

**Social Security Advisory Committee**  
**Minutes of the meeting held on 25 May 2022**

Chair: Dr Stephen Brien

Members: Matthew Doyle  
Carl Emmerson  
Kayley Hignell<sup>1</sup>  
Phil Jones  
Charlotte Pickles  
Liz Sayce<sup>2</sup>  
Grainne McKeever

Apologies: Bruce Calderwood  
Chris Goulden  
Seyi Obakin

## **1. Private session**

*[PARTIALLY RESERVED]*

### *Postal Regulations*

1.4 The Committee endorsed the postal regulations sub-group's recommendation that the following regulations were suitable candidates for clearance by correspondence:

- *The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) (no.2) Regulations 2022.*<sup>3</sup>

## **2. The Social Security Benefits (Claims and Payments) (Modification) Regulations 2022**

2.1 The Chair welcomed Graeme Connor (Deputy Director, Universal Credit Lead Analyst and Policy), Dave Hignett (G6, Universal Credit Policy) Craig Dutton (G7, Universal Credit Policy) and Pedro Imperico (DWP Lawyer) to the meeting. It was noted that these regulations have already been laid and are in force, as 'urgency' had been invoked.<sup>4</sup>

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<sup>1</sup> Kayley Hignell attended Items 1 and 2

<sup>2</sup> Liz Sayce attended items 3 and 4

<sup>3</sup> The Postal Regulations sub-group's recommendation had been made following an initial discussion with DWP officials on 16 May. The minutes of that session are held at Annex B.

<sup>4</sup> 'Urgency' is invoked where the Secretary of State is of the view that it would be inexpedient to refer the regulations to SSAC before they are laid as per section 173(1)(a) of the Social Security Administration Act 1992.

2.2 Introducing the item, Graeme Connor noted that the problem the Department was seeking to resolve was that, prior to this change, a benefit recipient who had energy bill arrears deducted directly from their benefit could also have ongoing consumption payments (OCP) deducted. The Ofgem Price Cap increase in April would mean: (a) a large increase in the number of requests for OCP deductions, and (b) a large increase in the amount to be deducted for existing OCP arrangements, which could be done without the claimant's knowledge, therefore a response was required. These regulations would provide a temporary solution for a year, whereby the energy supplier could not put in a request for new OCP deductions nor increase the monetary value of existing ones unless the claimant consents to it. The claimants will still have higher bills, but this would enable them to prioritise other costs of living, so provides an immediate solution to the problem. The Department is engaging with Ofgem and Energy UK to inform them why this is happening.

2.3 The following questions were raised by the Committee in discussion:

**(a) The regulations have been in force for a while now – what has been learned thus far about the effects?**

The data from the previous month does not indicate much so far. Some claimants have been increasing the OCP themselves, sometimes for the full amount, sometimes by an increase but not for the whole amount. Some claimants have started to use Fuel Direct. They might not have been aware of the scheme before but as this is coming up in our conversation with claimants on debt and hardship the awareness is increasing. Less than a hundred claimants have come out of the Fuel Direct scheme altogether. It had been a concern of the energy companies that there could be an en masse dropout from the scheme but that has not materialised.

**(b) Have all claimants that will be affected by the change been told it is happening?**

On the question of who should communicate to the claimant, there is an argument it should be the Department, but DWP's position is that it should be the energy suppliers. Why? It has never been the case that all OCP bills were guaranteed to be covered by the deductions, there could always be shortfalls, so it would just be more likely there was a discrepancy. It was thought the energy suppliers were better placed to make the communication. Energy suppliers said they wanted to be the one to make this contact and asked the Department to include some information for that letter on how the claimant can apply to make an increase in their OCP. To begin with there were few applicants but those numbers are ticking up. The energy suppliers have not communicated to everyone affected en masse, but they are factoring this in the future.

**(c) A claimant may receive a regular bill which normally states the amount due, and confirming it has been paid automatically. The claimant is accustomed to that arrangement, so they do not look at those letters in detail. Their account will be gathering arrears, and if their bill is only issued quarterly that problem will be exacerbated. Is there a risk in not communicating with those claimants?**

Whilst the DWP has not done that, the energy suppliers have begun to. They decided not to target the 100,000 customers this affects but would make that part of their wider communications on the bill increases which affect everyone.

- (d) Was it not considered to be the responsibility of the Department, with their duty of care to claimants, to make sure these claimants knew of the change?**

When the deduction is applied it is already known that this may or may not cover the bill fully, it has never been a guarantee. This is especially the case where a benefit award fluctuates. The DWP has not messaged claimants as this was impossible before 1 April logistically. However, DWP recognised that claimants will need to be aware of these changes, In discussions with energy suppliers, they stated they would be communicating with their customers in any case, including those on Fuel Direct and were best placed to do so. With this being the case, it was decided not to do anything separately within DWP.

- (e) The energy suppliers have a huge number of customers who may struggle to pay their bills, but this particular issue only impacts 100,000 people. These people are not a priority for the energy suppliers, but they should be for the DWP. The majority of this cohort receive Employment and Support Allowance and these and many others may be vulnerable. Whilst it may be normal practice for the energy suppliers to deal with these communications this is an exceptional situation, which is evidenced by the fact that these regulations have a one-year sunset clause. It was said this could not be done logistically by 1 April, but it is now two months later, and many of those claimants have still not been contacted by the suppliers. The Department could have contacted them all over the last ten weeks, there are various methods to do so such as through Universal Credit work coaches. Has that risk to these claimants been properly factored into the actions when delivering these regulations?**

That will be taken on board. Two things should be noted. One, not all of these claimants will see a material change to their deductions for arrears. Two, any communication would have to be individually targeted to a claimant based on their circumstance. For example, some claimants may be on a fixed price deal, so this would not apply to them and a general communication could cause them unnecessary concern. As the energy suppliers intended to communicate with their customers in any case it seemed better as they would have those details. However, the Department will consider the points made.

- (f) It is very sensible to canvass the view of the energy suppliers, but their desires should not be determinant of the actions of the Department who must show a duty of care to the claimants.**

These changes were driven by DWP's consideration for claimants. Supplier views were canvassed on the best way to communicate these changes to claimants and their view was that they would be communicating with customers

about changes in energy prices and were therefore best placed to do so. However, the points made by the Committee will be considered.

- (g) On the communications that the energy suppliers are sending to claimants, has their plan been reviewed? Will the DWP be informed when all claimants have been contacted? What proportion have been informed at present? How many people have contacted the DWP? Are the energy suppliers actively seeking contact with this cohort or waiting for a time when a bill is to go out, or for the customer to get in touch?**

Wording was provided to the suppliers for use in their communications with customers. This explains what customers need to do with the DWP. The Department has monthly meetings with the energy companies and the Department for Business, Energy and Industrial Strategy (BEIS) where updates on these matters would be expected. In terms of the proportion of claimants contacted it is only recently that the Department have started to see numbers of people changing their behaviour. The energy suppliers are proactively contacting people.

- (h) The DWP had meetings with Ofgem and the energy suppliers. Where was the voice of the claimant in that conversation?**

That voice was represented by the Department, acting as the supplier of the benefit. The reason for this change is to protect claimants. It was foreseen that there would be many new requests for OCP and it was in the claimant's interest that these would not be actioned automatically, rather than £150 or £200 being deducted and the negative consequences of that. Part of Ofgem's role is to protect customers.

- (i) There would normally be parity with Great Britain in the Northern Ireland version of such regulations but there is no price cap there, so how does this work? In the absence of the Assembly and Executive can the DWP take action?**

The DWP has reached out to the Department for Communities to inform them of the change, but it is not known how they are intending to respond. In terms of whether the DWP can take action, the social security system is a devolved issue, so there is a constitutional barrier to the DWP acting in the normal course of events. An update will be sought from the Department for Communities and the Committee outside of the meeting.<sup>5</sup>

- (j) Thinking forward a year, when the sunset clause in these regulations takes effect, are problems foreseen with the debts accruing over that year and that there may need to be new regulations to deal with that issue?**

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<sup>5</sup> This further information has been provided by the Department for Communities and is held at Annex C.

There is a lot of uncertainty over what may happen between now and April 2023. Whatever course is chosen there will be active communications about it. The behaviours of the claimants will be monitored and there will be ongoing work with Ofgem and BEIS, and discussion on arrears deductions, as the price cap rise in October draws near. The Department will work alongside BEIS and Ofgem to consider any response.

- (k) Thinking of a long-term response, if it is considered that too much money can be deducted from benefits, why retain the 25% cap for deductions? Is that figure too high? Also, considering the current high inflation rate, and the fact that benefit uprating always lags behind rising inflation, will not these issues effect all types of deductions, not just energy bills?**

The Department considers the impact on deductions overall, on advances and debt recovery, and what is sustainable. That maximum deduction cap has come down from 40% to 30% and now to 25%. It should be borne in mind that there is a distinction between deductions for debt and OCP. OCP are outside of that 25% cap. In theory, OCP can be for the entirety of award. The Government is looking at the 'cost of living' pressures being faced.

- (l) The Committee is aware that the Chancellor is due to announce a new package of measures to deal with the energy bill increases and inflation tomorrow. Might these regulations be overtaken by events, or do they fit within a longer-term strategic direction in any event?**

The Department could not do nothing. The points raised will be considered, particularly with regard to the communications to claimants. The longer term is very unknown, which is why these regulations have a sunset clause. Hopefully the economic situation becomes more stable, but in the meantime this measure buys the claimant some time. It is not perfect, it stops things getting worse rather than being a longer-term strategic solution. Any longer-term measure would come out of consultations with BEIS and Ofgem.

- (m) There are 100,000 people who presently have ongoing consumption payments deducted from benefit. How many people in this cohort is estimated will have accrued debt in 12 months' time?**

It is difficult to estimate that. There are wider costs of living work happening across Government. This is a temporary solution to get through the short term. Anyone who has built up debt will be worse off, and the whole issue is being looked at in the round, but it is thought that accruing debt, if that happens, is better than allowing the OCP to increase significantly at the energy suppliers request.

- (n) In terms of future modelling, when the October rise occurs could the amount deducted be as much as 85% of the Universal Credit personal allowance? How does that interact with the deduction limits?**

The OCP are treated differently to debt arrears deductions. The OCP are similar to managed payments to landlords – whatever the amount is, it paid direct to the energy supplier. Only then are the other deductions applied.

- (o) **For example, if there was a benefit award of £100, an OCP of £100, and a debt deduction liability what happens to the debt deduction?**

The OCP is removed from the benefit, so there is no money left to furnish the debt deduction at all.

- (p) **What is the prioritisation order of the different types of deductions?**

Monies for housing payments comes first, then the OCP, and then the other types of deductions.

2.4 After a period of private discussion the Committee decided not to take these regulations on formal reference, although would write to the Minister for Welfare Delivery regarding some concerns on communications, monitoring and forward planning.<sup>6</sup>

### ***3. The Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2022***

3.1 The Chair welcomed Richard Jordan (G7, Policy Lead International Access to Benefits), Helen Birch and Carl Stallwood (International Access to Benefits), and Mark Knight (G7, Pensioner Benefits & Carer's Allowance, Attendance Allowance, Carer's Allowance, Social Care) to the meeting. The Chair noted that similar regulations were before the Committee last year to deal with the fall of the Afghan Government and these regulations would be viewed and understood in contrast to those.

3.2. Introducing the item, Carl Stallwood explained the purpose of the regulations. In response to the Russian invasion of Ukraine of 24 Feb 2022, those arriving from Ukraine would normally have to satisfy the factual Habitual Residence Test (HRT) and Past Presence Test (PPT) as access to these benefits required individuals to have been resident in the UK for appreciable periods. Instead, those individuals should get access from day one. These regulations, which were laid under 'urgency' and have been in force since 22 March, are for those who were living in Ukraine immediately before 1 January 2022 and applies to, amongst others, Ukrainian nationals given leave and returning UK nationals.<sup>7</sup> There are three relevant schemes – the Ukraine Scheme, the Homes for Ukraine Scheme, and an extension scheme for those whose UK Visa expired since 1 January.

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<sup>6</sup> The Chair's letter to the Minister for Welfare Delivery can be found at Annex D.

<sup>7</sup> 'Urgency' is invoked where the Secretary of State states that it is inexpedient to refer the regulations to SSAC before they are laid, as per s173(1)(a) of the Social Security Administration Act 1992.

There is also a general amendment to ensure all those given the Home Office status of leave outside the immigration rules (LOTR) with recourse to public funds will no longer have to pass the HRT for income related benefits. A further amendment also exempts refugees/people granted humanitarian protection (or their dependents) from the HRT for disability and carer benefits. Northern Ireland, Scotland and Her Majesty's Revenue and Customs (HMRC) with Child Benefit regulations have mirrored this approach. A concern was raised about Irish nationals and it can be confirmed they will not be adversely affected.

3.3 The following main questions were raised during discussion by Committee members:

- (a) **With the Afghanistan crisis last year, the DWP and equivalent Child Benefit regulations were brought to this Committee alongside each other. Those Child Benefit regulations have not come to the Committee, why is that?**

The Department will contact HMRC, obtain those Child Benefit regulations and find out why they were not brought forward at the same time.

- (b) **Are there any relevant benefits which are not included in the list of affected benefits?**

The list of benefits is the same as for Afghanistan. There are no benefits which have a Past Presence Test (PPT) or Habitual Residence Test (HRT) condition which are not listed. Not all the benefits have the same residence conditions, they do not require a claimant to have been in the country for a certain period of time.

- (c) **What have been learnt from and changed since the Department's experience with laying the regulations to deal with the crisis in Afghanistan?**

With regard to the PPT these Ukraine regulations are more generous regarding returning UK nationals. The approach to the PPT has been developing over time; the Afghanistan regulations last year were more generous than the previous regulations concerning Afghan interpreters and now these for Ukraine are more generous still. This is in part due to the extraordinary circumstances facing those fleeing Afghanistan and Ukraine. The PPT will be kept under review to make sure it is achieving its policy aims, including in "humanitarian" cases.

- (d) **How many Ukrainian citizens have entered the UK through these schemes? How many are predicted over the next 6 months?**

The claim numbers are taken from our Operations and are not published. It is expected that a significant proportion of those arriving to claim UC, with the numbers for other benefits tending to be much lower. The number of claims is not the same as the number of people who have arrived - there are a significant number of single women with children and not everyone will access benefits. Based on the initial results and internal data a number of Ukrainian nationals are hoping to take up work and not rely on the benefits system, and some have access to funds.

**(e) What about council tax support schemes? Does the HRT and PPT apply there?**

That is an issue for the Department for Levelling Up, Housing and Communities, which has legislated for that.

**(f) There has been Afghanistan and now Ukraine, and bearing in mind there may be other countries at risk, is each situation taken on its own merits or is there a strategic longer-term policy developing?**

Each situation will need to be individually assessed. For people to get benefits they need a valid Home Office immigration status with recourse to public funds. The Department have proactively amended the income related benefit regulations to exempt those with LOTRs with recourse to public funds from the HRT for income related benefits, so it gives a little leeway in similar urgent situations in future. There is big challenge in acting in parallel with the Home Office, and sometimes the different nomenclature between the DWP and Home Office can cause confusion as well as policy development and legislation not always being in lockstep.

**(g) Through Syria, Afghanistan and now Ukraine – what lessons are being learned, what areas is the Department looking at in future?**

The point about having an understanding of a common language with the Home Office is important, and there is also a structure around decisions, so that the next time it is not starting from a blank page of paper – but rather there is a starting point and framework in place. Futureproofing has the problem that it is not known what the specific immigration schemes for each crisis might be, so one cannot draft anything in detail. However, following on from Afghanistan a system of doing these changes at speed has been learnt, it is known what processes must be in place and who needs to be involved.

**(h) Why was the coverage of Irish nationals in Ukraine an issue, but that did not arise with the Afghanistan regulations?**



The regulations exempt those granted leave under section 3(2) of the Immigration Act 1971 or those with a right of abode. It was understood during drafting that those with a right of abode would, among others, include Irish nationals. It is now understood that Irish nationals do not legally have a right of abode in the UK although they also do not require leave to enter and remain in the UK given their special status. The regulations will be amended to cover Irish nationals as this was unintentional.

- (i) A certain cohort are entitled to a series of exemptions. The steps are (i) identify cohort, then (ii) ensure the exemptions are in place. Is there an inching towards a separation of those two concerns?**

It must be understood exactly who the regulations are to be covering, and each time there is going to be tailoring for that circumstance. However, there has been some movement that way. Often people arriving are granted LOTR until any new immigration scheme is legislated for. Now all people with LOTR with recourse to public funds are treated as meeting the HRT for income related benefits.

- (j) If a claimant has LOTR they now pass the HRT automatically. Are there some people who the Department may want to have to pass that test?**

No scenario is readily apparent where that would be the case for those granted LOTRs with recourse to public funds.

3.4 After a period of private discussion the Committee decided not to take these regulations on formal reference. However, the Committee agreed that the Chair would write to the Minister for Welfare Delivery on the issue of having a framework in place for similar regulations in future.<sup>8</sup>

#### **4. Private session**

*[RESERVED ITEM]*

*Date of next meeting*

The next Committee meeting was scheduled to take place on 25 May.

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<sup>8</sup> The letter from SSAC's Chair to the Minister for Welfare Delivery is held at annex E.

**Attendees**

Guests and Officials

Item 2: Graeme Connor (Universal Credit Lead Analyst)  
Dave Hignett (G6, Universal Credit Policy)  
Craig Dutton (G7, Universal Credit Policy)  
Pedro Imperico (DWP Lawyer)

Item 3: Richard Jordan (G7, Policy Lead, International Access to Benefits)  
Helen Birch (International Access to Benefits)  
Carl Stallwood (International Access to Benefits)  
Mark Knight (G7, State Pensions, Child Maintenance & Devolution,  
Pensioner Benefits & Carer's Allowance, Attendance Allowance,  
Carer's Allowance, Social Care, Military Covenant)

Secretariat: Denise Whitehead (Committee Secretary)  
Dale Cullum (Assistant Secretary)  
Gabriel Ferros (Analyst)  
Richard Whitaker (Assistant Secretary)

## Meeting of the Postal Regulations Sub-Group

16 May 2022

Sub-Group Chair: Grainne McKeever

Members: Bruce Calderwood  
Kayley Hignell

### **1. The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) (no.2) Regulations 2022**

1.1 The sub-group Chair welcomed Jean King (Deputy Director, Health Division), Morgan Ripley and Nicol Brydon (Employers, Health and Inclusive Employment) to the meeting. Grainne complemented the officials on their impressive Equality Analysis which helped expedite the process, which the Committee did not want to unduly delay. Officials were thanked for answering the written questions raised by the sub-group at such short notice, and for attending this session.

1.2 Deputy Director Jean King explained the purpose of the regulations. The aspiration was to reflect the multi-disciplinary nature of the health workforce and ensure that the healthcare professional (HCPs) best placed to discuss the Fit Note with the claimant is the one who issues the Note. Presently only a GP can issue one, and a different type of HCP who has dealt with the claimant then has to go to the GP for a sign off. This change reduces the burden on GPs and makes things easier for the patient. This is also about reflecting the trajectory of the of the health and care system, reducing bureaucracy, and making sure the patient is having as high quality a conversation as possible. It builds on the recent change in digital certification which SSAC cleared earlier this year. That has already had a positive impact – for instance a disabled person was able to receive a Fit Note electronically rather than having to travel to their GP to get it.

1.3 The Committee asked the main following questions in discussion:

**(a) There was an answer among those helpfully provided earlier on self-registration and HCPs not working outside of their expertise. How can someone report issues or complaints with the Fit Notes, and how can performance be improved? For instance, only a very small number of fit notes currently contain suggestions on improvements on how people can work. (KH)**

Only 5% of Fit Notes include recommendations on how people can be helped to work. That figure should be addressed by having more types of HCP. The GPs do not have significant occupational health training, which was referenced by the British Medical Association (BMA) when giving evidence. By having a

wider range of the HCPs there is a better range of knowledge, and it becomes easier to pick the most appropriate person first rather than needing to go through bureaucratic hoops. If someone was refused a Fit Note, or they are not content with what it states, whilst there is no legal right to a second opinion, they will often be offered that. Our understanding is that very few GPs will refuse to grant that opportunity for a second opinion, so the absence of a legal right to a second opinion is not normally an issue.

**(b) What about complaints where too many Fit Notes have been issued, where an employer no longer accepts their validity? Is there a clear route for a complaint? (KH)**

The Department has a good dialogue with the HCP professional bodies and regulators, it hears from the business side of the issue, and the patient experience is heard through the patient body channels. There is a robust communication plan that sits alongside the regulation change, with discussions with the regulators for all these professions and the change is being made based on existing frameworks. The Department works closely with the Department for Health and Social Care. Individuals involved in the expansion will be aware. The desire is that everyone affected is comfortable and supportive of the changes. The monitoring exercise is very important, and there is a focus not just on the volume of Fit Notes but upon their quality – are more adjustments being recommended? There may be a decrease in sickness absence as the Fit Note conversation improves and the patient receives better advice on how they could work. That would be a success.

**(c) Raising complaints within a GP practice is well understood. Is that same understanding there for doing this with a pharmacist, or with a physiotherapist? Are there differences in the models? (GM)**

All HCPs have professional bodies where complaints can be raised. There are established routes within the regulatory bodies.

**(d) What of the danger of someone ‘shopping around’ for a HCP who is more generous in issuing Fit Notes? (GM)**

That is difficult to entirely mitigate against, but the regulatory bodies emphasise that all HCPs must follow strict professional standards. There is a reliance on the integrity of these professions to ensure such things are unlikely.

**(e) What of the possible instance where a patient does not clearly fit in a particular HCP’s referral space and there is a potential back and forth of responsibility? (GM)**

It is important to note that GPs are private practices, the front door is same, but the patients are going to the primary care service itself and not just a GP practice, it just means that a more appropriate HCP is used to have the conversation. There is no evidence that GPs turn people away, it is all within the primary care ecosystem, it would be a warm handover.

- (f) Does the logic around the primary care community of practice work with pharmacists and physiotherapists? How is the Department able to pick up whether, say, some pharmacies are handing out disproportionate numbers of sick notes? (BC)**

When there is a prescription given it is for a specific pharmacy, and the same checks and balances that prevent people getting medication at different pharmacies applies. The existing arrangements for those checks will continue, there was a deliberate attempt to not introduce new bureaucracy, but rather to respect the existing framework.

- (g) If a person went straight to a pharmacist, and missed out going to the GP initially, is there still that control? (BC)**

One can go straight to the pharmacy for a Fit Note. It costs money if one goes directly to the pharmacy, so that might not be appealing if one is able to get this service for free through the NHS. It is not likely to be a lucrative market. It is not as straightforward as just issuing a Fit Notes.

- (h) Does the evaluation consider that risk, and is there the available time to complete it, as it cannot go beyond 2023? (BC)**

The current timescale should allow it. It is difficult to measure differences, on data collection it is tricky to pick up through our systems, as the data comes through GP systems. It would likely only be picked up through qualitative data.

- (i) Why is there no sunset clause? (BC)**

It is very important to send a consistent message to the BMA and the professions, on who should be the new types of HCPs certifying fit notes, The regs will be considered after monitoring and evaluation. The Department meets regularly with key partners such as the BMA, regulatory bodies and others. When a Fit Note is certified it appears on the GP IT system, so if there was an upswell in an area this would come through the system. If the trajectories are in the right direction, then there can be consideration of what comes next. It is one element within the whole role of employers, the role of health and support, of society supporting people into work. Hopefully it will be a change for the long term, but if the trajectory changes the Department will be responsive to that. The management information that is published quarterly is received on a weekly basis, so any sharp changes should be seen immediately.

- (j) That data is really useful, but does that include Fit Notes issued outside of the NHS? (KH)**

No, that data is what is pulled through the GP information (GPI) systems, Fit Notes issued outside of that may be picked up through bigger qualitative piece of research.

- (k) How would it be spotted whether a particular pharmacist or physiotherapist was issuing many Fit Notes? (KH)**

Potentially through the qualitative information or through operations as it's likely there would be queries if they received 'non-standard' forms.

- (l) How might that quantitative data on Fit Notes issued privately be gathered? Could they connect to the GPI system, or is there a standard method being decided by the industry? (KH)**

They cannot access GPI. It is a difficult task to gather this data, it will be investigated how that gathering can be expanded. Certain professions have offered support to the evaluation, so there might be scope through their channels.

- (m) There is a residual concern that this is a big change to the Fit Note system, but there do seem unresolved issues around what happens outside the GP setting. (KH)**

The fundamental part of this change is about respecting the profession's own healthcare model. Those professions have done many years of training to get certified, they have regulators, and if they fall outside of those rules and standards they can lose that status and their whole professional standing. It is more about supporting the professions to let them know they can now issue the Notes, rather than introducing more stringent regulations, or anything that goes against or adds to the existing regulatory structure and bureaucracy. That message might be interpreted as being that they are not trusted, which would make this a hard sell. The Department have been guided by those professionals and their professional bodies and how they want to achieve the goal.

- (n) The system has been built up for years about what a GP does, and the Committee seek assurance that the components of the system will continue to work well with this expansion. (KH)**

It will be valuable to discuss this with analytical colleagues, to work on communications, to work with implementation partners, all the regulatory bodies and associated professional bodies. That can be taken away as a fair challenge, recognising it will be built on the existing ways of the self-regulatory and accountability systems already in place. The desire is to have the right process, which is best for the claimant, so they have the right conversation at the right time with the right person.

1.4 The sub-group Chair thanked the officials for their time and indicated that the Committee would consider the information and come back to the officials in due course.

## **The Social Security Benefits (Claims and Payments) (Modification) Regulations 2022**

*Further information provided by the Department for Communities subsequent to the Committee meeting*

The Department for Communities (DfC) engaged with a number of key stakeholders such as energy providers, the Consumer Council, Advice NI and the Northern Ireland Utility Regulator.

Having assessed the information provided it has been established that the energy market in Northern Ireland (NI) is operated entirely differently from Great Britain (GB). In absence of the price cap, the NI energy market has seen a series of sporadic increases across multiple energy providers, over the course of the last 9-12 months, without a notable increase in applications to the Department's Third Party Deduction (TPD) scheme. Furthermore, the increased use of pre-paid meters in NI places a different perspective on the potential impact of energy costs on those claimants using the TPD Scheme.

In the absence of an Assembly and Executive, this Department may make negative regulations on the basis of parity however the legislation introduced by DWP will not be replicated in Northern Ireland at this time. The DWP legislation, as it stands, causes operational difficulties in NI as there is no process in place for a claimant to initiate a TPD with DfC, either for UC or Legacy benefits. In addition, it is not appropriate to maintain parity due to the many differences in the energy market in Northern Ireland and potential impact on the operation of the TPD Scheme.

DfC feel that the current provisions and processes within the TPD Scheme, as well as the policy intent, provide wide-ranging protections for claimants in NI. This includes the right of appeal, consideration of hardship and cessation of deductions etc.

Should a challenge (including hardship) to the deduction arise from the claimant then deductions may be stopped by DfC and in most instances the claimant will be referred back to energy provider.

The onus should be placed on the energy provider to provide an assurance that they have exhausted all other means of securing payment from the claimant and sought the consent of their customer prior to making the initial application for a TPD, or to amend an existing deduction, for ongoing energy consumption.

Having considered all of the above DfC do not believe that legislation to modify the TPD scheme is required in NI.

Operational colleagues will work to amend the relevant guidance to reflect the current position regarding consent assurance from the energy provider on point of application and operational units will monitor the situation with regard to the numbers of requests and report on any substantial impact on the Department.





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

6 June 2022

Dear David,

**The Social Security Benefits (Claims and Payments) (Modification) Regulations 2022**

The above-named regulations, which prevent an increase in monies deducted directly out of benefits to pay for ongoing energy bill consumption payments - or for new ongoing consumption payment plans to be established - without the claimant's consent, were presented to the Social Security Advisory Committee at our meeting on 25 May 2022. The 'urgency' provision had been invoked to ensure the Department was able to respond in a timely way to the increase in energy bills that would follow the rise in the Ofgem price cap on 1 April, therefore the regulations had already been laid and were in force at the point of our scrutiny.<sup>1</sup>

Following careful consideration of the regulations, the Committee have 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. However, there are some aspects relating to the delivery of this policy which we consider could be strengthened, and there is also a need for some further longer-term planning to deal with developments over the coming year.

*Communication*

It will be important to ensure that claimants have absolute clarity about the consequences of this policy for them. In particular, while it may be in the interests of a claimant in the short term to not have a new or additional deduction made from their benefit, over the longer term there is a potential for debt to accrue. While we were pleased to learn that work coaches are discussing this with claimants during conversations on debt and hardship, we understand that overall responsibility for the communication of these changes has been left with energy suppliers. It was not clear to the Committee when all affected claimants would be informed by their energy suppliers, and hence what level of arrears could be at the point of communication.

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<sup>1</sup> Section 173(1)(a) of the Social Security Administration Act 1992

The Committee is clear that the Department has a duty of care to ensure that all claimants likely to be affected by this policy are contacted as soon as possible, and it should examine how best that can be achieved at pace – including potential DWP communications – given that increased debts are already accruing.

#### *Monitoring impact*

It will be essential for the Department to produce an analysis of the impact of this policy, with a clear comparison between the pre-April data and progression over time following the introduction of this policy. For example, this might include the number of claimants who have:

- received communication from their energy provider
- opted to have deductions made for energy bill debt arrears (both where that is a continuation of an existing arrangement, or where a new agreement has been established);
- deductions made from their benefit for ongoing energy consumption;
- (following communication from their provider) increased their ongoing consumption deduction payment to (i) partially cover their bill, or (ii) to completely cover their bill;
- reached the maximum 25 per cent debt arrears cap.

#### *Planning ahead*

In his evidence to the Department of Business, Energy and Industrial Strategy (BEIS) Select Committee on 24 May, the Chief Executive of Ofgem reported that the price cap could rise further - to £2,800 - in October. It is therefore essential that the Department plans what further response it may need to make for that additional increase – and how it fits into a broader cost of living strategy - as soon as possible. Consideration also needs to be given to the potential implications of the current sunset clause for these regulations.<sup>2</sup> This will help ensure that any further government response that is appropriate can be managed and communicated in a timely and effective manner, avoiding the need for urgency.

We have asked officials to report back to the Committee on each of the issues raised above over the summer.

A copy of this letter goes to the Secretary of State, Lady Stedman-Scott and Angus Gray.



Stephen Brien  
SSAC Chair

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<sup>2</sup> April 2023



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

26 May 2022

Dear David,

**The Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2022**

The above regulations were presented to the Social Security Advisory Committee for statutory scrutiny at our meeting yesterday. These regulations pave the way for Ukrainian nationals and returning UK nationals who are fleeing Ukraine following the Russian invasion to receive income-related benefits and disability benefits from day one of their arrival in the UK through the removal of the Habitual Residence Test and Past Presence Test.

The regulations came into force on 22 March, following the Secretary of State's decision to invoke the urgency provision<sup>1</sup> to enable the government to respond to the urgent humanitarian crisis developing in Ukraine. I have previously written to you acknowledging the compelling case for the use of the urgency provision for these regulations, and endorsing the steps you have taken to ensure that those arriving in this country from Ukraine can have welcome clarity and reassurance about the support available to them from the UK.

This letter confirms that the Committee has 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.

I want to take this opportunity to place on record the Committee's thanks to the team of officials who presented these regulations to us. They provided candid explanations of the purpose and practicalities of these regulations, which cover a complex area of policy and law with considerable interplay between Home Office immigration rules and

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<sup>1</sup> Section 173(1)(a) of the Social Security Administration Act 1992

the social security system. It was a credit to those officials that they were able to explain such detailed issues clearly and provide well thought-through and clear answers to our questions, providing considerable assurance to Committee members.

We were delighted to hear that, following the scrutiny of similar regulations brought forward following the rapid change of administration in Afghanistan in November 2021, our concerns about the inconsistent treatment of Afghan nationals and returning UK nationals have been taken on board for these regulations.<sup>2</sup>

The Committee was informed that a drafting error had crept into the formulation of these regulations which has resulted in an inappropriate distinction between UK and Irish nationals. We are satisfied that steps are being taken to address that.

It is understandable that, in developing legislation at pace to respond to developing human crises of the magnitude of those seen in Afghanistan and Ukraine, oversights of the nature I have outlined above will occur. We are reassured that the Department is ensuring that lessons are being learned, and successive legislation strengthened accordingly. However, the Committee is of the view that there may be merit in developing a standard framework on which future urgent regulations of this nature can draw. A framework of drafting instructions and processes ensures that corporate memory can be retained and made available to those who may find themselves facing the challenge of developing proposals to respond at short notice to similar designated crises. The Committee would be very happy to support the Department in developing such a framework if that would be helpful.

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



Stephen Brien  
SSAC Chair

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<sup>2</sup> [SSAC to Minister for Welfare Delivery: The Social Security \(Habitual Residence and Past Presence\) Amendment Regulations 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100222/SSAC_to_Minister_for_Welfare_Delivery_The_Social_Security_(Habitual_Residence_and_Past_Presence)_Amendment_Regulations_2021_-_GOV.UK_(www.gov.uk).pdf)