Minutes
27 January 2016

Social Security Advisory Committee

Minutes of the meeting held in room 5.21/5.22
Caxton House, Tothill Street, London, SW1H 9NA

Members:	Paul Gray (Chair) John Andrews Rachael Badger Adele Baumgardt John Ditch Jim McCormick Gráinne McKeever Matthew Oakley Seyi Obakin Judith Paterson Nicola Smith
Apologies	Colin Godbold Chris Goulden
Guests and Officials:	See Annex A

1. Private Session

[RESERVED ITEM]

2. The Universal Credit (Transitional Provisions) (Amendment) Regulations 2016 (Paper 2/16)

2.1 The Chair extended a welcome to Judith Hicks (Grade 7, Fraud, Error and Debt Strategy and Policy Division, Policy and Legislation) and Mike Bond (A/G7 Fraud, Error and Debt Strategy and Policy Division, Debt Strategy). Introducing the item, officials advised that the draft regulations were technical and did not signal any change in existing debt recovery policy. Powers already existed for the recovery of overpayments of tax credits by DWP, but these particular regulations were required so that notifications by HMRC could refer to the full range of different methods of recovery that DWP had at its disposal. That was needed in the event that a Universal Credit (UC) claimant with an outstanding tax credit debt subsequently moved off UC and where the DWP would need to resort to a method of recovery other than a straightforward deduction from benefit.

2.2 The Chair indicated at the outset that the Committee had considered carefully the supporting paperwork and that the main focus of the discussion that followed would be the wider implications of the DWP inheriting a very significant amount of

overpaid tax credits from HMRC and being tasked with its recovery. Officials offered to arrange a presentation for the Committee where senior representatives from HMRC and DWP could jointly set out the operational plans in taking on a large backlog of debt. The Chair agreed that that would indeed be helpful, and asked that the secretariat put the necessary arrangements in place. That meant that although the meeting would proceed with the normal convention of questions and answers, this could legitimately be seen as a means by which the Committee would raise issues which could be addressed more fully in a subsequent presentation.

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

(a) In March 2015 the overall tax credit debt was stated by HMRC to stand at £6.9bn. HMRC estimated that about £4bn of that would probably need to be written off. Would DWP be taking over the whole of the debt or the part of it that HMRC believed was reasonably recoverable?

The intention was that 'stable debt' would be transferred across to DWP as the planned migration of tax credits to UC took place over a phased programme. That was due to begin in April/May 2016 and end in 2021. DWP understood that this would represent 3.6m debtors and an overall debt of approximately £4bn with the pace of the migration accelerating over time. Future IT enhancements would enable debts for tax credits to be transferred automatically to DWP from HMRC.

(b) Had DWP given any thought to the effect upon individual claimants who might have understood that they would be better off under UC? There could, for example, be an impact upon work incentives for some.

DWP would need to communicate clearly what deductions would be made, at the point at which a person came on to UC. That would need to set out the extent of the tax credit debt and the rate of recovery that would apply. Some claimants who were currently making payments both to HMRC and DWP would find themselves better off in receipt of UC and where a single deduction in respect of overpaid benefit or credits would be made.

(c) Was there not a communication challenge insofar as tax credits overpayments were usually different in nature to overpayments within the benefits system administered by DWP? In the case of DWP benefits, overpayments generally indicated some element of culpability on the part of the claimant, whereas overpayments in the tax credit system were commonly nothing more than the normal operation of assessments made annually and then adjusted retrospectively.

DWP and HMRC had worked closely together to develop the communications in respect of debt that would be issued to customers at the point of transfer to DWP. Alongside that, work was underway to develop a model that provided

an indication of the resources required to manage the contact from customers who might have questions about their debt and how it would be managed by DWP. More information on that would be provided in the presentation that would be delivered to the Committee at a future date.

(d) Had the Department done any analysis on the 3.6m people who had an outstanding tax credit debt? How many, for example, might already have paid some of it off? How many were disputing the amount or the fact that they owed anything at all? How many were not disputing the amount, but were still in a period in which they were entitled to raise a dispute? There might even be some who did not know that they had a tax credit debt. It would be helpful to know more about the people who would be transferred to DWP in those circumstances.

A joint HMRC and DWP working group had been set up with the specific task of developing a forecast that enabled both departments to develop a better understanding of the impact that UC would have on the debt position. In addition, work was also underway to look at the operational problems connected with the migration of tax credit claimants with outstanding debts to DWP. Officials undertook to find out if there was any information available from that group and respond in writing to the Committee.

(e) Was it possible for a tax credit claimant to be migrated to UC and end up repaying an overpayment at a higher rate?

Generally tax credit repayment rates were higher than those administered by DWP. They also tended to be less flexible. The rates of repayment for claimants in receipt of one of the legacy benefits (eg JSA or ESA) were lower than those set out in UC legislation. A UC claimant repaying a tax credit debt as the sole deduction at £17.27 a week would, if in receipt of a legacy benefit, pay £11.10 a week. In the case of non-income-related benefits the maximum amount available for repayment would be one third of the benefit. However a lower repayment rate could always be agreed between the Department and the claimant where the claimant could show that the original rate of repayment would cause hardship.

(f) The Committee understood that HMRC had contracted a private sector company to collect outstanding debt. Would DWP be obliged to retain any contractual agreements on transfer of the debt?

From September 2015 any contracts that Departments had in place with private sector debt collection agencies were replaced by a contract with Indesser, a joint venture across Government. Any tax credit debt being collected by that joint venture that was associated to an individual who claimed UC would be transferred to DWP so that recovery by deduction from UC payments could be made.

(g) The explanatory material indicated that any tax credit debt would be considered for transfer to DWP at the point at which a claim for UC was made, rather than at the point at which UC was awarded? Was that right?

Yes, even if there was no entitlement to UC, or the individual moved off UC, DWP would retain responsibility for the debt. Ultimately a 'deduction from earnings order' could be made, although the Department looked upon such an order as a recovery method of last resort. The preference was for the Department to reach an agreement with the individual in question as to a method and rate of recovery.

(h) How did the Department define a 'stable' debt? There was a five year time period in which a debt could be challenged as accruing as a result of official error. Did that mean that a debt could only be described as stable when the five year period had elapsed and the debt had not been challenged?

If there was an on-going dispute, the Department would look upon a debt as unstable and therefore not appropriate for transfer. The fact that there was time in which a dispute could be raised would not, of itself, make a debt unstable. If the claimant subsequently challenged the debt whilst it was with DWP, the Department would need to ask the HMRC to deal with the challenge, although the debt itself would not be transferred back again.

(i) It would be helpful if, at the point of transfer of the debt, the claimant could be given written information which set out any official avenues for disputing the debt which remained open to them.

Noted.

2.4 Summing up the discussion, the Chair thanked the officials for attending and addressing the questions raised by the Committee. He advised them that the Committee was content that the proposed regulations could proceed without the need for their formal reference. He also acknowledged the Committee's appreciation of the offer to return at a later date with senior operational officials from HMRC and DWP to address wider questions about the transfer of the tax credit debt to DWP.

3. The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (Paper 6/16)

3.1 The Chair welcomed Darran Nuttall (G7) and Gary Rodgers (SEO), both from the Housing Benefit Policy Team within Working Age, and Julie Munt (SEO) and Jason Westerman (HEO), both from the Pension Credit Team within Work, Welfare and Wellbeing in Later Life.

3.2 Introducing the item, Darran Nuttall noted that the draft regulations would amend rules which currently provide that Housing Benefit (HB) and Pension Credit (PC) should not be paid for more than 13 weeks in the event of temporary absences from Great Britain (GB). Moreover, if it was known at the outset of leaving GB that the absence was likely to last longer than 13 weeks then entitlement to HB and PC would normally be terminated at that point and the person would need to make a repeat claim upon their return to GB. The proposed legislation would reduce this 13 week period to four weeks. The change in the HB rules on temporary absence would affect working age and pension age claimants alike.

3.3 Certain exceptions to the revised rules would be allowed for continental shelf workers, mariners and members of the armed forces serving overseas. Moreover, where the absence was in connection with the death of a partner, child or close relative abroad the payment period of HB and PC would be extended for up to another four weeks if it was considered unreasonable for the claimant to return to Great Britain within the first four weeks. Certain circumstances relating to medical treatment abroad could also warrant extensions of up to 26 weeks.

3.4 Committee members raised the following main questions in discussion:

(a) Because the legislation was framed in terms of a temporary absence from Great Britain, it would apply to people leaving to go to the Channel Islands and the Isle of Man as well as to Northern Ireland. Was that the intention?

Yes, the rules on temporary absences had, for many years, been defined by reference to absences from Great Britain rather than from the United Kingdom or the British Isles and entitlement to both HB and PC depended on being in GB save for certain temporary absences. Although the draft legislation listed exceptions for certain occupations, Ministers considered that a four week rule should be applied regardless of where the person went or stayed when absent from Great Britain.

(b) The existing rules on temporary absence caused difficulties for people in Northern Ireland who worked across the border in the Republic of Ireland. In many instances European legislation affecting the free movement of workers had to be taken into account by decision-makers as well as domestic legislation. Work-arounds were adopted so that people were not unduly penalised by the rules, but shortening the temporary absence rules to four weeks would only exacerbate a difficult situation. Would it not be better to have rules which avoided such difficulties?

The Department had been liaising closely with the Department for Social Development in Northern Ireland, but ultimately decisions affecting temporary absences from Northern Ireland were for the Northern Ireland Assembly itself.

The temporary absence rules affecting HB were predicated on the basis that entitlement stemmed from occupying the dwelling as the person's home. The rules on temporary absences should be seen as exempting the person concerned from the fundamental principle about physical occupation. In that context, Ministers believed that a four week period was fairer to taxpayers not entitled to HB or PC. Ultimately the benefit system was there to provide income for people as a measure of last resort; it did not exist to fund a lifestyle which incorporated extended trips outside of GB.

(c) In the Explanatory Memorandum it was stated: "The temporary absence changes will affect around 100,000 HB claimants and 60,000 PC claimants". How did the Department arrive at those figures?

The statistics were calculated by Departmental analysts based on information taken from the International Passenger Survey. They were not able to break down the figures any further.

(d) Did the Department have any information on the characteristics of the people who would be affected by the change or, more generally, on claimants who were absent from Great Britain for extended periods?

The Department did not have information about the numbers of claimants who notified a temporary absence from Great Britain, and individuals were not asked the reason for the absence when they informed us. However the Department would ask its analysts if they could find out more about the likely number of claimants who notified a temporary absence and the possible reason.

(e) Had the Department consulted representatives of groups such as students and share fishermen? Those, and other groups, could be affected by the proposed measure and it would be helpful to have their response to it.

The proposed change had been decided and announced as part of the Spending Review 2015. Although there had not been any specific consultation with groups representing certain occupations, discussion concerning the changes in Pension Credit had been conducted with key stakeholders, such as Age UK. The Department had already received correspondence from MPs and members of the public about the intended changes to the rules. Regarding the proposed changes to HB, the statutory period of consultation with local authorities had yet to be concluded. The Committee would be notified if, following the consultation process, the Department decided to adjust the proposals.

(f) There were people currently working abroad for extended periods but on modest wages who stood to lose entitlement to HB. Aid workers,

nurses (who might have been dealing with the health crisis involving the Ebola virus) and deep sea fishermen could all be cited as examples. Had the Department considered the possible impact the measure might have upon work incentives? The rule in tax credits was that a temporary absence of eight weeks was allowable, and that this could be extended up to 12 weeks, might have offered a more appropriate model. Additionally the Explanatory Memorandum stated that "these proposed regulations will not impact on business" but any self-employed person – and this would again include share fishermen – could be affected and, if so, it could not be said that there would be no impact upon business.

Ministers wanted to hold to a principle of drawing a clear line with these rules. Apart from the exceptions already set out in the draft legislation, there was a desire not to extend the list of exemptions on the grounds of keeping the legislation as simple as possible. Experience showed that with any lists of exemptions, there was always pressure to keep adding to it. The change was about a straightforward principle and a message that, in general, four weeks would be the limit for temporary absences from GB.

(g) The Committee was concerned that the information contained in the Impact Assessment was limited and that in attempting to understand the possible impact upon claimants, there had been little by way of engagement or meaningful dialogue with groups who, on the face of things, stood to be affected. It was the Committee's view that shortening the period during which entitlement to benefit continued warranted a serious consideration of the impact it would have.

Government reserved the right to decide on the extent to which entitlement to benefits can be considered where, under normal rules, there would be no such entitlement. As part of that consideration, there are factors to be taken into account, such as drawing a balance between providing additional entitlement, for example to those who chose to spend time abroad and the needs of taxpayers who fund the welfare bill. Ministers have given thought to which occupations they wanted to extend the four week concession, and have decided to go no further.

(h) The explanatory material did not appear to allow for different behavioural factors to operate for those of pension age and in receipt of Pension Credit. In practice there could be significant differences.

Noted.

(i) Bearing in mind the obligation to apply the Family Test, was any consideration given to making a specific exemption for people who might be fleeing domestic violence? The documentation produced by the Department in relation to the Family Test stated that the "families

who will be impacted most by this policy will be those where one partner is a victim of domestic violence and flees to a place of safety outside GB. This could mean that women, who are generally more likely to be the victims, stay with an abusive partner rather than seek safety overseas."

The Department's assumption was that anyone fleeing domestic violence would generally be doing so within Great Britain. The numbers of those leaving Great Britain on those grounds would be very small.

(j) There were instances where the current rules could not be characterised as funding a particular life-style. One example would be where grand-parents travelled abroad annually to care for their grand-children for the duration of school summer holidays.

The Department's view was that there are other grand-parents within GB who could not afford to travel to visit their grand-children within GB and who would consider it unreasonable that the taxpayer should be expected to fund the trips abroad of other pensioners.

(k) The draft legislation did not merely refer to a 'claimant' who was absent from GB, but a 'person'. That meant that partners or non-dependants within the household would also be affected by the change. How did that relate to regulation 21 of the Housing Benefit Regulations 2006 where a person could be treated as a member of the household for up to 52 weeks during a temporary absence from the home?

The Department would consider that point further and respond to the Committee outside of the meeting.

(l) People often did not know the consequences of going abroad. There could be many who would never be away for as much as 13 weeks but who could be absent for more than four weeks. How did the Department intend to get the message of the changes across to them?

People should tell the Department and their local authority when they leave the country for whatever reason and for whatever the period of time. Letters and leaflets which state what changes must be reported convey that message. Although it was still only a proposal at this stage, the Department had received a number of letters from people anticipating the change. The Chancellor's announcement last summer had been widely absorbed. The Department intended to set out the changes in the "Later Life" newsletter and would take other specific steps to communicate the change.

The Department emphasised that anyone abroad at the point at which any new legislation came into effect would be transitionally protected.

3.5 The Chair thanked the officials for attending and addressing the questions raised by the Committee. He advised them that, after a period of private discussion, the Committee had decided to take the draft regulations on formal reference and would undertake a public consultation. In particular, the Committee would be keen to explore further the scale and characteristics of those who were likely to be affected by the change; and the potential impacts on local authorities and the voluntary sector.

4. The Housing Benefit (Executive Determinations) (Amendment) Regulations (Northern Ireland) 2016 (Paper 3/16)

4.1 These draft regulations were presented to the Committee in unusual circumstances. The Rent Officers (Housing Benefit and Universal Credit Functions) (Local Housing Allowance Amendments) Order 2015 (SI 2015/1753) ("the Rent Officers Order"), which were paralleled by draft regulations from Northern Ireland, were exempt from being referred to the Committee because the GB primary powers under which they were made were contained in a statute which was not a 'relevant enactment' for the purposes of section 170(5) of the Social Security Administration Act 1992. However the parallel regulations from Northern Ireland emanated from a statute which did not exempt it from the Committee's scrutiny. For that reason the Committee was asked to consider legislation which was wholly based upon secondary legislation applicable to Great Britain (GB) which had not itself been brought to the Committee for scrutiny. It is worth acknowledging, however, that the Department had written to the Chair, as a courtesy, alerting him to what was intended.

4.2 The Chair welcomed officials[1] from the Department for Social Development in Northern Ireland who would be presenting the regulations, namely Anne McCleary, Michael Pollock, RoseMary Hughes and Philip Cairns. He also welcomed Marie Savage (SEO) and Beverley Walsh (G7) from the Working Age Housing Benefit Reform Team who were present in order to address questions relating to the original GB legislation.

4.3 Both the Rent Officers Order and the equivalent NI Regulations gave effect to the Chancellor's statement of July 2015 that Local Housing Allowance (LHA) rates were to be frozen for 4 years from April 2016. The Rent Officers Order came into force on 2 November 2015 and the NI Regulations were made on 15 January 2016, coming into force on the day after the meeting (28 January 2016). The Department for Social Development had invoked the urgency procedures in order to ensure that there was no delay in the Regulations coming into law. Although neither the GB nor the NI legislation referred to a four year freeze, the intention was that revised legislation would be passed by 2020 so that the rule that LHA rates fixed on the basis of the position of rents as they stood at 30 January 2015 would be superseded.

[1] DSD NI officials joined the meeting via a tele-conference link

Officials explained that the measure would have no impact at all unless rents rose from where they stood in January 2015. Moreover, if they did rise, the effects would be mitigated through the Targeted Affordability Fund (TAF) which would directly help all those in areas with higher rents, and through enhanced Discretionary Housing Payments (DHPs) which would be available for those affected by the measure. GB officials added that Ministers intended to amend the Rent Officers Order in Great Britain when the Department had established which rates were to be increased by the TAF and by how much.

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

(a) There was some indication that rents were rising in the private sector in Northern Ireland and that, contrary to official expectations, landlords were tending not to make exceptions for tenants on HB. Tenants were also facing add-on costs in connection with their Housing Benefit (HB). Could DSD be confident that even with enhancements to the DHP budget which was already under strain in Northern Ireland, there would be enough help to provide the mitigating assistance people would need? And would there be any updating of the guidance on DHPs which had been unchanged since 2003?

DSD was not expecting rents in Northern Ireland to rise; nor were rent increases currently being seen. Local research had shown only a 0.9 per cent annual increase since January 2015 and officials were hopeful that there were no big increases in the pipeline. Guidance on DHPs would be revised and updated.

(b) The difficulty was that the policy rested on a hope that rents would not rise, but there was no guarantee that that would be the case and Government could not rely upon it not happening. The Committee noted that the impact assessment produced for the measure did not take account of any other recent or planned changes in HB. Had either DSD or DWP done any cumulative impact assessment in relation to HB alone or in relation to housing policy? The Committee had previously recommended to the Secretary of State for Work and Pensions that the Department should conduct a cumulative impact assessment more widely in relation to changes stemming largely from the Welfare Reform Act 2012. On that occasion the Department had declined to do so on the grounds of difficulty and complexity. Was there now a stronger case for producing a cumulative impact assessment but one which was focused solely upon HB? The Committee was mindful that claimants of working age and in receipt of HB were particularly susceptible to accumulated cuts in benefit provision.

As far as Northern Ireland was concerned, all the provisions affecting HB were not yet in place and it would be premature to conduct a cumulative impact assessment of HB at the present time. DWP officials advised that no such cumulative impact assessment had been conducted, and that it would need to be initiated by Ministers.

(c) The Explanatory Memorandum stated, in relation to providing an equality impact, that: "In accordance with its duty under section 75 of the Northern Ireland Act 1975, the Department has conducted a screening exercise on these legislative proposals and has concluded that the proposals do not have any significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary." A conclusion that a screening exercise did not reveal any significant implications really demanded some information as to the screening data used; was there, for example, anything on age?

It was difficult for DSD because it was not possible, for example, to collect data on a claim form about a person's religious background or other data relevant to some of the categories listed in section 75 of the Northern Ireland Act 1975. DSD had carried out a screening exercise which had indicated that there was a potential minor impact across all the section 75 categories for which they had been able to collect data. DSD analysts were also liaising with DWP colleagues at the current time to assess what information would be collected for the purposes of informing the management information system.

(d) Even though it might not always be possible to collect information of this nature on a claim form, there were other ways of collecting information in order to ensure compliance with equality duties.

In relation to collecting information DSD needed to ask both why it needed to be collected and how. In determining why information was needed there were questions as to its relevance and there had been particular sensitivities around that issue in Northern Ireland. The Housing Executive in Northern Ireland had, in the past, tried to collect additional information but had not had a good response.

(e) The Explanatory Memorandum also stated that the Regulations did not impose any additional costs or savings on business, charities or voluntary bodies. But it would be highly likely that the voluntary sector would receive queries in relation to the TAF and access to DHPs. It was inconceivable that the measure would not have an impact in this way.

The Northern Ireland Housing Executive had been good at publicising the TAF on their website for the benefit of those affected. Adjustment in further legislation in relation to broad rental market areas was due, and then attention

would be given to sorting out the TAF. As far as the voluntary sector receiving queries in relation to the TAF was concerned, tenants would not have to claim the TAF. Instead it would be automatically paid to those living within the broad rental market areas identified as qualifying for this funding.

(f) DHP budgets were fixed in retrospect looking at the calls upon it over the previous 12 months. That meant that there would be a year's gap. Could DSD be confident that the size of the budget for a coming year would be adequate for ensuring that mitigation measures were properly funded?

As the DHP budget was uplifted to take account of predicted changes, Northern Ireland would see a further enhancement as a result of Barnett Consequentials.

(g) The evidence from Scotland, where the DHP budget had been additionally topped up by the Scottish Government, was that it would still not be able to cope with the additional pressure caused by this latest measure.

The UK Government was still in discussion about the size of the DHP budget for the forthcoming financial year.

(h) Possibly more for the future, it could be that some city rents would rise disproportionately and necessitate looking again at the legislation.

Noted.

4.5 After a period of private discussion, the Chair advised the officials that the Committee did not intend to take these Regulations on formal reference. Nonetheless the Committee had a number of concerns which would be set out in separate letters to Lord Freud and to the Northern Ireland Minister of Social Development.

4.6 The letter to Lord Freud would encourage the Department to bring on a voluntary basis to the Committee GB legislation which was exempt from formal reference to SSAC, but where parallel Northern Ireland legislation would follow. The Department had already adopted a process for draft regulations which were exempt by virtue of the six month rule, and it was desirable to extend that practice in cases such as this.

4.7 As far as this particular set of Regulations was concerned, the Committee was of the view that it was not sufficiently clear that DSD had given adequate thought to the particular and unique characteristics of the rented housing sector in Northern Ireland and whether those circumstances warranted greater deliberation as to whether the GB legislation should be adjusted in some way for the purposes of

Northern Ireland. The Committee would be keen to consider any such adjustments alongside DSD in future.

4.8 The Committee was disappointed at the inadequacy of relevant data on impact and in relation to equality duties, and felt that the analytical material in relation to these duties needed to be strengthened going forward. The Committee's letter to the Minister would also request that a specific cumulative impact assessment in relation to HB be undertaken.

4.9 The Chair thanked officials for their contributions and assistance during the course of the meeting.

5(A) The Social Security (Disability Living Allowance and Personal Independence Allowance) (Amendment) Regulations 2016 (Paper 4/16)

5.1 The Chair welcomed Hayley Johnson-Hurst (Grade 7, PIP Strategy and Analysis) and Geraldine D'Arcy (HEO, Health, Disability and Employment Directorate) to the meeting. The purpose of the draft regulations was to extend further the scope of draft legislation which the Committee had scrutinised at its meeting of 2 September 2015. At that meeting the Committee had decided that draft legislation giving effect to the judgment of the Supreme Court in the case of *Cameron Mathieson v Secretary of State for Work and Pensions [2015]* could proceed without formal reference to the Committee. The Supreme Court had held that withdrawing Disability Living Allowance (DLA) on account of hospitalisation was a breach of the child's rights under Article 14 of the European Convention on Human Rights (prohibition of discrimination) when taken with Article 1 of Protocol 1 (the peaceful enjoyment of possessions). The suspension of DLA in the case of Cameron Mathieson was held to discriminate against him as a disabled person by depriving him of a possession to which he was entitled.

5.2 The draft legislation seen by the Committee in September would have ensured that both the care and the mobility components of DLA would be payable in respect of children in hospital beyond the 84th day (ie - the 12th week). The Committee had asked whether that beneficial treatment could also be extended to young people aged 16 and 17 years. Officials advised the Committee at that time that the Department intended to carry out a more detailed equality analysis to see whether further changes are necessary in respect of children over the age of 16. They also advised that if further amendments to the legislation were considered necessary, they would also be presented to the Committee.

5.3 Following the September meeting, DWP carried out the detailed equality analysis to which they had referred and concluded that the beneficial provisions intended for children up to the age of 16 should be extended to young people aged up to 18 who were similarly hospitalised and in receipt of DLA or PIP. In doing so the Department had spoken to various charities such as 'Contact the Family' who had commented positively on the Department's intentions. The earlier legislation

was not brought into effect. Instead the draft legislation being presented at this meeting would bring forward the previous version but with amendments to accommodate the policy decision to extend the scope of the provisions to those aged 16 and 17 years in receipt of either DLA or PIP. The new rule would mean that the hospitalisation rule by which DLA and PIP was withdrawn after 12 weeks of in-patient treatment would be suspended in respect of all children and young people aged under 18 years and would continue to be suspended until they had been discharged from hospital, or a new decision in the case of reassessments was made on or after the person reached 18, or until the end of a fixed term award if it fell on or after the person reached 18.

5.4 The Chair thanked the officials for providing a detailed statistical analysis on DLA claimants in hospital and how they had been impacted by the hospitalisation rules. He also expressed the Committee's appreciation to the officials for the Department's favourable consideration of widening the scope of the changes to 16 and 17 year olds as originally suggested by Committee members.

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

(a) What would happen for children in hospital and on DLA but approaching age 16? Would beneficial treatment continue under PIP?

A child in hospital on DLA and within six months of reaching age 16 would not be invited to claim PIP. Ministers were clear that they should not have to go through a new claims process at such a time. Instead any invitation to claim PIP would be delayed until the child had come out of hospital. If, however, an automatic notification inviting the claimant to claim PIP had gone out before the child had gone in to hospital, the Department would continue with the process already initiated. The intention is that a young person in this situation should continue to be exempt from the hospitalisation rules under PIP, but the Department would check with its lawyers that the draft legislation achieved that effect[2].

(b) Would beneficial treatment also be extended to children and young people aged 16 or 17 in hospices?

If the hospice was maintained by the NHS it would be regarded by DWP as a "similar institution" for the purposes of satisfying the legal definition of "hospital in-patient treatment". The Committee had asked about whether the Department should re-visit this definition in the meeting held on 2 September 2015. Such a definition applied across the spectrum of social security benefits and was not limited to DLA and PIP. Although the Department was

[2] The Department subsequently confirmed that anyone under the age of 18 in hospital was exempt from the hospitalisation rule regardless of whether they are on PIP or DLA.

aware of changing funding arrangements involving the NHS it had not found that the present definition was inadequate. The issue would however be kept under review.

(c) Were there any linking rules to ensure that a child who transferred between hospital and full-time care in a special school would be exempt from the DLA and PIP hospitalisation rules?

That was the intention and the Department would check with lawyers that the intention was captured by the legislation[3].

5.6 The Chair thanked the officials for attending and addressing the questions raised by the Committee. He advised them that the Committee was content that the draft legislation could proceed without the need for formal reference to the Committee.

5(B) The Personal Independence Allowance (Transitional Provisions) (Amendment) Regulations 2016 (Paper 5/16)

5.7 The Chair welcomed Amanda Brookes (SEO, PIP Policy) who joined Hayley Johnson-Hurst (Grade 7 PIP Strategy and Analysis) at the meeting. This set of draft regulations was being brought forward to ensure that anyone suffering from a terminal illness would not experience a delay in receiving a higher rate of Personal Independence Payment (PIP) upon transition from Disability Living Allowance (DLA).

5.8 Existing transitional rules for a person who the Department wished to migrate from DLA to PIP were that once it had been determined that there was entitlement to PIP, claimants would continue to receive their DLA award for a minimum of 28 days and then PIP would start on the day after DLA ended. The purpose of the policy was designed to give time for the Department to administer the change with minimal

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[3] DWP lawyers subsequently provided information on the position a child (ie under 18 years for the purposes of the amendment) who entered a care home, then went into hospital and then re-entered a care home before reaching age 18. They commented as follows:

> *'If a child enters a care home the usual rules apply: ordinarily no payment from the day after they enter the care home until the day before they leave (the general rule). This is subject to the partial exception that if they are already entitled when they enter a care home they can be paid for the first 28 days. Our amendment provides an absolute exception from the general rule if the child enters a hospital or similar institution when under the age of 18, such that the regulation no longer applies. The linking rules are only relevant where the partial exception applies. So put more plainly, if a person enters the care home when entitled, they will benefit from the partial exception. If thereafter they enter hospital before the age of 18 they will benefit from the absolute exception. If they are then discharged and re-enter the care home, for the purposes of the linking rule what is relevant is not the stay in hospital but the previous stay in the care home.'*

disruption to the claimant and to provide additional limited financial support for those claimants who received a lower award under PIP. The disadvantage however was that those who would receive a higher amount of benefit under PIP would need to wait up to four weeks before receiving it. The Department had previously introduced a fast-tracked process for terminally ill claimants with a specialist team processing their claims or claims made on their behalf. The draft regulations would reduce the period before payment of PIP could replace DLA for such claimants to ensure the system delivered vital support as quickly as possible. The proposal was therefore that terminally ill claimants who would get a higher rate of entitlement under PIP should begin to receive the benefit more quickly. The intention was that payment of PIP would generally begin from the first Wednesday following the decision.

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

(a) How did the Department ensure that sensitive information about the claimant's condition was not inadvertently disclosed to the claimant in circumstances where they were unaware of it?

The process for handling claims from the terminally ill in a discreet and sensitive way had been in operation for many years, and generally worked very well. It was reliant upon private communications between the Department and GPs and had been developed with input from Macmillan who were satisfied that the proper safeguards were in place.

(b) How would the timing of payments work?

The way in which an individual could be affected by payday cycles meant that they should not need to wait any longer than 8 days to receive their first payment of PIP. DLA claimants generally received their benefit in four-weekly intervals. In most cases it was four-weekly in arrears, although there were some instances where it was three-weekly in arrears and one week in advance. The change in rules meant that the higher rate of PIP would begin to be paid from the next available PIP payday, with DLA ending on the earlier of the last day of the payment period during which the decision to award PIP was made, or the first Tuesday after making the decision.

(c) Would any terminally ill people get less benefit under PIP?

The Department estimated that around 99 per cent of terminally ill claimants would get more under PIP. Those who might receive less would generally be those who would not qualify for the mobility component under PIP. For anyone whose PIP entitlement would be lower than their DLA entitlement, they would not lose out by the change in legislation – they would get DLA for the extra weeks in the same way as someone who was not terminally ill.

(d) What would happen if the person's health improved?

It would not make any difference for the purposes of this set of draft proposals in any event, but the Department's policy was that anyone who had been diagnosed as terminally ill and who was in a more favourable benefit position as a result of that diagnosis should not lose that categorisation were they to live beyond the 6 months of the prognosis. A claimant was deemed to be terminally ill if suffering from a progressive disease and the person's death in consequence of that disease could be reasonably expected within 6 months.

5.10 The Chair thanked the officials for coming along and answering the Committee's questions. He advised them that the Committee was content that the legislative proposals could proceed without the need for formal reference to the Committee.

6. Private Session

[RESERVED ITEM]

7. AOB

Date of next meeting

7.1 The next meeting was scheduled to take place on 9 March 2016.

Annex A

Attendees

Guests and Officials

Item 2: Judith Hicks (G7, Policy and Legislation)
Mike Bond (G7, Fraud, Error and Debt Strategy)

Item 3: Darran Nuttall (G7, Housing Benefit Policy)
Gary Rodgers (SEO, Housing Benefit Policy)
Jason Westerman (HEO, Pension Credit Policy)
Julie Munt (SEO, Pension Credit Policy)

Item 4: Anne McCleary (Department for Social Development, Northern Ireland)
Michael Pollock (Department for Social Development, Northern Ireland)
RoseMary Hughes (Department for Social Development, Northern Ireland)
Philip Cairns (Department for Social Development, Northern Ireland),
Marie Savage (SEO, Housing Policy Division)
Beverley Walsh (G7, Housing Policy Division)

Item 5: Geraldine Darcy (SEO, PIP Policy), Amanda Brookes (SEO, PIP Policy), Hayley Johnson-Hurst (G7, PIP Policy)

Observers Richard Wood (Housing Policy Division)
Sarah Dunn (Devolution Directorate)
Angela Smith (Working Age Benefit Analysis Team)
Zoe Garrett (Housing Policy Division)
Catherine Nalty (Disability, Employment and Support Directorate)
Jared Hetherington (Universal Credit, Digital Service)
Rebecca Fynn (Universal Credit, Labour Market)

Secretariat: Denise Whitehead (Committee Secretary)
Henry Parkes (Researcher)
Michael Coombs (Assistant Secretary)
Paul Mackrell (Assistant Secretary)
Eirteqa Sultan (Assistant Secretary)