

Social Security Advisory Committee
Minutes of the meeting held on 8 December 2021
(Microsoft Teams)

Chair: Dr Stephen Brien

Members: Bruce Calderwood
Matthew Doyle
Carl Emmerson
Chris Goulden
Kayley Hignell
Phil Jones
Grainne McKeever
Seyi Obakin
Charlotte Pickles
Liz Sayce

1. Private session

[RESERVED ITEM]

2. Social Security (Income and Capital Disregards) Amendment Regulations 2021

2.1 The Chair welcomed Dave Higlett (G6, Universal Credit Policy), Trevor Pendergast (G7, Senior Manager, Universal Credit Policy), Gary Rodgers (SEO, Universal Credit Policy) and Andrew Milner (Debt Policy) to the meeting.

2.2 The Committee members asked the following main questions in discussion:

(a) How is the distinction drawn between a ‘normal’ compensation scheme, and the ‘special’ compensation schemes covered within these regulations?

The Department had to consider whether the existing provisions relating to treatment of personal injury compensation payments covered the payments being made in these schemes, which they did not, due to the schemes having harm’s way and next of kin (NOK) payments. Ministers decided that, taking into account the type of cases being covered by the schemes, an indefinite disregard was to be applied to payments from them.

(b) Does the disregard apply to any income and capital invested?

Income and capital should be disregarded, but the Department is intending to look at the question of derived income from disregarded capital in future. It is not expected that someone would be adversely affected – most people on UC and other income-related benefits have very small amounts of capital, if any.

- (c) How in, say, 20 years' time does the Department distinguish between the capital from the compensation scheme and money from any other source?**

In working age means-tested benefits the personal injury compensation disregard applies for one year after the compensation payment has been made, unless the money is placed in trust, in which case the disregard is indefinite. Therefore, being in a trust, the monies are easier to identify separately. There are ongoing discussions with Fraud and Error Policy on how to identify and track capital sums. Nonetheless people should still declare the source of their capital so it can be identified correctly, as unidentified capital can lead to a fraud investigation, which the Department should wish to avoid if the capital is to be disregarded in any case.

- (d) Regarding the decision to recover benefits, it is done if the compensation payments and social security payments cover the same period and are for the same reason, but is not all recovery done in a different time period to the benefits being recovered?**

The thinking behind this is to uphold the principle that if someone is receiving benefits following a compensatory event, the compensator should pay rather than the Government, or really the taxpayer. Where DWP pays out benefits that money should be recovered from the compensator. Exemptions are rare – for example in one instance a company went bankrupt and they had set aside money to compensate people. Had recovery of benefits been applied then it would have reduced the compensation almost entirely. In term of timing, someone could claim at a later date and attribute that cause back to a much earlier date but that is thought unlikely.

It should be noted that if a person chose to take a Local Authority to court (whether they would otherwise be included in this scheme or not) any compensation awarded would be subject to the Recovery of Benefits Act (meaning any benefits paid would be recovered, where appropriate).

- (e) How are those capital amounts dealt with, say, in the compensation payments made to the victims of the London 7 July or Manchester Arena terrorist acts?**

They are completely disregarded.

- (f) Ignoring for a moment the large sums in this example - this is just to illustrate the principle - if a person was to receive a compensation payment of 100k from a scheme, and they saved 50k from other sources, then they spend 30k – how is it known which pot of capital that spending is coming from?**

There is work ongoing to improve the information that the Universal Credit claim captures about the source of a claimant's capital. This may, for example, be in a bank or shares. It cannot be said that many years after a compensation payment

was received whether a claimant would divide their savings into disregarded and non-disregarded elements. If it is to be disregarded the claimant would normally be expected to indicate where the money came from.

(g) Are there no concerns about the ways in which a claimant may arrange their finances to maximise or minimise capital or income?

Clearly, claimants are required to declare all their income and capital. The experience from past schemes is that there is no evidence that claimants are arranging these sorts of payments in such a way to maximise their benefit entitlement beyond the scope of the policy intent.

(h) What is the size of the sums of compensation for these schemes? If they are large, then do indefinite disregards raise an issue of unfairness? Also, how does the next of kin aspect work – is it inherited?

In terms of payments to a next of kin (NOK), because some schemes (such as the Northern Ireland scheme) cover long periods of time, victims may have died, and the NOK can receive the payment. For the NI scheme, payments to the victims could be in the range of £10,000 to £80,000. It is understood the average is estimated to be between £18,000 and £19,000, figures close to the upper capital limit. In some schemes, some individual payments could be over £100k. It is believed the larger payments are likely to be going to people who would have qualified to have the payments disregarded as a result of personal injury, in which case had they put that money into a trust the capital would be disregarded anyway. The Lambeth scheme payments for harm's way payments are from £1,000 to £10,000.

(i) The Department can disregard the larger personal injury payments under the Trust model. The smaller NOK payments present a less compelling argument for being disregarded. Was it necessary to make any change?

It is true that parts of the payments could be disregarded under the personal injury provisions, but Ministers want to ensure no-one's benefit stops or reduces on account of these redress payments.

2.3 After private discussion, the Committee agreed that the regulations could proceed without a requirement for their formal reference. The Chair noted that the Committee would write to the Minister for Welfare Delivery to raise some specific concerns around how capital is identified, how income derived from capital is accounted for, and the use of trusts.¹

¹ The exchange of correspondence between the Committee Chair and the Minister for Welfare Delivery is held at annexes B and C.

3. The Universal Credit (Transitional Provisions) Regulations 2022, and The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2022^{2,3}

3.1 The Chair welcomed Neil Couling (Director General, DWP Change and Resilience), Graeme Connor (Deputy Director, UC Analysis and UC Policy), Dave Higlett (G6, UC Policy), James Calverley (G7, UC Policy), to the meeting. He proposed that the meeting be broken into three parts:

- a review of actions since the SSAC Managed Migration report of 2018, in particular: the feedback at that stage, what the Department have taken on board, and the learnings to date;
- the specific proposals in the draft regulations;
- plans going forward given the proposed removal of the regulation limiting the number of migration notices to 10,000, the roll out, milestones, checkpoints, review and oversight.

3.2 Neil Couling introduced the regulations by stating that whilst certain things from that previous report have been considered other things have not as yet, as work on this stopped abruptly when Covid occurred. However, these will continue to feature in the next phase of UC – a learning phase titled the ‘discovery phase’. In this discovery phase there will be work undertaken with claimants, advisors and external stakeholders and partners before the volumes are increased. For this phase there are not pre-determined data and numbers, rather it is a space to explore, learn and construct, allowing volumes to be adjusted based on learning.

3.3. Committee members asked the following questions:

SSAC’s earlier advice: an update on developments

- (a) **There were a number of useful conversations about the earlier recommendations by SSAC, such as about what was considered a safe transfer, about the state of readiness to roll out, the impacts on different cohorts, and implicit and explicit consent. What has (and what has not) happened following the SSAC recommendations?**

The Covid interruption was immediate, so some aspects of ongoing work at that time were lost. Some aspects have changed, including the volume of cases to move. In the Harrogate pilot there were not many cases that needed transitional protection (TP), however that may have been do with the cohorts moving. In terms of the Committee’s previous recommendations a number were accepted, such as the two-week run-on of DWP income-related benefits, whilst others were met with promises to explore further as we developed and tested

² The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2022 largely mirror the GB regulations, apart from some changes to Housing Benefit which apply to Northern Ireland only. The Committee agreed that they were content with those Housing Benefit changes.

³ During the course of this scrutiny, the Department shared certain information in confidence with the Committee, and accordingly this has been redacted as requested.

UC. Where there was an agreement to explore things, such as with operational readiness, that will be picked up in the future plan and other issues raised, around transferring data across from legacy systems, explicit consent, and how to work with third parties will be looked at in the discovery phase.

(b) Previously the Department were following a step by step iterative approach – does that original philosophy still hold?

Yes. The Department is determined to go at a pace that allows us to learn to transition to different phases properly. The pace in the discovery phase will be careful and considered, as with small volumes one can slow down, stop, and correct. [Redacted].

(c) How does the gradual, iterative approach work with the political pressure to get through the massive transitional caseload?

If there was a way to go faster whilst still making sure the system works that would be the approach. [Redacted]. The Senior Responsible Officer's (SRO's) view is that 2024 is still a reasonable target. The SRO would be content to regularly update SSAC during this process.

(d) What are the key lessons learned from the Harrogate trial?

There was originally a three-phase plan – first Jobseeker's Allowance cases (JSA), then Housing Association (HA), then Tax Credit cases. The JSA cases were underway, and the HA were about to start when lockdown happened. The main learning from the JSA cohort was that claimants are anxious about moving to UC. –Personal contact helped address negative preconceptions and informed claimants when payments would fall in the calendar which helped claimants understand when best to make their UC claim within the period they are required. There were very few TP cases, but the people in this cohort were less likely to have a lower entitlement on UC. It is not possible to move individuals across to UC or set up a gateway to identify them by using data from the legacy systems. It would take years of system development and would still be unreliable. People need to participate, and clean data is essential. Also, whilst it may be perceived that the JSA cohort are simpler on paper, they often had complex lives and the cases contained much complexity.

(e) Are the learnings from the huge pandemic claimant increase and the Harrogate pilot transferable to the ESA and Tax Credit cohorts?

The experience so far is that tax credit claimants are reluctant to engage with UC and DWP, they don't like the brand, they see it as a jobcentre experience. The issue therefore is how can it not be like a jobcentre experience? More must be done on communications, to build confidence with current legacy benefit claimants. The changes to the taper rate and work allowances

introduced after the Budget will help as they do mean that a large majority of tax credit claimants will be better off on UC.

- (f) A particular concern of SSAC in 2018 was that the risk of a failed transition was borne by the claimant. With that in mind is the 2024 a target or a commitment?**

It doesn't help running all the different legacy benefit and IT systems, so the sooner we can complete the move to UC the better [Redacted]. It is a Manifesto commitment to complete the UC move. Initiating all transfers by the end of 2024 is a valid target, subject to not being impacted by other policy priorities or external events.

- (g) One of the commitments in 2018 was to explore automatic transfers of claims – has DWP explored any options since?**

Automatic transfer is not impossible, but it is very hard. One area where there is some possibility is on tax credits – aspects of HMRC tax credit claims may be able to be used to build UC claims. We had previously planned to test this before the pilot was paused. We want to explore with HMRC if there is scope for certain information to be ported across.

- (h) Another 2018 commitment was to seek evidence on the group whose earnings exceed the UC threshold for four months – did that happen?**

At present UC claimants who are no longer entitled to UC due to earnings will have their earnings monitored for six months to see if they might (within this period) re-establish entitlement for UC. This might inform that four-month issue.

- (i) The gradual, iterative process is welcomed, but why therefore remove the failsafe of reporting at a particular point? Is there not wisdom in retaining that pilot point?**

The 10,000 limit is a threshold chosen previously, based on the concept of a pilot, to provide assurances that without a limit the intention was to move significant numbers of claimants in one go. [Redacted].

Specific regulations

- (j) On regulation 4 - could the purpose of that be explained?**

This change clarifies what happens in practice anyway. There is an inconsistency here, the legislation removes the inconsistency, and brings it into line with practice.

- (k) How does this interact with people in temporary accommodation?**

An award of housing benefit for those in temporary accommodation (and specified accommodation) does not terminate on claiming UC. Paragraph 3 of article 7 of UC Commencement Order No. 23 ensures claimants in temporary accommodation are not prevented from claiming housing benefit. This saving will be maintained in the commencement order meaning there is no interaction between the revocation of regulation 8(1)(b) and the availability of housing benefit to claimants in temporary accommodation.

(l) On regulation 5 – could the purpose of that be explained?

This aligns the approach to termination of legacy benefits for couples issued with a migration notice who separate, so it is the same as that in the case of natural migration. Existing Regulation 47(2) provides that if one member of the couple makes a claim for UC all legacy benefits to both members of the couple are stopped. That is revoked by these regulations. So, instead now it will be the case that the member claiming for the couple stays on legacy benefits if their ex-partner claims UC.

(m) The migration notice gives them three months to apply – is there a danger that applicants will not report changes in the circumstances of their benefit unit during that period?

People should be declaring changes of circumstances in the normal way. This is stated as a requirement in the existing regulations. The changes proposed therefore bring these regulations in line with natural migration and addresses the backdating point, as the legacy benefit will continue for one of the people. The original regulations on this had a one-month migration notice period, following the SSAC report of 2018, which said that it should be longer, it was changed to three months.

(n) There is a difference between the tax credit and UC definition of couple. Also, the removal of this provision takes out the three-month backdating possible and reverts to the standard one month. Is one-month sufficient protection?

A month is the normal backdating provision and backdating beyond that creates difficulties as there would be a need to consider earlier assessment periods for backdating purposes. In terms of the differences in definition of a couple, there is a subset of tax credit claimants who can claim as couples but who can live in different addresses. That detail is something that will be looked at in the discovery phase.

(o) On regulation 7 and the full-time education (FTE) change – are there any patterns amongst people who lose UC for short periods whilst still doing the same course of education?

FTE students have inadvertently been given more protection than other claimants get. The original intention had been to make sure students didn't

lose their benefits at the point of moving to UC. However, it was not realised that in ensuring this happened the regulations allow for full-time students to have their transitional protection reinstated long after if they claim UC again while still on their course. The numbers who this might apply to are not known, but they would be expected to be extremely low. This applies to those with childcare costs, in that UC doesn't pay childcare costs for student study. Where childcare costs fluctuate whilst someone is in study, this should not have an impact. So, if they started work during the summer and therefore came off UC due to earnings, if they applied again within four-months they would keep their TP.

(p) This regulation has the character not of a mistake but of a failsafe. Are there no circumstances where the TP would now be lost following this change?

None that we can think of that are common occurrence. The kind of short-term loss of UC referred to is picked up by the four-month rule. TP is still paid as part of a UC claim if a reapplication is made within four months, where your earnings take you off of UC.

(q) This change doesn't make the migration work any faster - so is there a money saving imperative, rather than just a speed imperative?

TP ensures eligible claimants receive an equivalent benefit award at the point of transfer to UC. However, this is not an indefinite award. It can be eroded where there are subsequent changes of circumstances. The regulation originally ensured legacy benefit students who didn't meet the FTE definition in UC, received this protection and they could keep TP whilst on that course. However, accidentally it was written so even if they have a change of circumstances and come off UC, then they reapply much later (but whilst they are still on the course) they could still get TP. It is not about saving money, rather it is just about correcting the legislation so the intent of TP is consistently applied to all claimants. The presence of this anomaly could also provoke challenge from other cohorts that they are not being treated equally.

(r) On the discretionary hardship payments (DHPs), is the Department sure that all bases are covered?

Yes. The DHP was originally introduced because we could not pay the two-week DWP benefit run-ons. There is a commitment to ensure migration is rolled out safely, the run-ons have been in place since summer 2020, and the advance phasing repayment period has been extended to 24 months.

(s) Although the primary reason was for run-ons, there was another group – those people whose earnings were temporarily above the UC threshold for four months. Were DHPs a 'backstop' for that group?

TP is not intended to be there ad infinitum and discretionary hardship payments were intended for hardship at the point of transition as a result of the termination of an existing benefit. The primary purpose was to provide for the two-week run on at the point the DWP legacy benefits terminated prior to this being deliverable in the legacy systems. These people will have made the transition to UC and then been off UC for more than four months before they move back so it is thought right that if someone has been off UC for five months, they don't return to get the TP.

- (t) Is a system being created whereby generally if a claimant is out of work there are advance payments available, but if a claimant is in work there is no advance payment - is a discrepancy between those two groups created?**

That is the current position with run-ons. Those in work will have income from employment, or if on Child Tax Credits alone, likely another source of income or capital.

- (u) The income of people in work is already used for fixed expenditure, a recent study showed that large proportions of people in work have less than £50 in savings. The advance could be required because they are more likely to be in debt than those on benefits alone.**

There is a maturation effect going on. There used to be 60% of cases where an advance was requested, and now that is down to 40%, so there is not an exacerbation of this issue happening.

- (v) Would the transition create that exacerbation? Is there potential to use DHPs to help in these situations?**

Rather than use a discretionary system if this was an issue then it would be appropriate to consider if a policy response was needed.

- (w) If removing barriers to the transition is important, then in this situation you will have a long tail impact of move over to UC when using the advance payment system, with the tax credit cohort who have a lot of debt, and adding more debt to that.**

The point is recognised, some are repaying debt in the tax credit system, which is crystallised. The discovery work needs to be done on debt and payment cycles. With regard to cash flow in the Harrogate pilot it was important to get the optimum date of claim right, in line with earnings and outgoings, which was a key finding. The tax credit cohort is under a quarter of claimants.

Implementation, governance and accountability

- (x) Moving onto the plan for the managed migration, please could an outline of that be given?**

One question is how can all this be done for 2024? Around 1.7 million households are estimated to be moved to UC. About a third of those will require TP – there is no financial pressure to save money on TP. The Department estimates that around 500k households⁴ could move to UC voluntarily and the rest will move either by natural migration or managed migration. [Redacted]. All along there will be checking that the DWP can cope, that the moves are safe and accurate and that potential problems are identified. Depending on what is found, the Department can, if deemed appropriate, press on the accelerator or the brake. [Redacted]. What does the ‘discovery’ phase mean? In that phase there is exploration with users, advice agencies, and other bodies to find what is the best way to move people across.

- (y) Has DWP the capacity to cope with the unexpected? The organisation grew in response to do the pandemic. To what degree can that extra capacity be retained whilst driving through the transitional plan?**

Resources we had during Covid can be repurposed, but there will always be adjustments. [Redacted]

- (z) In terms of the exit and entry criteria for the phases, what is foreseen for the transparency, scrutiny and debate, particularly bearing in mind the 10k limit was for Parliament? Is there a plan to publish the entry/exit criteria? Will there be an equality impact assessment for this, looking at how is it panning out for different groups of people? What is foreseen for the relationship with the public, Parliament, and SSAC?**

Whether the entry and exit criteria are published the ultimate judgments on whether to exit one phase and enter another is down to the DWP to decide. The Department does not want to erect a series of external barriers around those specific criteria. In the ‘discovery’ phase it will be learned about the kind of things that will appear in these criteria – although the criteria for entering this phase is set – nothing can be laid out that far in advance.

- (aa) Will anything be published in Parliament or anywhere else? For example, progress reports?**

The Government will consider how best to communicate progress. The amendment regulations will follow normal Parliamentary procedures.

- (bb) The historical commitment about the 10k report was about a process of public communication that could alleviate strong public concerns around UC – so, will coming just to SSAC provide that public confidence? It also provided a breakpoint to allow ramping up to happen – is there not a strong argument for that?**

⁴ March 2022: Reductions in the number of households on legacy benefits mean this has been revised to 200K

It would be very helpful for SSAC to give advice in this process, and that is likely what the Committee would want to do in any event. Any commitment made must be something that the Secretary of State is agreeable to. We know SSAC will be considering what role they might have in this.

(cc) What is the overall project governance?

The entry, exit criteria, are governed by the Programme and reviewed by the Programme Board and the internal audit the National Audit Office and Infrastructure and Projects Authority.⁵

(dd) Could more detail be given about how the figures and estimates you provided mean that the 2024 deadline can be reached?

There are now three million⁶ households in receipt of legacy benefits. The expected natural migration is 30-40k a month. With that factored in, voluntary migrations, cases that simply end, or people who don't move across, or who become pensioners, there will be around 1.7 million households that will have to move through managed migration. Also, there will be cases that simply end, or people who don't move across, or who become pensioners. The 100k a month figure for transfers is just a heuristic, the actual number may be different, once we have processes and systems we can model after Discovery but these are the estimates (based on earlier work) to put a stake in the ground.

(ee) With the original 10k pilot figure there was debate about whether that figure was large enough to be properly representative – is it?

That 10k was not meant to be a representative sample, it was not trying to replicate Great Britain, it was there in part to emphasise to some external stakeholders that DWP wouldn't move to large volumes before completing preparatory work in the Pilot. The anxiety then was large volumes could overwhelm the system. Of course, Covid has shown large volumes can be dealt with where a system is well built and tested.

The point of the Discovery phase is to find gaps and learning by failing on occasion – it in effect replaces the need for a 10,000 limit. And we have demonstrated before that the Department takes a responsible approach to testing. [Redacted]

(ff) Would scaling up happen after test process and evaluation? The concern is that scaling happens before there is the learning – the 10k reassurance forced a pause and conversation and gave reassurance.

⁵ The Programme is also accountable to the Secretary of State.

⁶ As of March 2022 is this estimated to be 2.6m

There will be constant scaling, growing into the volumes. There was 20 people at the start in Sutton, then you build and build, gradually increasing the number of offices to which you roll-out. The safest and best way of doing this is key, can this be executed, rather than pushing people. [Redacted]

(gg) The binding constraint here is the ability to terminate legacy benefits and making sure claimants have a route to UC. There needs to be safe termination and flow onto UC, and you choose the sequence to trigger terminations.

The Department needs to be able to safely move claimants to UC. DWP know DWP benefits, Local Authorities know Housing Benefit, HMRC know Tax Credits. The challenge is to work out how these claimants can be safely moved across to UC. Because there are so many different benefit combinations, we need to be careful not to accidentally pull a group across when the process is not ready or yet built. That is why the discovery phase, rather than any 10,000-claimant limit, is what is important.

3.4 The Chair noted that, while the Committee was content with many of the proposals, it had identified some concerns – in particular on the effect of regulation 9 which removed the 10,000 cap on migration notices - on which it intended to write to the Secretary of State, together with some potential mitigations for her consideration. The Committee would await a response to those concerns before completing the statutory scrutiny process.⁷

4. The Universal Credit and Employment and Support Allowance (Amendment) Regulations 2022

4.1 The Chair welcomed Marie Cousens (G7, Health, Conditionality and Self-Employment), Manjula Pelpola (G6, Health, Conditionality, Sanctions and Hardship Payments Policy) and Dan Gatland (SEO, ESA, IIS, DMA Policy and Performance).

4.2 Introducing the regulations, Marie Cousens explained the purpose was to standardise and streamline the process for terminally ill (TI) persons, those who claim under the Special Rules for Terminal Illness, claiming benefits. These regulations remove the need for a TI person to sign a claimant commitment, which makes the process easier and quicker for claimants.

4.3 The Committee asked the following main questions in discussion:

(a) These regulations apply for Universal Credit (UC) and Employment and Support Allowance (ESA). Is there an instance where a TI person is claiming Jobseeker's Allowance (JSA) – if so, why not apply that rule there?

⁷ Exchange of correspondence between SSAC's Chair and the Secretary of State and Minister for Welfare Delivery can be found at annexes D, E and F

Normally TI persons are too ill to be seeking work. A person would therefore either make a claim to NS ESA if they had paid sufficient contributions; and/or they would make a claim to Universal Credit if they met the criteria for that. Also, the special rules that apply in ESA and UC do not apply in JSA.

- (b) Do General Practitioners (GPs) have to complete the form? Is there any concern that certain people may struggle to navigate the system required to get their TI diagnosis signed off, and therefore that some TI persons may not be captured due to this step in the process?**

The forms can be completed not just by GPs but by a number of other relevant healthcare professionals (e.g. cancer or palliative care nurses), and other evidence can be accepted if they struggle to have that form signed. The Department has completed an evaluation into how the benefits system supports people nearing the end of their lives. The change to the eligibility criteria from death expected in six months to death expected in 12 months will be introduced in due course, which will align it with NHS rules, and capture more people through the Special Rules.

- (c) What if the person lives beyond the 6-month period?**

The award given to the TI person is for three years. At the end of that period, it can still be extended following a light touch review and if the person is still alive.

- (d) Where someone is the partner of a TI person, they do not get the claimant commitment waiver, and also the fact of the TI is treated as confidential from the other partner. Does the Department ask the TI person if this information can be disclosed to the partner, and what happens to the partner in these difficult circumstances?**

All claimants are treated as individuals. It is up to the TI person to consent to disclosing information to their partner. Where the partner does know the circumstances then there is careful listening to the situation, and flexible and tailored easements can be applied, conditionality can be reduced, and there is an option to suspend any activity for a period of time.

- (e) In terms of the rationale for these regulations, is it thought it would be unreasonable for anyone with TI to do a claimant commitment, because if so, is that not already covered by the existing regulations? Is DWP aware of any cases where a TI person was not already given a waiver?**

Perhaps it would not be unreasonable, just unnecessary. Currently someone with TI may still be asked to give a claimant commitment, and this change is to ensure that cannot happen. However, this change has not been prompted by any known instances of this happening, but rather on the possibility it might.

4.4 The Committee agreed that these regulations could proceed without the requirement for their formal reference.

5. Private Session

[RESERVED ITEM]

Date of next meeting

The Committee's next meeting was scheduled to take place on 26 January 2022.

Attendees

Guests and Officials

- Item 2: Dave Higlett (Head of UC Legislation Team)
Trevor Pendergast (G7, Senior Manager, Universal Credit)
Andrew Milner (SEO, Debt Policy)
Darren Bird (Observer)
Oliver Tanner (Observer)
- Item 3: Neil Couling (Director General, DWP Change and Resilience)
James Calverley (G7, UC Policy)
Graeme Connor (Deputy Director, UC Analysis and UC Policy)
Dave Higlett (G6, UC Policy)
Beatrice Fannon (Observer)
- Item 4: Marie Couzens (G7, Health Conditionality, Self-Employment)
Manjula Pelpola (G6, Health, Conditionality, Sanctions and
Hardship Payments Policy)
Dan Gatland (SEO, ESA, IIS, DMA Policy and Performance)
Lloyd Davies (Observer)
- Secretariat: Denise Whitehead (Committee Secretary)
Jaishree Patel (Assistant Secretary)
Richard Whitaker (Assistant Secretary)
Gabriel Ferros (Assistant Secretary)

Letter from Stephen Brien, SSAC Chair to David Rutley MP Minister for Welfare Delivery, 14 December 2021



David Rutley MP
Minister for Welfare Delivery
Department for Work and Pensions
Caxton House
6-12 Tothill Street
London
SW1H 9NA
14 December 2021

Dear Minister.

The Social Security (Income and Capital Disregards) (Amendment) Regulations 2021

The Committee undertook a statutory scrutiny of the above-named regulations at its meeting on 8 December. Following careful consideration of the proposals, the Committee decided that, under the powers conferred by Section 173(1)(b) of the Social Security Administration Act 1992, it does not wish to take these regulations on formal reference and agreed that they may proceed accordingly.

The Committee welcomes the spirit of these regulatory changes in enabling claimants of means-tested benefit to have certain compensation payments disregarded as income or capital, leaving their benefit unaffected. However, during our detailed consideration of the proposals, we were of the view that the following aspects of the regulations required further clarification by the Department:

- **How does the Department account for income derived from the capital of compensation payments?** Where capital from compensation is used in such a manner that it generates income, will it be disregarded and - if so - how?
- **How does the Department identify that the capital held by a claimant is the compensation payment as opposed to capital derived from any other source?** As the disregards apply indefinitely, how does the Department determine that the capital held continues to form part of the compensation payment? If it is not practice for the Department to determine the sources of capital held, what consideration has been given to the risk associated with applying a disregard indefinitely?
- **Are the use of Trusts in relation to these compensation schemes under-utilised?** In personal injury compensation cases the disregard is limited to 12 months, after which the monies must be placed in a trust or annuity if it is to remain disregarded. This has the advantage of placing the compensation monies in a clearly defined separate space from any other sources of capital. Has any consideration been given to whether the use of trusts would be a useful mechanism for overcoming the problem of identifying the capital source?

The Committee would be grateful for clarity on these questions and confirmation of your assurance that these issues will be carefully considered by the Department, and that a full written response will be provided to us at the earliest opportunity.

In closing, I would like to place on record the Committee's thanks to Dave Higlett and his team who, in recognition of the fact the regulations were due to be laid just two days after our meeting, took proactive steps to brief the Committee on the main aspects of the proposals in November.

I look forward to discussing these issues further when we meet in early January.

A copy of this letter goes to Lady Stedman-Scott, Jonathan Mills and Dave Higlett.

A handwritten signature in black ink, appearing to read 'Stephen Brien', written in a cursive style.

Stephen Brien
SSAC Chair

Letter from David Rutley MP Minister for Welfare Delivery to Stephen Brien, SSAC Chair, 12 January 2022



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Dr Stephen Brien
Social Security Advisory Committee
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12th January 2022

Dear Stephen,

The Social Security (Income and Capital Disregards)(Amendment) Regulations 2021

Thank you for your letter of 14 December 2021.

You raise several issues with the way that capital and income disregards operate within Universal Credit and indeed within the legacy benefits Universal Credit is replacing.

Universal Credit has two separate regimes dealing with the disregard of compensation payments:

- Regulation 75 relates to personal injury compensation;
- Regulation 76 relates to specific compensation schemes.

Broadly speaking both these provisions allow personal injury and the other specified categories of compensation to be disregarded both as unearned income and capital. There are differences between the provisions, mainly that regulation 75 provides only a 12 month disregard, unless the payment is put into a trust, in which case the disregard become indefinite. No such condition applies in regulation 76.

I note that in your letter you refer to the regulations achieving a disregard of capital and income payments from schemes established or approved by the Secretary of State to compensate for historical institutional child abuse in the United Kingdom, and from the Home Office's Windrush Compensation Scheme. That is the aim of the amendments, that payments from such schemes, whether they be in the form of income or capital, will not affect entitlement to means-tested benefits.

The questions you pose in your letter in essence refer to what happens thereafter once that initial policy aim has been achieved. That then opens wider issues about the treatment of disregarded capital, beyond and including the payments made under the schemes covered by the amendments. Turning then to the specific questions in your letter:

1. How does the Department account for income derived from the capital of compensation payments? Where capital from compensation is used in such a manner that it generates income, will it be disregarded and - if so - how?

Universal Credit: only counts unearned income if it is listed in Universal Credit Regulation 66. This is unlike legacy benefits, which count all income other than earnings unless specifically disregarded.

- Interest, dividends and rental income: these types of income are not listed in regulation 66 because Universal Credit calculates an assumed income yield from capital. For every £250, or part thereof, of capital over a threshold of £6,000, an income yield is assumed. This is similar to rules in legacy benefits). For example, someone with capital of £6,100 would have Universal Credit reduced by £4.35 per month and a person with £6,400 would have benefit reduced by £8.70 per month. Assumed income yield is not calculated on capital that is disregarded;
- Income from an annuity or trust: these forms of income are listed in regulation 66, but there is a specific exemption where an annuity is purchased with personal injury compensation or where the capital used to establish the trust was personal injury compensation or capital from a special compensation scheme covered by regulation 76. In Universal Credit, if the recipient places the money into a trust any income derived from the trust is disregarded. Where the capital that is disregarded generates actual income that is not taken into account as unearned income, and is not spent, it will be added to the person's capital by virtue of UC regulation 72(3) (and note there is no specific provision in UC for disregarding the capital that is derived from such income as this would require it to be separately identified).

Legacy benefits: in legacy benefits all forms of income are counted unless specifically disregarded. Therefore, legacy benefits have provisions which simply disregard any income from capital where that capital is from (or derived from) special compensation schemes.

2. How does the Department identify that the capital held by a claimant is the compensation payment as opposed to capital derived from any other source?

Universal Credit: the Department does not attempt to distinguish the capital derived from a compensation payment from other capital (with the exception of personal injury compensation that has been placed in trust). Wherever a claimant has received a payment of capital which is disregarded, whether indefinitely or for a

prescribed period, their capital threshold is effectively increased by the amount of the original payment for the duration of that period. This is regardless of whether it was simply paid into a bank account with other funds or held or invested elsewhere.

There are some differences between Universal Credit regulations 75 and 76, largely derived from the provisions in the legacy schemes. Specifically, a payment of personal injury compensation has a general disregard for 12 months, after which it must be used to purchase an annuity or be placed in trust (and then income from annuity or the trust is specifically disregarded) whereas regulation 76 allows for an indefinite disregard.

Legacy benefits: in legacy benefits capital held from compensation payments need to be separately identified from other capital because the relevant regulations provide for a disregard of any capital resource "derived" from that capital. (This means that where the income generated from an asset that is disregarded is added to a person's capital, that capital is also disregarded). However the provisions regarding capital from personal injury compensation are the same as those for Universal Credit (a general 12 month disregard followed by an indefinite disregard where the compensation is held separately in a trust).

We have taken steps to encourage claimants to declare payments which are disregarded, so that a note can be placed on the claim, so if a check of capital assets is undertaken, we would be able to determine that certain assets should be disregarded.

3. Are the use of Trusts in relation to these compensation schemes under-utilised?

We have no evidence to that effect. The point here though seems to be whether a similar approach could be adopted to special compensation payments (i.e. making the full disregard conditional upon placement of the monies in a trust). That would need consideration in the round, for example consideration would need to be given to the potential effect on people who have already received special compensation payments.

As you will appreciate, when Universal Credit was introduced there was a considerable effort made to simplify the rules dealing with income and capital and I would be content for the Committee to engage with my officials to discuss the issues further if helpful.

Yours sincerely,



David Rutley MP
Minister for Welfare Delivery

Letter from The Rt Hon Thérèse Coffey MP, Secretary of State for Work and Pensions to Stephen Brien, SSAC Chair, 13 January 2022

SOCIAL SECURITY
ADVISORY COMMITTEE

The Rt Hon Thérèse Coffey MP
Secretary of State
Department for Work and Pensions
Caxton House
6-12 Tothill Street
London
SW1H 9NA
13 January 2022

Dear Secretary of State,

Universal Credit (Transitional Provisions) Regulations 2022

The Committee undertook its statutory scrutiny of the above-named regulations at its meeting on 8 December. The Committee was content with many of the proposals. However, we have identified some concerns which we have set out below, together with some potential mitigations for consideration.

A process to move around 1.7 million households - many with complex lives - onto Universal Credit from legacy benefits creates a significant risk for both those who are reliant on these benefits and for DWP. The Committee's response to [The Universal Credit \(Managed Migration\) Regulations 2018](#) set out our concerns at that time about a number of these risks, and urged the Government to take steps to ensure that those risks were carried by the Department rather than claimants being taken through this process. The existing Ministerial commitment to pause the migration process and report to Parliament was a key commitment given to Parliament as part of the scrutiny of *The Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019*.

We do recognise that the Covid-19 pandemic has enforced a prolonged pause in the Department's migration plans, and that there is a persuasive argument to move on from the pilot to working at greater scale. While we are supportive of a test-and-learn approach, the Committee is of the considered view that, given the extent of this undertaking, there is a need to have in place arrangements that provide public assurance through independent scrutiny of plans and proposals, particularly as the detail about the iterative test and learn process is necessarily limited at this point in time.

The proposed regulation 9 has the effect of removing the cap on the number of migration notices (10,000) that could be issued to existing claimants on legacy benefits and the associated Ministerial commitment to report back to Parliament before proceeding further. The main conclusion from our scrutiny of these regulations was that there is a need to consider further the potential consequences of regulation 9, and we would encourage you to retain the cap. Greater clarity is required on how the process (at key points of the migration process) will be scrutinised, and what success measures are considered to be.

If, however, the Government is committed to this position, we consider it important that the Department puts alternative arrangements in place that could provide mitigation against the element of risk that these proposals introduce, by providing independent oversight and assurance. This should take an evidence-based approach that provides independent scrutiny and public assurance, and which enables the Department to adapt its processes in an iterative way, before the numbers, and types of cohorts, being migrated are scaled up.

We would be happy to explore the role this Committee, as impartial and independent advisers to the Secretary of State, could play in providing some ongoing scrutiny and publicly report its findings. We would, of course, be prepared to undertake such a role at the end of the discovery phase in order to help secure strong public confidence in the process. However, robust scrutiny will require drawing in other key bodies, experts and stakeholders to work in partnership with this Committee. We would welcome an opportunity to discuss with you the composition of such a group, to ensure that it provides credible, independent, and impartial advice in which you can have confidence as a potential alternative to parliamentary scrutiny.

Such an approach could help alleviate public concerns about – and build confidence in – the move to Universal Credit. This process would not unduly hinder the Department through a requirement to bring forward amended regulations and report to Parliament at key review points, but would allow transparent scrutiny to take place and ensure key learning points were identified and shared.

I would welcome an opportunity to discuss these issues with you further and propose making our position public when reporting on the draft regulations before us.

A copy of this letter goes to Lady Stedman-Scott, the Minister for Welfare Delivery, Neil Couling, and Jonathan Mills.



Stephen Brien
SSAC Chair

Letter from David Rutley MP Minister for Welfare Delivery to Stephen Brien,
SSAC Chair, 1 February 2022



Department
for Work &
Pensions

DAVID RUTLEY MP
Minister for Welfare Delivery

Caxton House
Tothill Street
London, SW1H 9AJ

Dr. Stephen Brien
Chair, Social Security Advisory Committee
Caxton House
Tothill Street
London, SW1H 9NA

1st February 2022

Dear Stephen,

UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) REGULATIONS 2022

Thank you for your letter dated 13 January 2022 and for your time to discuss the issues raised further on 25 January.

I welcome the Committee confirming they are content with the majority of the proposed amendments to the named regulations after undertaking their statutory scrutiny. We have a shared ambition to see the rollout of Universal Credit delivered safely and on time, by 2024, and we are both keen to avoid delays to this process.

I recognise the concerns raised by Committee members and I want to assure the Committee that the Secretary of State and I are mindful of the scale and the significance of the task ahead of us. We are especially mindful of the vulnerability of some of our claimants.

You raised the possibility of separating out the regulations for the Committee to consider specific regulations in slower time. We have explored this again. However, the complexity associated with tabling two sets of amendments and the risk this presents of delaying the programme lead us to presenting these regulations as a single package.

To provide the Committee with an appropriate and proportionate opportunity to provide advice to Ministers as we proceed with the migration to UC, I would be willing to meet you on a quarterly basis to update the Committee on progress and share key findings up to the end of discovery phase. The offer of these meetings

reflects the exceptional scope and scale of this project and, as we both realise, are not standard procedure for the Department and its engagement with the Committee. As such, the Secretary of State and I would not anticipate that this approach is employed elsewhere in the Department.

I hope this offer reflects the spirit of our meeting and look forward to your response which I hope will confirm that the Committee will not need to refer these regulations. A copy of this letter goes to the Secretary of State, Baroness Stedman-Scott, Neil Couling and Jonathan Mills.

A handwritten signature in blue ink, appearing to read 'DR', is positioned above the typed name.

DAVID RUTLEY MP
MINISTER FOR WELFARE DELIVERY

Letter from Stephen Brien, SSAC Chair to David Rutley MP Minister for Welfare Delivery, 11 February 2022



David Rutley MP
Minister for Welfare Delivery
Department for Work and Pensions
Caxton House
6-12 Tothill Street
London
SW1H 9NA
11 February 2022

Dear Minister,

The Universal Credit (Transitional Provisions) Regulations 2022

Thank you for your letter of 1 February, responding to issues raised in my original correspondence of 13 January and our subsequent discussion with the Secretary of State and Lady Stedman-Scott on 25 January.

The Committee recognises that the Department is keen to make early progress with the implementation of these proposals to provide certainty for those individuals who may be affected by the move to Universal Credit. In order to expedite matters, I convened an extraordinary meeting of Committee members, which we held on 9 February, to further consider these regulations in the light of your response – with an emphasis on how best to ensure appropriate scrutiny and public confidence for an agile process in light of the proposed regulation 9.

The Committee welcomes your offer of regular quarterly meetings to report on progress and share findings until the end of the discovery phase. However, there was a clear consensus among Committee members that this, in isolation, would not go far enough to mitigate against the risks highlighted in my original letter and the Committee's earlier report on *The Universal Credit (Managed Migration) Regulations 2018*. Nor would it serve to strengthen public confidence in the system.

I am therefore writing to confirm that, after further careful consideration of the proposals, the Committee has decided to take the above regulations on formal reference in accordance with sections 172(1) and 174(1) of the Social Security Administration Act 1992.

I can provide assurance that we do not wish to unduly delay the process. We will not be undertaking a large-scale public consultation on this occasion but intend to seek the advice of a small number of experts, including those with significant experience or expertise of agile processes and their governance. We will, subject to the usual modalities, arrange these conversations as early as possible, and anticipate being in a position to submit our report to the Secretary of State within a few weeks.

We will ensure that DWP is informed of our plans and detailed timetable for, and of developments throughout, the formal reference process. I would also be very happy to discuss further with you at any stage of the process if that would be helpful.

A copy of this letter goes to the Secretary of State, Lady Stedman-Scott, Neil Couling and Jonathan Mills.

A handwritten signature in black ink, appearing to read 'Stephen Brien'.

Stephen Brien
SSAC Chair