim universal credit; or
- (b) notified persons who are members of a polygamous marriage for the purposes of an award of an existing benefit are a couple or single persons for the purposes of a claim for universal credit.

(2) Where this regulation applies, all existing benefits to which any of those notified persons are entitled are to terminate on the day before the earliest day on which an award of universal credit is to commence by virtue of claim by any of those persons (and paragraphs (3) to (5) of regulation 46 also apply for the purposes of this paragraph).

(3) If, where this regulation applies—

- (a) a notified person makes a claim for universal credit—
  - (i) on or before the deadline day; or
  - (ii) after the deadline day, but the award of universal credit is to commence on or before the deadline day because the claim has been backdated, and
- (b) because of an earlier claim by another notified person, there would otherwise be a gap between the day on which those benefits terminate and the commencement of the award of universal credit,

then, notwithstanding anything in the Claims and Payments Regulations, as modified by regulation 15, the award is to commence on the day after those benefits terminate.

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<sup>(80)</sup> The order is the Welfare Reform Act 2012 (Commencement No.9 and Transitional and Transitory Provisions and Commencement No.8 and Savings and Transitional Provisions (Amendment)) Order 2013 (S.I.2013/983) which has been amended by S.I. 2014/1452.

<sup>(81)</sup>

## *Transitional Protection*

### **Meaning of “qualifying claim”**

**48.**—(1) A “qualifying claim” is a claim for universal credit by a single claimant who is a notified person or by joint claimants, both of whom are notified persons, where the following conditions are met—

- (a) the claim is made—
    - (i) on or before the deadline day; or
    - (ii) after the deadline day, but the award is to commence on or before the deadline day because claim has been backdated; and
  - (b) none of the circumstances in paragraph (2) applies.
- (2) The circumstances are—
- (a) before the claim is made (and after the issue of the migration notice) the notified person has made another claim for universal credit that is defective and the Secretary of State has not (because the defect has not been corrected or the claim has not been completed in accordance with the Secretary of State’s instructions within the required time) treated that claim as if properly made in the first instance by virtue of regulation 8(6) of the Claims and Payments Regulations;
  - (b) before the claim is made (and after the issue of the migration notice) the notified person has made another claim for universal credit in respect of which the Secretary of State has required further evidence or information which the person has not provided within one month (or any extension of one month) in accordance with regulation 37 of the Claims and Payments Regulations; or
  - (c) the claimant was a prisoner on the migration day.

### **Meaning of “migration day”**

**49.** “Migration day” in relation to a qualifying claim means the day on which, subject to regulation 8(2A) and (3) (continuation of housing benefit), all awards of an existing benefit are to terminate as a consequence of that claim in accordance the provisions mentioned in regulation 46(2).

### **Secretary of State to determine whether transitional protection applies**

**50.**—(1) Before making a decision on a qualifying claim the Secretary of State must first determine whether—

- (a) a transitional capital disregard is to apply; or
- (b) a transitional element is to be included,  
(or both) in the calculation of the award.

(2) But the Secretary of State need not determine whether a transitional element is to be included in a case where regulation 47 (qualifying persons who claim as different benefit unit) or regulation 8(3) (continuation of housing benefit in respect of specified accommodation or temporary accommodation) applies.

### **The transitional capital disregard**

**51.**—(1) A transitional capital disregard is to apply where, on the migration day, the claimant—

- (a) is entitled to an award of a tax credit; and
- (b) has capital exceeding £16,000.

(2) Where a transitional capital disregard applies, any capital exceeding £16,000 is to be disregarded for the purposes of—

- (a) determining whether the financial condition in section 5(1)(a) or 5(2)(a) of the Act (capital limit) is met; and

(b) calculating the amount of an award of universal credit (including the indicative UC amount).

(3) Where a transitional capital disregard has been applied in the calculation of an award but, in any assessment period, the claimant no longer has (or joint claimants no longer have) capital exceeding £16,000, the transitional capital disregard is not to apply in any subsequent assessment period.

(4) A transitional capital disregard is not to apply for more than 12 assessment periods.

### The transitional element

**52.**—(1) A transitional element is to be included in the calculation of an award if the total amount of any awards of existing benefits determined in accordance with regulation 53 (“the total legacy amount”) is greater than the amount of an award of universal credit determined in accordance with regulation 54 (“the indicative UC amount”).

(2) Where a transitional element is to be included in the calculation of an award, the amount of that element is to be treated, for the purposes of section 8 of the Act (calculation of awards), as if it were an additional amount to be included in the maximum amount under section 8(2) before the deduction of income under section 8(3).

### The transitional element - total legacy amount

**53.**—(1) The total legacy amount is the sum of the representative monthly rates of any awards of an existing benefit to which a claimant is, or joint claimants are, entitled on the migration day.

#### *Tax credits*

(2) To calculate the representative monthly rate of an award of working tax credit or child tax credit—

- (a) take the figure for the daily rate of the award on the migration day provided by HMRC and calculated in accordance with section 13 of the 2002 Act and the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002<sup>(82)</sup> on the basis of the information as to the claimant’s circumstances held by HMRC on that day; and
- (b) convert to a monthly figure by multiplying by 365 and dividing by 12

#### *IS, ESA(IR) and JSA(IB)*

(3) To calculate the representative monthly rate of an award of income support, income-based jobseeker’s allowance or income-related employment and support allowance—

- (a) take the weekly rate on the migration day calculated in accordance with—
  - (i) Part 1 of the Jobseekers Act 1995<sup>(83)</sup> and the Jobseeker’s Allowance Regulations 1996<sup>(84)</sup>,
  - (ii) Part 1 of the 2007 Act<sup>(85)</sup>, the Employment and Support Allowance Regulations 2008<sup>(86)</sup> and the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010<sup>(87)</sup>;
  - (iv) Part VII of the Social Security Contributions and Benefits Act 1992<sup>(88)</sup> and the Income Support (General) Regulations 1987<sup>(89)</sup>,on the basis of information held by the Secretary of State on that day; and
- (b) convert to a monthly figure by multiplying by 52 and dividing by 12.

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<sup>(82)</sup> S.I. 2002/2008 as amended.

<sup>(83)</sup> 1995 c.18.

<sup>(84)</sup> S.I. 1996/207, as amended.

<sup>(85)</sup> 2007 c.5.

<sup>(86)</sup> S.I. 2008/794, as amended.

<sup>(87)</sup> S.I. 2010/1907 as amended by S.I.2010/2430.

<sup>(88)</sup> 1992 c.6.

<sup>(89)</sup> S.I. 1987/1967, as amended.

(4) The amount of income-related employment and support allowance or income-based jobseeker's allowance is to be calculated before any reduction for a sanction.

(5) Where —

- (a) a claimant who is entitled to an income-based jobseeker's allowance is also entitled to a contribution based jobseeker's allowance; or
- (b) a claimant who is entitled to an income-related employment and support allowance is also entitled to a contributory allowance,

then, despite section 4(8) to (11) of the Jobseekers Act 1995 and section 6(5) to (7) of the 2007 Act (excess over the contributory allowance to be treated as attributable to the income-based, or income-related, allowance) the weekly rate in paragraph (3) is to be calculated as the applicable amount<sup>(90)</sup> less the claimant's income (if any).

*Housing benefit*

(6) To calculate the representative monthly rate of an award of housing benefit—

- (a) take the weekly rate on the migration day calculated in accordance with Part VII of the Social Security Contributions and Benefits Act 1992 and the Housing Benefit Regulations 2006<sup>(91)</sup>, on the basis of the information held by the Secretary of State on that day, and convert to a monthly figure by multiplying by 52 and dividing by 12; or
- (b) in a case where the claimant had rent free periods, calculate the annual rate by multiplying the weekly rate (as above) by the number of weeks in the year in respect of which the claimant is liable to pay rent, and convert to a monthly figure by dividing by 12.

(7) For the purposes of paragraph (6), if the migration day falls in a rent free period, the weekly rate of housing benefit is to be calculated by reference to the amount of rent for the last complete week that was not a rent free period.

(8) In paragraphs (6) and (7) "rent free period" has the meaning in regulation 81 of the Housing Benefit Regulations 2006.

*The benefit cap*

(9) Where—

- (a) the existing benefits do not include an award of housing benefit, or they include an award of housing benefit that has been reduced to the minimum amount by virtue of Part 8A of the Housing Benefit Regulations 2006<sup>(92)</sup> (the benefit cap);
- (b) Part 7 of the Universal Credit Regulations (the benefit cap) is to apply in the calculation of the indicative UC amount; and
- (c) the claimant's total entitlement to welfare benefits (as defined in section 96(10) <sup>(93)</sup> of the Act) on the termination day is greater than the relevant amount,

the total legacy amount is to be the relevant amount.

(10) For the purposes of paragraph (9)—

- (a) the amount of each welfare benefit is the monthly equivalent calculated in the manner set out in regulation 73 of the Universal Credit Regulations; and
- (b) the "relevant amount" is the amount referred to in regulation 80A<sup>(94)</sup> of those Regulations which is applicable to the claimant.

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<sup>(90)</sup> See section 4 of the Jobseekers Act 1995 and section 7 of the 2007 Act for the meaning of "applicable amount".

<sup>(91)</sup> S.I. 2006/

<sup>(92)</sup>

<sup>(93)</sup> The definition of welfare benefit was amended by the Welfare Reform and work Act 2016 (c.7)

s.8.

<sup>(94)</sup> Regulation 80A was inserted by

### The transitional element - indicative UC amount

54.—(1) The indicative UC amount is the amount to which a claimant would be entitled if an award of universal credit were calculated in accordance with section 8 of the Act by reference to the claimant's circumstances on the migration day, applying the assumptions in paragraph (2).

(2) The assumptions are—

- (a) if the claimant is entitled to an award of child tax credit, the claimant is responsible for any child or qualifying young person in respect of whom the individual element of a child tax credit is payable;
- (b) if the claimant is entitled to an award of working tax credit that includes the childcare element, the indicative UC amount includes the childcare costs element and, for the purposes of calculating the amount of that element, the amount of the childcare costs is equal to the relevant weekly childcare charges for the purposes of regulation 53(2), converted to a monthly amount by multiplying by 52 and dividing by 12;
- (c) if the claimant is entitled to an award of housing benefit, the relevant payments for the purposes of Schedule 4 to the Universal Credit Regulations (housing costs element for renters) are equal to the appropriate maximum housing benefit for the purposes of regulation 53(6)<sup>(95)</sup> converted to a monthly amount by multiplying by 52 and dividing by 12.
- (d) the amount of the claimant's earned income is—
  - (i) if the claimant had an award of a tax credit, the annual amount of any employment income or trading income (as defined by regulation 4 or 6 respectively of the Tax Credits (Definition and Calculation of Income) Regulations 2002<sup>(96)</sup>) by reference to which the representative monthly rate of that tax credit is calculated for the purposes of regulation 52(2) converted to a net monthly amount by—
    - (aa) dividing by 12, and
    - (ab) deducting such amount for income tax and national insurance contributions as the Secretary of State considers appropriate;
  - (ii) if paragraph (i) does not apply and the claimant had an award of income support, income-based jobseeker's allowance or income-related employment and support allowance, the amount of earnings by reference to which the representative monthly rate of that benefit was calculated for the purposes of regulation 52 (including nil if none were taken into account) converted to a monthly amount by multiplying by 52 and dividing by 12; or
  - (iii) if paragraphs (i) and (ii) do not apply, but the claimant had an award of housing benefit, the amount of earnings by reference to which the representative monthly rate of that benefit was calculated for the purposes of regulation 52 (including nil if none were taken into account) converted to monthly amount by multiplying by 52 and dividing by 12.

(3) If the claimant would not meet the financial condition in section 5(1)(b) of the Act (or, in the case of joint claimants they would not meet the condition in section 5(2) (b)) the claimant is to be treated, for the purposes of calculating the indicative UC amount, as if they were entitled to an award of universal credit of a nil amount.

(4) If a transitional capital disregard is to apply, any capital exceeding £16,000 is to be disregarded.

(5) The indicative UC amount is to be calculated after any reduction under Part 7 of the Universal Credit Regulations (the benefit cap) but before any reduction under section 26 (higher-level sanctions) or 27 (other sanctions) of the Act.

(6) But there is to be no reduction for the benefit cap under that Part where the amount of the claimant's earned income (or, in the case of a couple their combined earned income) on the termination day, calculated in accordance with paragraph (2)(d), is equal to or exceeds the amount

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<sup>(95)</sup> See regulation 70 of the Housing Benefit Regulations 2006 (S.I. 2006/231) for the meaning of "appropriate maximum".

<sup>(96)</sup> S.I.2002/2006.

specified in paragraph (1)(a) of regulation 82 (exceptions – earnings) of the Universal Credit Regulations.

(7) The calculation of the indicative UC amount is to be based on the information that is used for the purposes of calculating the total legacy amount, supplemented as necessary by such further information or evidence as the Secretary of State requires.

### **The transitional element – initial amount and adjustment where other elements increase**

**55.**—(1) The initial amount of the transitional element is—

- (a) if the indicative UC amount is greater than nil, the amount by which the total legacy amount exceeds the indicative UC amount; or
- (b) if the indicative UC amount is nil, the total legacy amount plus any amount by which the income which fell to be deducted in accordance with section 8(3) of the Act (that is 63% of earned income above the work allowance and 100% of unearned income) exceeded the maximum amount.

(2) The amount of the transitional element to be included in the calculation of an award is—

- (a) for the first assessment period, the initial amount;
- (b) for the second assessment period, the initial amount reduced by the sum of any relevant increases in that assessment period;
- (c) for the third and each subsequent assessment period, the amount that was included for the previous assessment period reduced by the sum of any relevant increases (as in subparagraph (b)).

(3) If the amount of the transitional element is reduced to nil in any assessment period, a transitional element is not to apply in the calculation of the award for any subsequent assessment period.

(4) A “relevant increase” is an increase in any of the amounts that are included in the maximum amount under sections 9 to 12 of the Act (including any of those amounts that is included for the first time), apart from the childcare costs element.

### *Ending of transitional protection*

### **Circumstances in which transitional protection ceases**

**56.**—(1) A transitional capital disregard or a transitional element does not apply in any assessment period to which paragraph (2) or (4) applies, or in any subsequent assessment period.

#### *Cessation of employment or sustained drop in earnings*

(2) This paragraph applies to an assessment period if the following condition is met—

- (a) in the case of a single claimant—
  - (i) it is the assessment period after the third consecutive assessment period in which the claimant’s earned income is less than the amount specified in regulation 99(6)(a) of the Universal Credit Regulations (the single administrative threshold); and
  - (ii) in the first assessment period of the award, the claimant’s earned income was equal to or more than that threshold; or
- (b) in the case of joint claimants—
  - (i) it is the assessment period after the third consecutive assessment period in which their combined earned income is less than the amount specified in regulation 99(6)(b) of the Universal Credit Regulations (the couple administrative threshold), and
  - (ii) in the first assessment period of the award, their combined earned income was equal to or more than that threshold.

(3) For the purposes of paragraph (2) a claimant is to be treated as having earned income equal to or more than the single administrative threshold (or, as the case may be, the couple administrative threshold) in any assessment period in respect of which regulation 62 (minimum

income floor) of the Universal Credit Regulations applies to that claimant or would apply but for regulation 62(5) of those Regulations (minimum income floor not to apply in a start-up period) or regulation 59 of these Regulations (minimum income floor not to apply for the first 6 months.).

*Couple separating or forming*

- (4) This paragraph applies to an assessment period in which—
- (a) joint claimants cease to be a couple or become members of a different couple; or
  - (b) a single claimant becomes a member of a couple (unless it is a case where the person may, by virtue of regulation 3(3) of the Universal Credit Regulations (claimant with an ineligible partner), claim as a single person.

**Application of transitional protection to a subsequent award**

57.—(1) Where—

- (a) a transitional capital disregard is applied, or a transitional element is included, in the calculation of an award, and that award terminates; or
- (b) the Secretary State determines (in accordance with regulation 49) that a transitional capital disregard is to apply, or transitional element is to be included in the calculation of an award, but the decision on the qualifying claim is that there is no entitlement to an award,

no transitional capital disregard is to apply and no transitional element is to be included in the calculation of any subsequent award unless paragraph (2) applies.

(2) This paragraph applies if—

- (a) the reason for the previous award terminating, or there being no entitlement to an award, was that the claimant (or joint claimants) had earned income on account of which the financial condition in section 5(1)(b) or 5(2)(b) of the Act (income is such that the amount payable is at least 1p) was not met; and
- (b) the claimant (or joint claimants) become entitled to an award within the period of 3 months beginning with —
  - (i) where paragraph (1)(a) applies, the last day of the month that would have been the final assessment period of the previous award (had it not terminated), or
  - (ii) where paragraph (1)(b) applies, the day that would have been the last day of the first assessment period had there been entitlement to an award.

(3) Where paragraph (2) applies in a case where a previous award has terminated, the new award is to be treated for the purposes of regulation 51 (transitional capital disregard), 52 (transitional element), 55 (transitional element – initial amount and adjustment where other elements increase) and 56 (circumstances in which transitional protection ceases) as if it were a continuation of that award.

*Miscellaneous*

**Qualifying claim – Secretary of State may set later commencement day**

58. Where the Secretary of State decides a qualifying claim that was made on or before the deadline day, and it is not a case where the award is to start earlier than the date of claim by virtue of regulation 26 of the Claims and Payment Regulations, as modified by regulation 15, or by virtue of regulation 47(3), the Secretary of State may determine a day on which the award of universal credit is to commence that is after, but no more than one month after, the date of claim.

**Minimum income floor not to apply for first 6 months**

59.—(1) Where universal credit is awarded to a claimant who is a notified person, regulation 62 of the Universal Credit Regulations (minimum income floor) does not apply in relation to that claimant in respect of an assessment period falling wholly or partly within the period of six months beginning with the day on which the award commences.

(2) In a case where the Secretary of State has determined that the claimant is in gainful self-employment, but is not taking active steps to increase the earnings from that employment to the

level of their individual threshold, the Secretary of State may terminate the period mentioned in paragraph (1).

(3) In this regulation “gainful self-employment” and “individual threshold” have the meaning in regulation 64 and 90 respectively of the Universal Credit Regulations.

### **Students**

**60.** Where a notified person does not meet the basic condition in section 4(1)(d) of the Act (receiving education) on the day on which all existing awards terminate in accordance with the provisions mentioned in regulation 46(2) because the person is undertaking a full time course (see regulation 12(2) and 13 of the Universal Credit Regulations), that condition is not to apply in relation to the notified person while they are continuing to undertake that course.

### **Rounding**

**61.** Regulation 6 of the Universal Credit Regulations (rounding) applies for the purposes of calculating any amount under this Part.

### **Effect of revision, appeal etc. of an award of an existing benefit**

**62.** Nothing in regulation 53 (total legacy amount) or 54 (indicative UC amount) requiring a calculation in relation to the transitional element to be made on the basis of information held on the migration day prevents the Secretary of State from revising or superseding a decision in relation to a claim for, or an award of, universal credit where—

- (a) in the opinion of the Secretary of State the information held on that day was inaccurate or incomplete in some material respect because of—
  - (i) a misrepresentation by a claimant;
  - (ii) a failure to report information that a claimant was required to report where that failure was advantageous to the claimant; or
  - (iii) an official error; or
- (b) an application to revise or supersede a decision in relation to an award of an existing benefit (including the report of a change of circumstances), or an appeal from such a decision, that was outstanding on the migration day has since been concluded.

### **Claimants in receipt of severe disability premium: restriction on new claims for UC and transitional payments**

**63.—(1)** No claim may be made for universal credit on or after [*date of coming into force of the MM regs*] by a single claimant who, or joint claimants either of whom,—

- (a) is, or has been within the past month, entitled to an award of an existing benefit that includes a severe disablement premium (“SDP”);
- (b) continues to satisfy the condition for eligibility for an SDP; and
- (c) is not a notified person.

**(2)** Where it comes to the attention of the Secretary of State on or after [*date of coming into force of MM regs*] that—

- (a) a claimant, or joint claimants, became entitled to an award of universal credit as a consequence of a claim made before that date and the Secretary of State is satisfied that paragraph (1) would have prevented the claim from being made if it had been in force at that time;
- (c) that award has not since terminated (whether by a claimant ceasing to meet the conditions of entitlement to universal credit or becoming, or ceasing to be, a member of a couple);
- (d) the claimant has not (or neither of joint claimants has) ceased to be entitled to the care component, the daily living component, armed forces independence payment or



attendance allowance (all as defined in paragraph 6 of Schedule 4 to the Employments and Support Allowance Regulations 2008<sup>(97)</sup>); and

- (e) no person has become a carer for—
  - (i) in the case of a single claimant, the claimant, or
  - (ii) in the case of joint claimants—
    - (aa) if SDP was payable at the higher rate, both of them
    - (bb) if SDP was payable at the lower rate, the claimant who was the qualifying partner,

the Secretary of State must determine, in accordance with paragraph (3), the amount of a transitional SDP payment in respect of each assessment period of the award that began, or is to begin, before the conversion day..

(3) The amount for each assessment period is—

- (a) in the case of a single claimant —
  - (i) £80, if the LCWRA element is included in the award; or
  - (ii) £280, if the LCRWA element is not included;
- (b) in the case of joint claimants—
  - (i) £360 if the higher SDP rate was payable and no person has become a carer for either or both of them,
  - (ii) £80, if paragraph (i) does not apply and the LCWRA element is included in the award in respect of either or both of them, or
  - (iii) “£280. If the LCWRA element is not included in respect of either or both of them and—
    - (aa) the lower SDP rate was payable, or
    - (bb) the higher SDP was payable but a person has become a carer for one of them.

(4) If the LCWRA element is not included in the award at the time of the determination under paragraph (3), but is included in a later assessment period (and sub-paragraph (b)(i) does not apply), the amount for that assessment period, and each subsequent assessment period beginning before the conversion day, is £80 (and the Secretary of State may make a further determination).

(5) The transitional SDP payment is to be treated as an additional amount of universal credit and may be paid by way of a lump sum or periodic payments, as the Secretary of State determines.

(6) In the assessment period that begins after the conversion day, the calculation of the award is to include the amount of the transitional SDP payment as if were the initial amount of a transitional element calculated under regulation 55(1).

(7) In respect of each subsequent assessment period, the award is to be treated, for the purposes of regulation 55(2) (adjustment where other elements increase), regulation 56 (circumstances in which transitional protection ceases) and regulation 57 (application of transitional protection to a subsequent award), as if the transitional SDP payment had been converted into a transitional element.

(8) The conversion day is to be a single date for all cases to which this regulation applies, determined by the Secretary of State having regard to the efficient administration of universal credit.

(9) Any amount paid as a lump sum as a consequence of a determination under this regulation is to be disregarded in the calculation of capital for the duration of the award or, if longer, 12 months from the date of that payment.”.

(10) In this regulation—

“the lower SDP rate” and “the higher SDP rate” are the rates specified in sub-paragraph (i) and (ii) respectively of paragraph 11(2)(b) of Schedule 4 to the Employment and Support Allowance Regulations 2008 or the corresponding rates in relation to income support, old style JSA or housing benefit;

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<sup>(97)</sup>

“the qualifying partner”, in relation to a couple in respect of whom the lower SDP rate was payable is the partner who had no carer or, as the case may be, was not the partner who satisfied the qualifying condition for SDP only by virtue of being a patient, and references to a person being a carer for another person are to the person being entitled to, and in receipt of, a carer's allowance or having an award of universal credit which includes the carer element in respect of caring for that other person.”.

**Amendment consequential on restriction on claims by certain severely disabled persons**

3.—(1) In paragraph (2) of article 7 (transitional provision: claims for housing benefit, income support or a tax credit) of the Welfare Reform Act 2012 (Commencement No. 23 and Transitional and Transitory Provisions) Order 2015**(b)** .....[*Amendment to allow legacy claimants who are subject to the hard gateway to claim legacy benefits*].

Parliamentary Under Secretary of State  
Department for Work and Pensions

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

CCS1018817174  
978-1-5286-0841-1