

## **Universal Credit and related regulations: Response to SSAC technical comments and policy points**

During the summer of 2012, the Social Security Advisory Committee (SSAC) consulted with a broad range of organisations and individuals on the Government's draft Universal Credit and related regulations. In particular, the Committee examined the coherence of the package of regulations in terms of implementation, and whether there were gaps or unintended consequences that need to be addressed.

On 23rd August 2012, SSAC delivered its report on the Universal Credit and related regulations to the Secretary of State for Work and Pensions. The Committee also received a number of detailed and technical comments, and broader policy points, relating to the regulations from consultation respondents which it forwarded to Departmental officials to consider.

These points have proved helpful in enabling the Department draft an effective package of regulations and the Secretary of State would like to take this opportunity to thank those who took the time to respond to the SSAC consultation.

Where the Government has decided not to make changes to the regulations it should be borne in mind that there will be an extensive programme of monitoring and evaluation for Universal Credit and the Government will also be able to make use of the piloting powers provided by section 41 of the Welfare Reform Act to test different approaches in the light of experience of live running.

The attached annexe sets out the Department's response to the technical comments and policy points.

# Responses to SSAC technical comments

## Universal Credit Regulations

1. *Couples (reg 3(1)): there is a degree of ambiguity in the wording. It could be interpreted as though neither partner need satisfy any of the basic conditions of entitlement in order to establish entitlement.*

The Department thanks the Committee for raising this point. The intention should now be clear in the final version of the Regulations which now mirrors para 1 of Schedule 1 to the 2012 Act.

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2. *Persons treated as not being in Great Britain - exemptions (reg 7(4)): the position relating to people from Montserrat is unclear.*

The current income-related benefit regulations contain a provision that exempts people who have left Montserrat since November 1995 because of volcanic activity from the Habitual Residence Test. They have been immediately entitled to income-related benefits on arrival in the UK provided they meet the other conditions of entitlement.

However, in May 2002 Montserratians (along with other British overseas territories citizens) were automatically granted British citizenship. Therefore, Ministers agreed that this provision should be withdrawn. Montserratians arriving in the UK will be able to qualify for income-related benefits on the same basis as other British citizens coming here for the first time (that is, once they have satisfied the Habitual Residence Test).

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3. *Claimant Commitment (reg 13(1)(a)): the drafting of this sub-paragraph needs attention as there is no sub-paragraph (b) and that the heads of (a) are linked by both an 'and' and an 'or'.*

This sub-paragraph has now been re-written and clarified.

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4. *Restrictions on Entitlement (reg 16(2)(b)): further clarification of this provision is needed to clarify whether it intends to refer literally to the length of the sentence or rather the predicted term spent in custody.*

We think that the regulations are sufficiently clear in that it is the length of the sentence to which we refer rather than the predicted term in custody.

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5. *Amount Deducted for Income (reg 19): the policy rationale for having a lower disregard for claimants with housing costs is not clear. Having minimum and maximum disregards adds complexity, and a lower disregard for those with*

*housing costs will be a disincentive to work. Clarification is needed about whether a claimant's earnings disregards will be upgraded during a dispute about eligibility for housing costs and whether a recoverable overpayment will arise if housing costs are restored. Regulation 19(3) would benefit from further clarification on the application of a 65 percent taper.*

Claimants in receipt of housing support will generally have a higher award of Universal Credit than those with no housing costs. In order to address this and target resources more fairly, we intend to allow those claimants with no support with their housing costs to keep more of their earnings.

On determining which disregard will be applied whilst the amount of housing cost support is subject to dispute, the claimant will be considered to be ineligible for housing support while the dispute is on-going and therefore the higher disregard will apply. If the housing element is subsequently restored with regard to the period in which the claimant received the higher disregard, any resulting over or underpayments will be corrected as usual.

The taper will apply to income that exceeds the amount that has been disregarded.

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6. *Standard Allowance and Child Element (reg 20): CPAG noted that the proposed lower rate of the additional amount for disabled children (equivalent to the LCW element) is significantly less than the current disabled child element paid with child tax credit. They argue that will adversely impact vulnerable families with a disabled child, with many families being worse off by up to £30 per week. Although the Government has indicated that the higher rate will rise to around £77 per week, it is not mentioned in the Explanatory Memorandum (EM). The use of the word 'and' after regulation 20(2)(a) suggests that both rates could be paid where applicable, but paragraph 48 of the EM uses the word 'or'. Clarification would therefore be helpful.*

Universal Credit will make the system easy to understand and target support on those most in need. In relation to disability, the approach has been debated extensively. The Government has made it clear that the intention is that disability support offered in Universal Credit for adults and children should be consistent and focus resources on the most severely disabled individuals.

Sub-paragraph 20(2)(A) [now 25(2)(a)] has now been redrafted to clarify.

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7. *Manner of Determining Total Entitlement to Welfare Benefits (reg 70(5)): section 18 of the Welfare Reform Act 2007 refers to a person being disqualified 'for receipt' of benefit rather than 'from receipt'.*

The drafting of this regulation has now been corrected.

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8. *Reduction of Universal Credit (reg 71(2))*: further clarification would be helpful here to remove ambiguity around the treatment of child care cases.

This drafting of this regulation has now been clarified.

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9. *Exceptions etc (reg 72(1))*: in sub-paragraph (g)(i) and (iii) the drafting might be clearer if it read ‘that person is not receiving it by virtue of’ rather than ‘that person is not receiving it under’.

*The Department should also check whether the reference to regulation 9 - rather than regulation 7 - of the Social Security (Attendance Allowance) Regulations 1991 is correct.*

On the first point we believe that this is purely a drafting matter which makes no difference to how the provision will work. The Benefit Cap (Housing Benefit) Regulations 2012 have already been approved by Parliament with the original wording; however we have amended the equivalent provisions in the Universal Credit Regulations to reflect this comment.

The drafting of this regulation has now been corrected in light of the second comment.

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10. *Claimants Subject to no Work-Related Requirements (reg 79)*: here, and in several other places, the term ‘responsible carer’ has been used but not defined.

Section 19(6) of the Welfare Reform Act 2012 defines “responsible carer” for Universal Credit purposes.

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11. *Earnings Threshold for Claimants Subject to No Work-Related Requirements (reg 80)*: further clarification on how the threshold will be applied in cases of fluctuating earnings, or where a claimant only works for part of the year (eg school terms) would be helpful. The meaning of ‘a sustained period’ is likely to be open to differing interpretations. Also the definition of the threshold in terms of weekly earnings does not sit easily with UC’s monthly assessment period.

Regulation 80 has been substantially re-written as Reg 91 and now covers fluctuating earnings more thoroughly. The term ‘sustained period’ is no longer used in the regulation.

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12. *Claimants Subject to Work-Focused Interview Requirement Only (reg 82)*: further clarification is required on whether kinship carers are included in this provision.

Provision is made to include kinship carers in the latest version of the Regulations. This is now included at regulation 92.

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13. *Work Search Requirement (not to be imposed) (reg 88): further clarification is needed here. For example:*

- *there appears to be a mis-match between sub-paragraph (3)(a) and regulation 10(4);*
- *sub-paragraph (3)(i)(iv) would appear to exclude those who are in the situation of caring for someone who went into hospital or a hospice and subsequently died. It would be helpful to have clarification on whether that is the intention; and*
- *the comments above relating to regulation 80 also apply to sub-paragraph (3)(j).*

This section of the regulations has now been redrafted and clarified substantially. Sub-paragraph (3)(i) has been revised to reflect policy intent that the conditionality easement should apply following the death of a close relative.

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14. *Domestic Violence (reg 89): the reference to sub-paragraph (2)(a) in sub-paragraph (1)(a) should be amended to paragraph (2)*

This section of the regulations has now been redrafted and the reference is now to sub-paragraph (3)(a).

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15. *Circumstances in which a Work Search Requirement must not be imposed etc (reg 90): in sub-paragraphs (3)(k) and (l) the opening words should be 'the claimant'.*

The drafting of this regulation has now been corrected.

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16. *Zero Sanctions (reg 98): it is unclear whether this regulation also applies where a claimant is no longer subject to conditionality for reasons other than having LCW or LCWRA (e.g. becoming a carer or parent).*

The final version of the regulations make it clear that sanctions will be reduced to zero only where the claimant moves into the No Work Related Requirements conditionality group by reason of limited capability for work and work – related activity.

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*17. Period of Hardship Payments (reg 110): given the length of the sanctions in some cases, the Department might want to reflect on whether the requirement for a monthly application for hardship payments will put unnecessary burdens on staff and claimants.*

It is important to establish a balance between any administrative burden and the need to verify the claimant's position regularly. In this case, we think we have struck that balance. Where a claimant makes an application shortly before their next Universal Credit payment is due, the hardship payment period can be extended to the end of the next month. Hardship should not be regarded as a static process; a claimant's circumstances at the outset of a period of sanction are unlikely to remain the same for the entire duration of the sanction.

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*18. Meaning of "Alternative Finance Payments" (Schedule 1, para 6): clarification is required on whether the term 'alternative finance payments' covers sharia mortgages.*

We are confident that the term "Alternative Finance Payments" does cover Islamic Home Purchase products.

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*19. Liability for Payments (Schedule 2): it is understood that there will be provision for advance payments to be made as payments on account of benefit. Further clarification would be helpful on whether there will be an equivalent provision to the existing rule in connection with Housing Benefit (reg 93 of the HB Regs) which would require an interim payment to be made if the housing aspect of the claim cannot be determined within 14 days.*

We are not making an equivalent provision to the existing rule in connection with Housing Benefit. In circumstances where we are not able to verify all elements of a claimant's Universal Credit award, an advance of benefit may be payable in the interim. This advance would then be recovered in full once the award becomes payable. Any under payments paid to the claimant as soon as is practical and overpayments recovered through usual deduction processes.

We could also make an award of Universal Credit in respect of decided elements even where other elements remain undecided. So, for instance, we could make an award of Universal Credit that does not include an amount in respect of housing costs where a question around rent liability remains to be decided.

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*20. Failure to Pay by the Person Liable (Schedule 2, para 1): this might usefully be amended to 'has claimed' rather than 'is claiming' since once the claim has been made it ceases to exist.*

We believe that the provision is drafted correctly as is.

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21. *Contrived Liability (Schedule 2, para 9): a definition of ‘contrived liability’ in the legislation is required.*

We do not believe that it would be appropriate to define contrived liability. A judgement will have to be formed after considering all aspects of the nature of the agreement and the factors that gave rise to the agreement. Commissioners and Upper Tribunal Decisions exist from Housing Benefit cases to assist the decision maker.

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22. *Number of Bedrooms (Schedule 4, paras 12 and 37): the Department should reflect on whether these paragraphs need to be revised in the light of the Court of Appeal decision in the case of Burnip v Birmingham City Council and Another [2012] EWCA Civ 629 (15 May 2012).*

DWP is appealing the decision to the Supreme Court. In the meantime guidance has been issued to local authorities about applying the Court’s decision in relevant cases. A similar approach will be taken in Universal Credit until the appeal is decided and Housing Benefit and Universal Credit regulations will be amended as soon as practicable if the outcome requires it.

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23. *Temporary Absence of a Benefit Unit Member (Schedule 4, para 13): it is unclear why paragraph (5) has been included when the size criteria is the same whether or not one partner in a couple is absent.*

Where a member of a couple with no children or non-dependants goes into prison they are no longer part of the extended benefit unit and are not included in the Universal Credit assessment. If the remaining person is under 35 and not in an exempt category the Shared Accommodation Rate would be applied straight away. This provision provides a protection from that restriction where the partner’s period of absence is not expected to exceed 6 months.

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24. *Private Sector Rents etc (Schedule 4, part 4): clarification is required as to whether tenants who are currently excluded from the LHA rules (eg Rent Act protected tenants) are included in the new scheme.*

All private-rented sector tenants who are entitled to the housing costs element in Universal Credit will have that assessment based on the relevant LHA rate.

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25. *Housing Costs Element (Schedule 4, paras 38 to 42): further clarification is required about whether, in situations where the social sector under-occupation rules apply to joint tenants, a renter could be penalised if the joint-tenant under occupies their portion of the dwelling even if the renter does not.*

The social sector under-occupation rules in Universal Credit will not now apply to joint tenants.

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*26. Polygamous Marriages: the fact that existing provisions relating to polygamous marriages are not to be carried forward into UC will mean that spouses, other than the first, will be treated as single adults with the result that a polygamous household will receive a higher level of UC per adult than the partners in a couple. The resultant inequality of treatment is an issue which merits further consideration.*

The Government considers that the fairest approach under Universal Credit is for the husband and first wife to claim as a couple in the same way as any other couple. Any other adults living in the household will have to qualify as single people on the basis of their own circumstances. This process already operates in the current system in cases where a polygamous marriage is not recognised in UK law.

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*27. Exceptions to the Benefit Cap (reg 75E(1)): see comments (above) made in relation to regulation 72(1) of the Universal Credit Regulations.*

As explained under point 9 above, the Benefit Cap (Housing Benefit) Regulations 2012 have already been approved. We believe that this is purely a drafting matter which makes no difference to how the provision will work.

However, we accept the point made on Attendance Allowance and the regulations were amended as suggested before they were laid before Parliament.

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*28. Exceptions to the Benefit Cap (reg 75F(1) HB Regs): since those on ESA and in the support group are exempt from the cap, further clarification is required about whether the exemption should extend to severely disabled claimants on Incapacity Benefit or Severe Disability Allowance.*

We do not agree that there should be a blanket exemption for households in receipt of Incapacity Benefit or Severe Disablement Allowance as they will not all be in the same position as people in the ESA support group. However we are looking at whether we can identify those who could be eligible for the ESA Support Component before the cap is applied to them.

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*29. Interpretation (reg 75G): the reference to 'regulation 96(10)' should be amended to 'section 96(10)'.*

The amendment was made prior to the Housing Benefit regulations being laid.

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## Claims and Payments Regulations

30. *Joint-Claims (reg 10): this regulation should be reviewed to determine:*

- *whether this provision needs to be aligned with regulation 3(1) of the Universal Credit Regulations. Regulation 10 does not appear to make provision for what happens when one member of a couple is exempt from claiming;*
- *whether the 'unable' in paragraph (4) could be amended as it will be open to a wide interpretation. It may be helpful to pin down its intended meaning more closely; and*
- *provide further clarification in paragraph (5) about what will happen if both partners satisfy the conditions of entitlement after they cease to be a couple.*

On the first point, regulations have already been amended to include a cross reference to the Universal Credit Regulations which addresses this first point made by SSAC.

On the second point, we have decided to provide for sufficient flexibility in the regulations but we are setting out a clear meaning of "unable" in guidance.

On the third point, this provision only applies when the award of Universal Credit to joint claimants is terminated because they cease to be a couple. It is therefore clear that there will then be two awards to the claimants as single persons after they split up. This will be underpinned in guidance.

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31. *Time within which a claim must be made (reg 24): this regulation should be reviewed in light of the following:*

- *given the precondition stipulated by paragraph (2)(b) it is not clear that there is a need for the additional words 'the claimant was not able to make a claim in the manner prescribed in regulation [CP9]' in paragraph (3)(b) and (c); and*
- *sub-paragraph (3)(c) only works by assuming the very thing to be established. It might be preferable to refer to the first day of UC entitlement because a claim in the prescribed manner is a condition of entitlement and it is the date of claim and therefore the start of entitlement which is being considered.*

On the first point, the regulations have been re-drafted and this has removed some of the unnecessary wording that the Committee have highlighted.

On the second point, this regulation is not about entitlement; it is about extending the time within which a claim for Universal Credit can be made. The current wording requires that medical evidence must be supplied in support of their claim that they were experiencing a health condition during the earlier period. The Decision Maker will need to consider that evidence and decide whether the claimant satisfies the requirements of this regulation before an earlier date of claim can be allowed.

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# Responses to SSAC policy points

## Universal Credit Regulations

1. *Couples (reg 3(1))*: a high number of responses questioned the Government's decision that where one member of a couple was over state pension age and the other was under, the appropriate benefit should be UC rather than State Pension Credit. They argued that this would impact adversely on the elder partner in the long-term, although they will be protected in the short-term.

The Welfare reform Act sets out that couples where one member is under and one is over state pension age will access Universal Credit rather than pension credit. Regulations set out the way in which this will work. We want Universal Credit to be as simple as possible and providing for a 'pensioner premium' would add to complexity. We also want to incentivise work so mixed age couples, with a working-age partner will benefit from the generally higher disregards and tapers in Universal Credit if either of them works.

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2. *Temporary Absences (regs 3(6) & 4(7))*: reducing the period of temporary absences from 52 weeks to 26 weeks may cause some difficulties for a claimant whose partner or child is, for example, in hospital or respite care. Although the partner would be eligible to claim as a single person, the loss of support with respect of a child could jeopardise ongoing contact with them if they were at a distance and travel costs were high.

Universal Credit clarifies and aligns a disparate mix of temporary absence rules in the current income-related benefits. DWP believes that introducing a standard 26 week rule for temporary absence is broadly fair. Where there are clear rules, there will always be people who fall on the wrong side of the line but we do not expect that this change will cause significant problems in practice.

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3. *Qualifying Young Person (reg 5(1)) and Exceptions to Conditions of Entitlement (Education) (reg 12(1))*: Respondents raised the following issues for the Department to reflect on with the Department for Education to ensure that the effect of this policy does not conflict with the broader aims of encouraging young people to complete their education, and its own aims of enabling them to secure sustainable employment:
  - the change in the definition of a 'qualifying young person' will mean that some young people may feel constrained to leave education and claim benefit in their own right, even though it could be detrimental to them in the long-term. It will also mean that the rules are out of kilter with those in Child Benefit; and
  - Disability Rights have commented that this provision effectively restricts the ability of young people to complete their education. Currently, anyone under 21 in non-advanced education can claim HB but for UC, it will only be possible if they are without parental support or in one of the other groups prescribed in regulation 12.

- *Students on DLA can claim income-related ESA at present, but will only be able to claim UC if they also have a limited capability for work.*

On the first point, through the child element, and the provision for young people to claim in their own right, Universal Credit will provide support to young people who are engaged in education or training. However, we understand the concerns raised here, and will closely monitor the effect of this policy on young people who are at risk of disengaging with the labour market.

On the second point, we do not believe that it would be right to maintain the position where young people in education can get help with housing costs in situations where they are not estranged from parental care or subject to some other specific exemption.

On the third point, the intention is that disabled students should have access to Universal Credit but only where they are entitled to an additional element for Limited Capability for Work or Limited Capability for Work Related Activity.

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4. *Minimum Age of Entitlement (reg 6(2)): there may be merit in considering whether this provision should be extended to include the situation where a young person is at risk of being forced to live away from their parents.*

We considered this suggestion carefully, but concluded that there was a risk of providing a perverse incentive if we allow young people to claim in their own right whilst they are living at home. We are designing Universal Credit on the principle that young people under 18 should be in education or training. Therefore, there should be no need to pay them Universal Credit in their own right if they are living at home because, if their parents or guardians are claiming Universal Credit, they will be able to get the child element in respect of them.

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5. *Meaning of 'Receiving Education' (reg 10): the National Union of Students (NUS) support DWP's intention to move away from previous definitions of full and part-time courses to a position where there is greater recognition of the flexibility of modern study patterns. It potentially allows, for example, for more intensive evening courses that would give scope for a person to comply with a work search requirement and secure entitlement to benefit. It will be important to ensure that the guidance provides the right foundation to enable decision-makers to make reasoned and balanced decisions.*

*Regulation 10(2)(b) provides a definition of education as: 'undertaking any other full time course of study at an educational establishment for which a loan, grant or bursary is provided for the person's maintenance or would be available if the claimant applied for it.' The NUS assert that a distinction should be made between those courses for which a statutory payment is made – ie where there is entitlement if the student meets certain criteria – and discretionary payments which now form the bulk of further education funding in England.*

On the first point, the Government notes the importance of the availability of good quality guidance for decision makers.

We have deleted the words “or would be available if the claimant applied for it” in light of the second comment.

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6. *Claimant Commitment (reg 13(1)(a))*: a judgment from the Secretary of State that a request for a review is unreasonable has the potential to be disputatious. If it is intended that a claimant could only challenge such a decision by way of Judicial Review rather than appeal, the Department might want to consider a different approach.

A claimant may ask for their Claimant Commitment to be referred for a second opinion. The Secretary of State will need to agree that there are reasonable grounds for referral. Acceptance of the Claimant Commitment is a condition of entitlement to Universal Credit and if the claimant refuses to accept one, even after a reasonable ‘cooling off’ period, they will not be entitled to Universal Credit. The decision to terminate the award, though, can be subject to appeal.

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7. *Maximum Amount of Award (reg 18)*: respondents have raised concerns on the absence of additions for disability and other elements in UC. It is asserted that this will impact heavily on severely disabled claimants. Moreover a lone parent under 25 will face a significant cut in benefit which is likely to have an impact upon child poverty. Several respondents have also commented upon the lack of an age addition for those above state pension age. While transitional protection will offer a safeguard in the short-term, in the long-term, given the premise that UC was to be cost neutral overall, disabled people and others will effectively subsidise those who stand to gain from the reforms.

The Government understands that concerns have been raised about the effect of the new structure on particular groups. Universal Credit will simplify and rationalise the way in which benefits are calculated. This rationalisation will restructure the pattern of entitlements and target resources to those that need it most. The greater simplicity of Universal Credit is also expected to lead to a substantial increase in the take-up of currently unclaimed benefits, with most of the impact being at the lower end of the income distribution. Indeed, the introduction of Universal Credit is expected to increase benefit spending by £2bn. Transitional Protection will be provided in the form of a cash top up for claimants who have been moved onto Universal Credit by the Department and who have a lower Universal Credit award than their current benefits, as long as their circumstances remain the same.

In relation to people with disabilities, Universal Credit will recycle the resources that can be released from reforming the existing disability premiums to raise the level of the Limited Capability for Work and Work Related Activity element in Universal Credit. This will target support towards people with the most severe disabilities.

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8. *Amount of Standard Allowance and Child Element (reg 20): The NUS note that students with children are some of the most vulnerable learners, and that support for their children is crucial. It would be helpful to have clarity on how the support currently available through Child Tax Credits will be transferred to UC, and respondents have asked for an assurance that no parent will be worse off under the new arrangements.*

The child element of Universal Credit will provide similar support as Child Tax Credits for students with childcare. All students with children, whether lone parents or in couples, may be eligible for Universal Credit.

Transitional protection will apply to parents who move into Universal Credit and this will mean that people will not be worse off under Universal Credit, unless there is a significant change in circumstances.

For parents more generally, Universal Credit will bring many advantages in relation to childcare support and work incentives.

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9. *Period for which the LCW or LCWRA is not to be included (reg 24(1)): this will mean that some claimants will have to wait almost a month longer than others to qualify for a LCW or LCWRA element, depending on when they happen to have fallen sick, giving some arbitrary results. There might be merit in considering an approach which gives a more consistent result.*

The Department is satisfied that the regulations, as drafted, achieve an outcome that is consistent with the monthly approach in Universal Credit. The element will be awarded after three complete assessment periods or if earlier from the assessment period in which the equivalent component is awarded in ESA.

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10. *The Work Condition (reg 28(2)(b)): the list appears to disadvantage the self-employed who, if they become sick, will not be entitled to Statutory Sick Pay. Unlike in Tax Credits, there is no deeming provision. The Department might usefully consider extending the list to include Statutory Sick Pay.*

In order to receive the childcare element, the claimant needs to be in paid work. However, periods when the claimant is off work sick and receiving statutory sick pay do count as periods of employment for this purpose, so the childcare element will continue to be paid.

While self-employed people do not get statutory payments, such as sick pay, they will continue to receive childcare payments for as long as they are considered gainfully self-employed. If gainful self-employment comes to an end, then the childcare run-on will apply, which means that costs can be claimed up to a month following the end of that period of gainful self-employment.

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11. *The Child Costs Condition (reg 29(1)(b))*: this provision seems to prevent the necessary flexibility which is required by fluctuating child-care arrangements (eg where a school holiday falls within an assessment period).

We have thought carefully about this. One of the advantages of the approach to childcare costs in Universal Credit is that they will be based on monthly reporting of actual costs which is significantly more flexible than the current system based on weekly notifications.

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12. *Child Costs Element (reg 30(2)(a))*: this provision contains a power for the Secretary of State to disallow childcare charges where they are considered to be excessive having regard to the 'extent to which the claimant is engaged in paid work'. Abuse of the system should be prevented, however this is a wide discretion and there is some concern among respondents that it could be used to force people in low paid jobs to move their children to inferior and cheaper childcare providers. It has been suggested that because the upper ceiling and the limit on 70 percent of childcare charges are a sufficient disincentive to claimants incurring excessive charges, the regulation should be revised to make clear that 'excessive' charges relate only to numbers of hours of childcare appropriate to the number of hours of work. The Department may wish to consider whether the power is necessary and, if not, whether it could be omitted.

The childcare element is intended to help support and encourage people into the labour market and this rule is not intended to force people into low paid jobs, or to use cheaper childcare providers. It provides the Secretary of State with the necessary discretion to reduce the amount of childcare costs paid where the costs claimed are not for work purposes.

Hours will not be considered 'excessive' where they are being used for travel time, or where extra childcare is purchased because the parent's working hours 'straddle' the morning and afternoon sessions offered by a provider. We will continue to provide guidance to make these rules work properly for claimants.

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13. *Limited Capability for Work (reg 35 and Schedule 7)*: the Department may wish to reflect further on the following points:

- *pregnant women entitled to maternity allowance or within 6 weeks of their expected date of confinement (or 14 days following the date of confinement) are currently treated as having LCW. Their exclusion from entitlement to a LCW element under UC is not explained and will cause hardship for some women; and*
- *there is no provision for treating a claimant as having limited capability for work while awaiting assessment or disputing a decision through revision or appeal - a process which could take many months. Regulation 90 only relaxes work related requirements in these circumstances, for a maximum period of 14 days, twice a year.*

On the first point, there are a number of deeming provisions in ESA, which will continue to apply in Contributory ESA. The Universal Credit approach will create a simpler and fairer system, focusing particular support to those with the greatest need. In Universal Credit, women who are pregnant will be placed automatically in the LCWRA group if there is serious risk to their health or to the health of the unborn child if they do not refrain from work or work related activity. They will be eligible for the LCWRA element during this time. The Sure Start Maternity grant for each qualifying child will be payable to eligible claimants within Universal Credit to assist with the immediate needs of a new baby.

On the second point, because Universal Credit is a benefit covering a range of contingencies there is no need to treat people as having limited capability for work while appealing. The Work Capability Assessment will determine whether a claimant has limited capability for work or work related activity. In Universal Credit, claimants who provide medical evidence that they are unable to work will have a Work Capability Assessment (WCA) at around the 3 month stage of their claim. During this period, they will be placed, with some exceptions, in the all-work requirements conditionality group. Additionally, claimants who have appealed against being found fit for work following the WCA will also be placed in this conditionality group.

Work related requirements will depend upon the claimant's personal circumstances and will be tailored to their individual capabilities. Advisers will have the flexibility to adjust these to the needs of the individual, taking account of the claimant's illness or disability. This approach is intended to support more claimants by keeping them in touch with the labour market to reduce the damage caused by labour market detachment. The regulation has now been redrafted and clarified.

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*14. Work Capability Assessment (reg 37): the Department may wish to reflect further on the following issues:*

- paragraph (2) places a cap on work incentives for disabled claimants, including those undertaking 'permitted work'. CPAG suggest that as long as a claimant can satisfy the work capability assessment there should be no limit since, in any event, the means-test for UC would exclude higher earners;*
- in relation to paragraph (4) it has been suggested that, as currently, there should be provision for a reassessment after 6 months as, in many cases, the previous assessment may have been inaccurate as many independent reports and enquiries about the accuracy of assessments have established. People with mental health problems, in particular, may not have accurately advocated their difficulties or challenged assessments within the prescribed time limits and there should be provision for requesting a reassessment after a reasonable period.*

On the first point, the drafting of this regulation has now been corrected. However, in relation to paragraph 37(2), some clarification is required. Regulation 37 paragraph 2 does not cap work incentives: it states:

If the claimant has weekly earned income above [the relevant threshold] an assessment may only be carried out where the claimant is entitled to a disability living allowance or a personal independence payment.

The regulation provides that where a claimant is earning more than the earnings threshold they may be referred to a WCA if they are also in receipt of DLA or PIP. If the claimant is assessed as having Limited Capability for Work or Work Related Activity then they will be eligible for the appropriate element.

On the second point, the regulation allows for reassessment where further material facts regarding a claimant's condition come to light or where there is a relevant change of circumstances in the claimant's condition.

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*15. Deprivation of Capital (reg 47): the new test of 'reasonable expenditure' could be an area on which there could be a degree of inconsistent decision-making before case-law emerges. The new test may be difficult to apply in cases where a claimant has a mental health condition. If the legislation is not tightened, care needs to be taken to ensure that the underpinning guidance for the Department's decision-makers is clear and comprehensive.*

The Government notes the importance of the availability of good quality guidance for decision makers.

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*16. Trade Disputes (reg 52): the TUC has welcomed the greater simplicity of the UC rule on trade disputes, but is concerned that children and adults not involved in a dispute will now face significant hardship. At present, they may qualify for IS, but they will not under the new system. This change will cause avoidable hardship and, in long disputes, there may be significant impacts for children.*

The current trade dispute rules for benefits set out in 1948 are complex and out of date. Under Universal Credit where there is an existing award, households will continue to receive the same level of support they would get if there was no trade dispute. But if their income drops their Universal Credit will not increase.

For new claims any entitlement will be based on usual "non-strike" earnings. If those earnings were high enough to nil entitlement to Universal Credit then this position will continue.

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*17. Permitted Expenses (reg 54): the draft regulations only allow for expenses reimbursed by the employer whereas, in the current regulations affecting WTC and HB, expenses incurred by the employee but not reimbursed are also covered. This will affect expenses reimbursed by a third party and tax deductions for such things as cleaning uniforms, buying specialist clothing or repairing tools, where the employer does not reimburse the worker.*

The regulations as drafted ensure that, when calculating a Universal Credit Award, any allowable deductions for expenses are determined using the deductions for expenses general rules contained in the Income Tax (Earnings and Pensions) Act



2003. A key requirement when calculating the award is for the claimant to demonstrate that any allowable expense was incurred wholly, exclusively and necessarily in connection with their employment.

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*18. Student Income (reg 65): The NUS indicates that it has previously been given assurances by the Government that, in general terms, the intention is not to change the way student income is treated except where doing so would support the aim of simplifying the regulations. NUS supports this objective but is keen to ensure that the same general principles in the present legislation remain: for example that grants, loans and other funding for specific purposes (tuition fees, course costs, childcare etc) should be disregarded, along with a suitable proportion of any general payment intended to support students in lieu of books, equipment and travel.*

Under Universal Credit, student income will be treated in a similar way to the current system but we have significantly simplified the legislation. Where the student is eligible for a loan, the loan will, as now, be treated as income and most grant income will be disregarded. In other cases, grants and bursaries which support educational needs and are made for the specific purpose of meeting course-related costs will, as now, be disregarded in assessing Universal Credit. The separate disregards for books and equipment and travel will be rolled into one but will retain the current value.

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*19. Expected hours of work (reg 81(2)): respondents have raised the following points for further consideration by the Department:*

- in sub-paragraph (a)(ii), in determining whether a person has reasonable prospects of finding work, there may be external factors to be considered which are outside the scope of the individual's control eg the local labour market and the availability of childcare. It is understood that this potential tension will be explored further in guidance;*
- in sub-paragraph (c) it is unclear why this provision only applies to claimants with long-term impairments when short-term acute impairments can equally affect a claimant's ability to work for 35 hours a week.*

On the first point, guidance will enable an adviser to make a fair judgement on a case by case basis.

On the second point, we have considered this point and have redrafted the regulation to remove the reference to 'long term' impairment. Advisers will take into account any impairment that may have a substantial adverse effect on the work that a claimant can do.

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20. *Work Availability Requirement (reg 87(3)(b))*: the Department is asked to reflect further on the following points raised during the consultation:

- *Gingerbread assert that it is unrealistic to expect a responsible carer to be able to organise childcare with only 48 hours' notice, particularly if they are solely reliant on formal childcare provision (the current rules allow for one week to find alternative arrangements);*
- *the current easement of 24 hours' notice to attend an interview if providing a paid or unpaid service (eg giving someone a lift to work in a car or community service such as rehabilitation work with ex-offenders) has not been carried forward. Given that one of the descriptors for ESA envisages people with impairments needing help to get in to work, the removal of this easement could create some difficult cases;*
- *there are currently flexibilities around work search requirements (for instance, where a child has been excluded from school) which have not been carried forward into these regulations. This type of issue will be explored and set out more fully in the guidance, but the shift away from specific exemptions and adjustments set out in legislation means that it is important that the guidance itself is subject to scrutiny.*

On the first point, that of responsible carers who need longer than 48 hours to arrange child care to attend a job interview. We are sympathetic to the predicament parents may find themselves in if there is no appropriate childcare available, and therefore our decision will have the flexibility to consider the circumstances as 'good reason' for not attending a job interview.

On the second point, in order to make Universal Credit simpler and easier to understand and administer these easements have not been carried forward. Regulations do, however, allow for easements for claimants who are carrying out voluntary work.

On the third point, again in order to make UC simpler and easier to understand, these specific flexibilities aren't spelt out in regulations although easements may be applied at the discretion of the adviser if the claimant has temporary childcare responsibilities. Regulation 99 (5)(b) provides details of these easements.

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21. *Work Search and Availability Requirement (reg 88)*: it is unclear why this provision only applies to claimants with long-term impairments. Respondents have suggested that the Department should consider extending the provision to those with short-term acute impairments which can equally affect a claimant's ability to work for 35 hours. It has also been suggested that, as claimants who are unfit for work for longer than 14 days are more likely to be unable to fulfil work-related requirements, paragraph (5) should be extended to claimants awaiting assessment of whether they have LCW and are providing medical statements.

Work related requirements will depend upon the claimant's personal circumstances and will be tailored to their individual capabilities. Advisers will have the flexibility to adjust these to the needs of the individual, taking account of the claimant's health

condition or disability. This approach is intended to support more claimants by keeping them in touch with the labour market to reduce the damage caused by labour market detachment. We have re drafted the regulation to clarify that work related requirements **may** be lifted where a claimant is unfit for work for longer than 14 days and where advisers identify that it is not reasonable to require claimants to fulfil work related requirements. This applies to claimants with both long term and short term impairments that have a substantial adverse impact on the work related requirements they can undertake.

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*22. Domestic Violence (reg 89(3)(d)): respondents have commented that the maximum period of one month allowed to obtain the required notification should be extendable where there are delays due to pressure of work in hard pressed services such as the Police or Social Services.*

Regulation 99(5) provides additional flexibility so work search requirements will not be imposed where the Secretary of State is satisfied that it would be unreasonable to require the claimant to comply with a work search requirement or a work availability requirement.

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*23. Circumstances in which a Work Search Requirement must not be imposed (reg 90): The following issues have been raised on which the Department is asked to reflect further:*

- the easement for undertaking work search requirements allows people with a certain level of earnings to be exempt. In considering earnings for this purpose, it is unclear why the combined earnings with a partner are included, but earnings from self-employment are excluded;*
- in sub-paragraphs (3)(e) and (f) provision is made for ordinary and additional maternity and paternity leave, but not for ordinary and additional adoption leave. Work search requirements are eased for adopters in other parts of the legislation, but they seem to have been disadvantaged at this point.*

We have now redrafted the regulations substantially.

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*24. Amount of a Reduction under Sections 26 and 27: 16 and 17 Year Olds: given the Department's recognition that 16-17 year olds should face lower sanctions, and for a shorter period, due to the vulnerabilities associated with the limited circumstances in which they are entitled to Universal Credit, the Department is asked to consider whether there is a case for retaining the existing safeguards which currently apply for 16-17 year olds.*

The existing approach (eligibility, conditionality and sanctions) for 16/17 year olds is complicated which is why we have simplified arrangements under Universal Credit whilst, at the same time, providing protections for this vulnerable claimant group. Requirements for 16/17 year olds will be personalised to reflect their circumstances. Claimants who do not meet requirements may be able to provide good reason for failing to do so and may be able to appeal a sanction decision.

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*25. Conditions for Hardship Payments (reg 109(1)(e)): to qualify for a hardship payment a claimant is required to have made every effort to cease to incur any expenditure which does not relate to accommodation, heating, food and hygiene. It would be helpful to have greater clarity about how this will work in practice, and how payments relating to, for example, a legal debt, essential clothes or bedding, or meeting a child's developmental needs will be treated.*

We will incorporate into the Guidance for Decision Makers the action claimants should be expected to take to reduce costs that do not relate to the specific essential needs. We engaged with stakeholders during the development of this Guidance.

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*26. Rent Payments (Schedule 1, para 2): in the definition of 'rent payments' no provision is made for 'use and occupation charges' (the payments made by a person commonly left in the property after the death of a tenant whilst the new tenancy situation is resolved). Similarly there is no provision for mesne profits.*

No specific provision is being made for mesne profits in the housing element of Universal Credit as we consider that they would be more likely to appear as rent or payments for a licence or permission to occupy. In these cases legitimate housing costs are likely to be covered under Schedule 1 of the regulations. We decided not to carry forward specific provision for mesne profits as it would not be fair for the benefit system to underwrite such arrangements.

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*27. Payments which are not Rent Payments (Schedule 1, para 3): this means that leaseholders will have to meet a demand for ground rent from their own resources.*

Provision for ground rent is excluded from support within Universal Credit. Amounts for such liabilities are generally low and it is not considered appropriate to include them within a simplified system.

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*28. Extended Benefit Unit of a Renter (Schedule 4, para 11): the size criteria will apply in terms of the 'extended benefit unit'. As now it includes the claimant and partner, the children and any non-dependants (broadly defined as anyone living with the claimant), and not foster children. Significantly it does not include lodgers or sub-tenants. It appears that the income from the lodger/sub-tenant will only be taken into account if it is taxable which may help to balance things out. Given that one way for claimants to deal with any shortfalls between the housing costs they pay and the benefit they get for these is to take in lodgers, the Department might wish to consider ensuring that if they do, they do not lose out further.*

All income received from lodgers and sub-tenants will be disregarded in the Universal Credit calculation.

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29. *Temporary Absence of a Benefit Unit Member (Schedule 4, para 13): this provision will have an adverse impact upon remand prisoners subsequently found not guilty or who are given an outcome by the court which is other than a custodial sentence.*

This provision provides protection for claimants where members of the extended benefit unit are absent temporarily. In the case of remand prisoners, six months protection for the claimant is a reasonable period.

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30. *Amount of Housing Cost Contributions (Schedule 4, para 16): respondents have commented that the proposed rate of deduction for non-dependants in receipt of an income-related benefit will cause hardship. They have queried whether a non-dependant in receipt of UC or any income-related benefit should be classified as an “exempt renter” for the purposes of paragraph 17. Non-dependants who are students or in receipt of a training allowance have also been mentioned in this context. The legislation provides that live-in carers will count as non-dependants. Although no deduction will be made if the claimant or partner gets a specified benefit, is blind or if the non-dependant receives carer’s allowance, this would not appear to assist those who have carers employed by charitable or voluntary organisations who currently do not count as non-dependants.*

The deduction applies only to those benefit recipients on whom there is an expectation of work. Students are expected to contribute from their grants/loans.

A bedroom is provided for where an adult in the benefit unit requires an overnight carer. Where the carer is employed by a charitable or voluntary organisation, provision for a bedroom will now be made. No deduction will be applied if the person they are caring for receives a specified benefit.

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31. *Exceptions to the Benefit Cap (reg 75F(1) HB Regs): it has been suggested that:*

- *people in more expensive accommodation as a consequence of being foster or kinship carers should be exempted from the benefit cap. Grandparents Plus advises that it has conducted a recent survey which finds that almost half of kinship carers are raising a child with a disability or special needs; and*
- *since those on ESA and are in the support group are exempt from the cap, further consideration should be given to whether the exemption should extend to those on Incapacity Benefit or Severe Disability Allowance who are severely disabled.*

On the first point, there are no plans to exempt kinship carers or households in receipt of Incapacity Benefit or Severe Disability Allowance. Exemption will be granted where someone in the household is entitled to Disability Living Allowance (or its successor).

On the second point, households in receipt of Incapacity Benefit or Severe Disablement Allowance should not have a blanket exemption as they will not all be in the same position as people in the ESA support group. However we are looking

at whether we can identify those who could be eligible for the ESA Support Component before the cap is applied.

## Claims and Payments Regulations

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*32. Making a Claim (reg 9(1)): by abolishing the facility to accept paper claims, the Department may be committing itself to unnecessary administrative expenditure. There will be some claimants without internet facilities and who are unable to use (or without access to) a telephone but who would be perfectly able to complete a paper claim. Those claimants may now need a visit. Clerical claims have been retained in PIP on the basis of the diversity of PIP claimants. However there will be similar diversity amongst UC claimants.*

Universal Credit is an online benefit and as such it is right that we do not have paper claims. For those not able to make a claim online or by telephone we will offer a face to face service – delivered either at a local office or, for our most vulnerable claimants, through home visits. In both instances the claimant will be supported to make a claim on an electronic form.

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*33. Claims in the Alternative (reg 23): there is arguably a case for allowing a claim for UC to be treated as a claim for CA and vice versa, both in the alternative and in addition. People coming to the benefit system for the first time are sometimes unaware of precisely which benefit they should claim and for carers it may not be obvious. This is particularly so given the shift to online claiming where people are expected to do their own research rather than calling in to the local office and receiving advice.*

Claims for Universal Credit will not be treated as a claim for Carers Allowance and vice versa. We will, however, provide claimants with the right support and information to ensure they are signposted to, and able to claim, all the benefits to which they are entitled.

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*34. Time within which a claim must be made (reg 24(3)(c)): the need to require doctors and medical staff, and possibly oblige claimants with additional costs by making it a requirement, to provide written evidence in all cases is questionable. There may be instances where the Secretary of State already has the relevant evidence to hand or it may be self-evident. It is worth noting that GPs can charge for the provision of such evidence.*

Medical evidence is required in support of a claim from people with a health condition. Requiring medical evidence for the earlier period that a claimant with a health condition wishes to claim from is consistent with the requirements for the determination period for the LCW element within Universal Credit.

But if the Secretary of State already has medical evidence to hand which covers the relevant period then it is sensible to make use of it in relation to this provision.

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*35. Amending and Withdrawing a Claim (regs 28 & 29): the current rules allow a written application to be amended in writing and a telephone application may be amended in writing or by telephone, provided the application has not already been determined. Similarly, an application may be withdrawn if the claimant notifies the Secretary of State before it has been determined, although regulation 5(2) of the 1987 Regulations does not specify any manner in which that notice must be given.*

Since the preferred method of applying for Universal Credit will be on-line, it was anticipated that specific provision would have been made for amending and withdrawing applications on-line. This does not seem to be the case. Additionally, there is no provision for joint claims to be amended or withdrawn jointly. The wording suggests that one person alone is able to amend or withdraw the application

In terms of Universal Credit, "in writing" is defined as including writing produced by means of an electronic communication therefore the regulations do provide that the claimant can notify amendments or withdraw their claim on-line.

The use of the word "person" in the regulations includes plural therefore joint claimants can withdraw or amend their claim jointly.

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*36. Advance Claims (reg 30): the Department has stated that 'at present the only Universal Credit claim that we plan to accept in advance will be claims from prisoners'.*

*A number of submissions raised, in particular, the needs of people moving out of supported housing into a home of their own. The facility to treat a claim as made in advance and award benefit accordingly has long been an important administrative tool available to the Secretary of State to smooth the process of determining claims to benefit with advantages for the claimant and the Department alike. The chances of the first payment being delayed are reduced when the Secretary of State accepts a claim in advance.*

*In the context of on-line claims, it may be possible for a person seeking to make a claim in advance to have their information stored on the system, so that at the start of entitlement, they can return to the computer, complete the final stages and press the 'send' button, without necessarily being inconvenienced unduly. But it will not always be possible for claimants to do that and any delay on their part will prejudice their subsequent award. Although in other circumstances a claim can be treated as made on the day the claimant first signalled an intention to make a claim, it would not work in the case of claims in advance because the date of claim would still be prior to the start of entitlement and the current rules are clear that the Secretary of State will not consider such claims.*

The vast majority of Universal Credit claimants will find the claim process straightforward. As Universal Credit is assessed and paid monthly in arrears there will be sufficient time for claims submitted at the correct time to be determined before the claimant's first pay date is reached.

Vulnerable claimants who are unable to claim online on the relevant date or who may be delayed in submitting their claim through no fault of their own should not lose out as they will have their date of claim protected through the 'treat as made' and backdating provisions.

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*37. Duration of Awards (reg 38(1)): this provides that a claim for UC is to be treated as made for an indefinite period and any award on that claim is to be made for an indefinite period. The desirability for the Secretary of State's discretion to be bound in this way has been queried. In the vast majority of cases claims will be open-ended, requiring any awards made on the claim to be similarly open-ended, but if, for example, a single person falls sick a fortnight before reaching state pension age, it would arguably help the Secretary of State to be able to make a single decision rather than making an initial decision followed by a second one shortly afterwards, both with a right of appeal. The commitment to exclusive open-ended awards does not cohere well with section 88(2) of the Welfare Reform Act 2012 which indicates that the fall-back position for PIP will be fixed term awards.*

As Universal Credit is a dynamic and responsive benefit we decided awards should be indefinite and that we would not have fixed term awards. The Welfare Reform Act only included powers to make fixed term awards in respect of the housing costs element of Universal Credit. We also do not anticipate that having indefinite awards will be problematic for Decision Makers but we will keep this under review as Universal Credit rolls out.

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*38. Payment Period (reg 41): given the Welfare Reform Act's principle of seeking to align and simplify benefits, a more consistent approach would be to pay PIP at monthly intervals rather than every four weeks.*

The primary reason for providing for calendar monthly payments in Universal Credit is to support a behavioural change to encourage people from welfare into work. PIP is not connected to work; like DLA it will be payable in or out of work. There is no link between Universal Credit and PIP nor a complete overlap between recipients. Therefore the Government intends that initially PIP will normally be paid in arrears at four-weekly intervals. We will however keep this matter under review.

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*39. Third Party Deductions (reg 52): there is no explicit provision for the deduction of arrears on payments of service charges by hostels and supported accommodation providers. Currently this is an important way for them to recover payments for ineligible service charges and respondents argue that, without it, many will struggle to recover the money owed. A high turnover of hostel residents means that this could be a regular problem and the loss of income could impact on the services they are able to offer.*

Schedule 6, paragraph 7 – 'Rent and service charges included in rent', has been amended following the decision to pay for exempt accommodation outside of Universal Credit. The third party deduction provisions will allow a deduction to be made for arrears of rent, service charges or ineligible service charges, if the person's housing costs are being met through either Universal Credit or Housing Benefit. This will therefore cover people in hostels and supported accommodation.