

9 November 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)  
Bruce Calderwood  
Carl Emmerson  
Colin Godbold  
Chris Goulden  
Jim McCormick  
Gráinne McKeever  
Dominic Morris  
Judith Paterson  
Liz Sayce  
Victoria Todd

Apologies: Rachael Badger  
Seyi Obakin  
Charlotte Pickles

Guests and Officials: See Annex A

**ITEM 1**

*[RESERVED ITEM]*

**2. The Social Security (Exempt Work and Hardship Amounts) (Amendment) Regulations 2017 (SSAC Paper 31/16)**

2.1 The Chair welcomed to the meeting the following DWP officials: Trevor Pendergast (G7, Employment and Support Allowance and Work Capability Assessment policy), Brian Ah-Chung and Olwen Mitton (temporary SEO and HEO respectively in the Universal Credit Sanctions and Hardship Payments Policy and Strategy), Claire Foale (G6, Head of Customer Relationship Management) and Amy Morgan (Lead Analyst in the Department's ESA Analysis Division).

2.2 The draft regulations should be seen in the context of the Welfare Reform and Work Act 2016 (Consequential and Transitional Savings Provisions) Regulations 2016 which the Department had brought to the Committee for informal scrutiny in the previous month (see minutes for October 2016). Those regulations were introduced to provide protection for existing benefit recipients of Universal Credit (UC) or the Employment and Support Allowance (ESA) at 3 April 2017 when sections 15 and 16 of the Welfare Reform and Work Act 2016 would take effect. In summary, section 15, when enacted, would mean that new ESA claimants placed in the work-related activity group following the work capability assessment would not receive a work-

related activity component (WRAC). Section 16 would similarly mean that new UC claimants would not receive an additional element if they were placed in the limited capability for work group.

2.3 The draft regulations were similarly consequential upon the coming into force of section 15 of the Welfare Reform and Work Act 2016 although, inasmuch as they would amend existing regulations, the proposals were not exempt from formal reference to the Committee. It should also be noted that the draft regulations would only affect ESA claimants.

2.4 The draft regulations would introduce two measures which stemmed from the decision to remove the work-related component for new ESA claims with effect from 3 April 2017. The first was the abolition of the 52 week rule for 'permitted' work. ESA claimants in the work-related activity group (WRAG) could currently work up to 16 hours a week and be remunerated at a rate of £115.50 a week. That was broadly equivalent to 16 times the weekly national living wage. It was also anticipated that the Chancellor would announce the 2017/18 rate of the national living wage in his Autumn Statement. The current permitted work rule only applied for 52 weeks however, and a new period of permitted work could only be triggered after a break of a further 52 weeks. Following commitments made by Ministers during the passage of the Welfare Reform and Work Act through Parliament, the 52 week rule for permitted work was to be abolished. That would mean that there would no longer be any limitation as to time placed on a person undertaking permitted work and retaining their full entitlement of ESA. The proposals effectively made that change.

2.5 Following the withdrawal of the WRAC for new claimants, the second measure was a change in the hardship rate of ESA for a sanctioned claimant. Rather than the existing 60 per cent of the basic ESA rate plus the WRAC, a claimant (or a member of the claimant's family) who was seriously ill or pregnant would get 80 per cent of the basic ESA rate without any additions under the current proposals. That change would align the rules with those of Jobseeker's Allowance (JSA).

2.6 The following main questions were raised by Committee members in discussion:<sup>1</sup>

- (a) The qualifying criteria for the hardship rate of 80 per cent of the basic rate of ESA required the claimant, or a member of the household, to be seriously ill or pregnant. How would the test of being seriously ill work**

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<sup>1</sup> The responses provided to questions (a) to (j) include clarification and additional context received from DWP officials subsequent to the meeting. As the clarification better reflects the Government's policy, and DWP's understanding of how the current legislation relating to hardship should be interpreted, the Committee has agreed to reflect this position in the minutes. The clarification provided after the meeting has no bearing on the outcome of the Committee's scrutiny of the regulations.

**in the context of a benefit where the claimant needed to be ill or disabled and incapable of work in order to be entitled in the first place?**

The test was not related to the work capability assessment which was the functional assessment to determine eligibility for ESA. Within the hardship context 'seriously ill' would be defined in guidance and would reflect the basis of the hardship test and the policy intent that acknowledged that claimants with a serious illness would incur additional costs.

**(b) Would information gathered from the work capability assessment be used in determining whether a person was seriously ill?**

No, a decision on hardship and the appropriate rate would be made entirely on the basis of information gathered at the time the application for a hardship payment was made and not on the basis of the work capability assessment. The test of hardship was based purely on the financial circumstances of the claimant.

**(c) If a person was seriously ill but no additional expenses were incurred as a result of it, would they get the 80 per cent hardship rate?**

The application for hardship payments was a financial test and not a health test. A person was judged to be in hardship if they had insufficient funds to meet the basic necessities, accommodation, food, heating and lighting, clothes and hygiene requirements. That would be made clear in the guidance. Once a person was judged to be in hardship then the rate at which hardship was paid would be based on whether the claimant (or a member of the claimant's family) was pregnant or seriously ill.

The policy acknowledged that a person who was in hardship with a serious illness was likely to incur higher costs, for example constant heating, special diet, additional hygiene requirements.

**(d) Did the Department operate a ceiling on the financial test, so that the extra costs incurred had to reach a minimum threshold?**

No. As previously explained the test was whether the claimant (or their partner or child) would suffer if hardship payments were not made. That was based upon their requirements (accommodation, food, heating and lighting, clothes and hygiene requirements) and the resources, if any, available to them.

**(e) If a disabled person on ESA had mobility problems and needed to rely on taxis, would that count for those purposes?**

Yes, because the claimant could demonstrate that taxis were a necessity; for example to purchase their groceries.

- (f) Why did the test refer to ‘serious illness’ and not include disability? Should that be clarified?**

The wording of the provision had been imported from the parallel JSA provisions without amendment. It had also been in existence for many years. The point made however was accepted and would be covered in detail in the guidance where appropriate.

- (g) Presumably the Department would be taking the existing guidance on hardship as it applied in JSA cases and expanding it for the purposes of ESA since the issues would seem to be far more complex. Did the Department have that guidance ready?**

The guidance for ESA had not yet been written. As noted, it would need further expansion and development to cater for the additional factors to be taken into consideration for ESA claimants and their additional financial needs.

- (h) If a person had extra costs due to circumstances other than serious illness or pregnancy (such as living in a remote area), would that be taken into account and if not, why not?**

The decision maker would make a determination as to whether a claimant was in hardship and therefore eligible to some hardship payments and, of course, where a claimant lived may feed into that decision. If a claimant needed to use public transport to access basic amenities and to purchase food items, then this would mean that they were more likely to access the hardship threshold.

Once a determination had been made as to whether the claimant was in hardship, then a determination would be made as to whether the claimant could access the 60 per cent or the 80 per cent rate.

- (i) The amendment to regulation 64D of the Employment and Support Allowance Regulations 2008 simply provided that the 80 per cent rate applied where the claimant’s ESA award did not include the work-related activity component and the claimant or any other member of their family was either pregnant or seriously ill. Significantly, there was nothing in the legislation which stipulated an additional test that, as a result of that serious illness, they incurred additional costs. The explanatory note at the end of the proposed new regulations reinforced that point in its comments on new regulation 5.<sup>2</sup>**

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<sup>2</sup> “Regulation 5 makes amendments to the Employment and Support Allowance Regulations 2008 amending the way that an amount of hardship is calculated. Where a claimant is not in receipt of a work-related activity component and either they or a member of their family is either pregnant or seriously ill they will receive 80% and in all other cases claimants will receive 60% of their prescribed amount.”

Those were the rules that applied already in JSA and the Department had merely replicated them for the purposes of ESA. The policy in JSA (and to be imported into ESA) was that claimants who were seriously ill incurred extra costs as a result of their serious illness and the extra rate reflected that.

- (j) Did that mean that, on the Department's interpretation of the legislation, a woman could be pregnant and get a hardship payment at the 60 per cent rate because she had no extra costs as a result of her pregnancy?**

No. If a pregnant claimant (or, in a couple case, a claimant with a pregnant partner) applied and was found to be in hardship they would be paid benefit at the rate of 80% of their personal allowance.

- (k) The impact of sanctions would be tougher for some ESA claimants. Would any work be done on assessing the impact of sanctions in those cases? There were issues around ESA claimants being sanctioned for failing to attend an interview when they had a hospital appointment and the perceived fairness of the way the sanctions regime worked.**

The Department was considering doing some further work on sanctions, but nothing had been decided. A lot of work had gone into improving the process of communicating precisely what was required of claimants and the consequences of any failure to comply. Matthew Oakley's report<sup>3</sup> had prompted the Department into looking at the issue of appointments and what claimants were told to do when they had one.

- (l) Had the Department communicated the intended changes on the 52 week rule to employers?**

Yes. The Department had adopted a communications strategy which included representatives of employers. Overall the communications plan broke down into three separate target audiences: new and existing claimants, front line staff and stakeholders which included employer representatives. A toolkit had been prepared for stakeholders which explained the changes.

- (m) Did the Department have any details about the numbers of people taking up permitted work? Were there any identifiable trends? And what were the likely cost/benefit analysis of abolishing the 52 week rule?**

The numbers of people taking up permitted work had been very low as a proportion of the ESA caseload. Current figures indicated around 8,700 out of 2.5 million ESA claimants were engaged in permitted work.

- (n) It could be that awareness of the opportunity to take permitted work was low. What could be done to increase awareness and perhaps track take-up over time?**

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<sup>3</sup> [Independent review of the operation of Jobseeker's Allowance sanctions validated by the Jobseekers Act 2013](#)

That issue had been recently raised by stakeholders and it had been suggested that the Department launch a campaign to amplify the message about taking up work whilst on ESA and keeping benefit in full. The Department was looking at the possibilities of social media for tracking take-up and of strengthening channels.

- (o) Had any evaluation been made of those who had been doing permitted work and then stopped or come to the end of the 52 week period?**

A small number of claimants coming to the end of their period of permitted work had lowered their hours of work so that they retained entitlement to ESA. Some had left benefit altogether.

- (p) Could the Department simplify the earnings rule on permitted work further and have a single earnings rule on the amount of earnings rather than have an earnings rule as well as a 16 hours rule? People often fell foul of the rules through misunderstanding.**

The 16 hour threshold had traditionally represented the boundary between in-work benefits and out-of-work benefits. Although that distinction and definition would cease to be relevant in Universal Credit cases, it continued to exist in the legacy benefits and would seem to have a place in the long period leading up to the final roll-out of Universal Credit. It may be therefore that the 16 hour rule would be dropped in time, but the Department would consider this issue further.

- (q) What were the numbers of ESA claimants sanctioned who got a hardship payment, and how many were refused?**

In 2014/15 around 7,800 hardship payments had been made. That represented a ratio of 1:4 of those who were sanctioned. However it was not known how many of those sanctioned had asked for a hardship payment and been refused, and how many had not asked.

- (r) In paragraph 22 of the Equality Analysis there was a reference to claimants with appointees who are assumed to understand the requirements of a mandatory interview and are proactive in assisting the claimant to comply. How would a claimant who needed an appointee come to be sanctioned?**

The Department would come back to the Committee in writing on that question.

- (s) Paragraph 16 of the Equality Analysis advised that ESA claimants could only be sanctioned if they were placed in the work-related activity group following their work capability assessment. How did that match the Department's intention to require claimants to undergo a 'health and**

**work conversation' (with a sanction for a failure to comply without good cause) before undertaking the work capability assessment?**

The Department acknowledged that the Equality Analysis did not reflect the policy intention that taking part in the health and work conversation (HWC) would be mandatory for the majority of individuals. However, as was already the case within ESA, there were extensive safeguards to ensure individuals were not sanctioned inappropriately. If someone was unable to attend, they would have the opportunity to reschedule another appointment. Should they fail to attend again they would be invited to show good cause for not attending before sanctions were considered. The Department would also be implementing appropriate exemptions to the HWC for some individuals.

- (t) What were the rules on sanctioned claimants entitled to contribution based ESA? Could they get a hardship payment? The amended regulation 64D (1)(a)(i) only referred to those whose entitlement did not include a work-related activity component under section 4(2)(b) of the Welfare Reform Act 2007, and section 4 related to income-based ESA.**

Hardship payments were payments of income based ESA only, and therefore a claimant in hardship would need to qualify for income-based ESA in order to access ESA hardship payments. People on contributory ESA might qualify for income-related ESA as a consequence of being sanctioned. If a claimant did not qualify for income-based ESA, it was likely that other resources would be available to them, in which case the question of possible hardship payments would not arise.

- (u) At repeated places in the Equality Analysis it was recorded that a particular group (eg those with diseases of the musculoskeletal system) were disproportionately represented within the ESA caseload, but that the impact upon them from the changes would be neutral. Such a statement was contradictory. If there were proportionally more claimants of a certain category within the work-related assessment, it necessarily followed that the impact of the changes would be similarly disproportionate. That disproportionality of effect should then lead on to a note of explanation and, probable justification in most cases. The comment was offered for future reference.**

The Department noted the point.

- (v) Paragraph 21 of the Equality Analysis mentioned core visits by visiting officers. Did the Department have any information in relation to core visits? Was a person who had received a core visit less likely to be sanctioned, for instance?**

The understanding was that in cases where the information indicated a mental health issue, any failure to contact the claimant would normally trigger a core

visit. However the Department would undertake to see what data on core visits was available and forward it to the Committee.

**(w) Had the Department undertaken any work to improve dealing with vulnerable claimants prior to a sanction being imposed?**

In addition to work to which the Department committed itself as part of the Oakley review, the Department also undertook additional steps in October 2015 to strengthen its Work Programme Provider Guidance in respect of vulnerability and safeguarding procedures for ESA WRAG participants. The guidance covered the subject of a core visit prior to a sanction referral.<sup>4</sup> That restructuring of guidance was in turn supported by National Work Programme Provider events to instil the message.

2.7 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 proposals could proceed without the need for formal reference. Although the Committee would not want to look in detail at the revised guidance on hardship in ESA, the Chair asked the officials to ensure that the guidance met the concerns that had been raised during the course of this discussion.

**3. The Universal Credit (Housing Costs Element for Claimants Aged 18-21) (Amendment) Regulations 2016 (SSAC Paper 34/16)**

3.1 The Chair welcomed Geoff Scammell (G6, Deputy Head of Housing Strategy), David Slovak (SEO, Universal Credit Housing Policy) and Andrew Stocks (G7, Housing Analysis) to the meeting.

3.2 The Chair noted that the draft regulations would remove entitlement to the housing element in Universal Credit (UC) for certain claimants aged 18 to 21 years and specify the circumstances where claimants within this age cohort would be exempt and therefore entitled to the housing element. He emphasised that the Committee understood the core policy about removing the housing element for 18-21 year-olds claiming UC had been subject to Parliamentary scrutiny and was not an issue to be re-opened by the Committee. Rather, the focus of the Committee would be on the draft regulations which sought to set out the exemptions from the new rule.

3.3 Introducing the item, Geoff Scammell explained that, subject to exceptions, any 18-21 year-old who made a new claim for Universal Credit (UC) in a full service area from 1 April 2017 would not have any housing costs included in their assessment. The Government's rationale for the measure was that it would ensure parity among young people when deciding to move out of their parents' home whether they were working or not. The government did not consider it fair that a

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<sup>4</sup> Work programme Provider Guidance – ESA Safeguarding guidance.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/510873/work-programme-provider-guidance-chapter-4b.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510873/work-programme-provider-guidance-chapter-4b.pdf)



young person could move away from home and immediately pass the cost of their housing on to the taxpayer. The policy had been a Conservative Manifesto commitment in May 2015, announced by the Chancellor in his Autumn Statement of 2015. That policy had been further developed and qualified. In particular the draft regulations circumscribed a wide range of exemptions. The policy was refined substantially to exempt those in receipt of Housing Benefit, in receipt of housing costs in their UC at the point of change on 1 April 2017 or on UC in a live service area.

3.4 Geoff Scammell noted that, in developing the policy, the Department's first consideration had been to ensure that any young person who had barriers to work was exempt from the new rule. That had been achieved primarily by prescribing that anyone not falling within the all work-related requirements conditionality group would be exempt, although the proposals included other exemptions. The second consideration had been to ensure that those aged 18-21, and potentially affected by the new rule, also had a parental home in which they could reasonably live. That meant that any young person aged 18-21 seeking to claim UC with an element for rent should be presented with a choice – either live with their parents or move into work. If either of those options was not a reasonable choice for the individual, the intention was that they would not be affected by the policy. The view of the Department was that, after applying those two tests, the majority of 18-21 year-olds who might otherwise be affected by this change would actually be exempt.

3.4 The Department had consulted over 30 different representative bodies, stakeholders and charities representing young people, housing, central and local government and other aspects of social policy relevant to this change. In fact, the consultation had begun at a very early stage so that the Department could go to Ministers with proposals which had already been developed in discussion with key stakeholders. The approach adopted prescribed exemptions based on existing categories defined in the legislation and operating in the Universal Credit system, such as couples, certain claimants with a physical or mental disability and carers (namely those in receipt of Carer's Allowance, those caring for more than 35 hours per week, and those whose caring responsibilities prevent them from working 35 hours per week). Those who would be exempt from the shared accommodation rate within Housing Benefit (eg care leavers, claimants managed under a Multi-Agency Public Protection Arrangement (MAPPA)) were similarly exempted from the new rule. Since the categories listed for exemption from the shared accommodation rate represented a proxy for vulnerability, anyone falling within one of those categories would necessarily be considered to face a barrier to getting into work already. Anyone who had worked and earned over a prescribed amount for six months would also be exempt for a six month period, as would anyone without a parental home.

3.5 At the stage at which the Manifesto commitment was given, Treasury Ministers in particular saw this as a fairly major savings measure. As the policy was developed and the work on providing a comprehensive list of exemptions strengthened, projected savings reduced significantly. The Department believed that

only around 10,000 people would be affected, yielding an estimated £95 million over the course of the current Parliament. Ultimately, the aim was that the measure would have a behavioural effect so that young people who could work would be less likely to leave the parental home and set up a separate home independently whilst remaining on benefit.

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

- (a) **New paragraph 4B(1)(e) of Schedule 4 of the Universal Credit Regulations 2013 has an exemption where “in the opinion of the Secretary of State it is inappropriate for the renter to live with their parents”. That form of wording was different from the rules on entitlement for 16-17 year-olds and students who would otherwise be disentitled to benefit, where the issue was one of ‘estrangement’. So what would happen when a 17 year-old entitled to benefit which included housing costs on the grounds that they were estranged from their parents reached 18 years?**

Any 16-17 year-old entitled to benefit would probably have spent time in local authority care and would be exempt on those grounds. It was difficult to envisage someone of that age having their own accommodation and not coming under one of the exempt categories. The Department would check that however and come back to the Committee.

- (b) **Could a student be entitled to benefit on the grounds of estrangement but not get housing costs because the Secretary of State found that they still had a parental home?**

No, because those students who were eligible to claim UC sit outside the all work-related requirements group and so were exempt from the new rule.

- (c) **The new test of ‘inappropriateness’ would seem to place a high burden on decision makers. Having a provision that included an exemption where it was unreasonable to require the renter to live with parents might be a better approach. Could the Department consider that? What help would be available to decision makers in reaching their decisions on inappropriateness? Would the test incorporate other factors, such as the inability to get to work through lack of public transport?**

Whether or not a young person could live with their parents was a difficult policy area, not helped by the fact that in most cases the claimant’s account of a relationship had to be taken at face value unless their account was inherently improbable. It was not the kind of issue where verification could reasonably be sought. Determining whether it was appropriate or inappropriate for a renter to live with their parents was something which would be set out in guidance. As an example, the kinds of situation that were likely to feature in that guidance were, in the case of a prison leaver, where the

parental home was on an estate where gangs operated and where the claimant had reason to feel that there was a realistic threat of violence.

- (d) The test of ‘inappropriateness’ was set in the context of the opinion of the Secretary of State. That would seem to take any aggrieved claimant out of the arena of challenging the decision through the normal mechanism of exercising appeal rights and into that of judicial review. Given the role that First-tier Tribunals played in helping to shape the thinking of Decision Makers and the role that judges of the Upper Tribunal played in establishing case-law, would it not be helpful to ensure decisions made on the test of inappropriateness were made appealable?**

The Department undertook to take that question away and come back to the Committee in writing.

- (e) The employment threshold in new paragraph 4C of Schedule 4 provided for a period of six consecutive months which took account of actual earnings for each separate month and required that the threshold be met in each month. This approach contrasted with that of regulation 90 of the Universal Credit Regulations where the earnings threshold required to be met in order to be placed in the no work-related requirements group made provision for averaging of earnings. Could a person meet the regulation 90 threshold and be placed in the no work-related requirements group, but fail to meet the requirements for exemption from the new housing cost rule for those aged 18-21?**

The Department undertook to take that question away and come back to the Committee in writing. The Department’s starting point was, where possible, to utilise existing rules rather than create separate provision though it was accepted that this might not always be possible.

- (f) A pregnant woman would normally expect to come out of the all work-related requirements group 11 weeks before her due date. Had the Department consulted with professionals on that specific point because they would probably advise that some women would be vulnerable before they reached the 11 week date?**

No specific discussion had taken place on that issue, although it seemed unlikely that any woman in this situation and renting a home already would not be exempt under other provisions.

- (g) What effect would a returning young person have on the entitlement of their parent(s) to Housing Benefit?**

A non-dependant was counted as part of the claimant’s household so a returning young person would increase the claimant’s bedroom allowance by one. So, if the parent lived in the social sector and was under-occupying by

one room the “bedroom tax” would be removed. If under-occupying by two rooms, it would reduce from 25 per cent to 14 per cent. If the parent lived in the private sector the Local Housing Allowance rate would increase. The financial effect of this depended upon the relationship between their rental liability and the old and new LHA rates. If their rent was already within the lower rate there would be no financial effect, but the more likely outcome would be a significant increase in the parents’ benefit. The other effect was that non-dependants were expected to make a contribution towards their parents’ rent of £69.39 a month. That did not apply to non-dependants aged under 21 but where a young adult aged 21 returned home that contribution would be deducted from their parents’ allowance

If the parental home was overcrowded that would be a factor in the decision as to whether it was inappropriate to return to the parental home.

**(h) How did the Department calculate that only 10,000 people would be affected by this rule by 2020/21?**

Administration data held by the Department was used to look at the number of 18-21 year-olds on Housing Benefit and out of work, alongside numbers that would be exempted where the Department held information that would exempt claimants.

**(i) How would the change help in increasing work incentives?**

A young person who lived in the parental home received a lower amount of UC than one who left home and acquired a rental liability. A lower entitlement in UC meant that a lower level of earnings was required before they moved off the 65 per cent taper and retained 100 per cent of their earnings.

**(j) The figures on young people living in the family home were based on the Family Resources Survey (FRS). FRS was a household survey and would therefore exclude some 18-21 year-olds such as students in halls of residence.**

Sampling error in the figures was acknowledged due to the age group and for the reasons raised. It was also noted that some of the figures used a different survey (Labour Force Survey).

**(k) The Department needed to know the effect of the policy and find out how people responded to the change in rules. What evaluation would be done?**

The Department would have some information from its management information system, but it was not yet known whether Ministers would want a specifically targeted evaluation beyond that which was done routinely for UC. It would be helpful to have a longitudinal study that looked at causality, but there were no current plans to have one.

- (l) Regulation 3 of the draft regulations seemed very complicated. How would the Department be communicating that to claimants, because it was difficult to work out from the wording of the legislation the different permutations as to what might happen where?**

The legislation might look complicated but the intention was simple enough and communicating it clearly should also be relatively straightforward. The basic principle was that to be affected by the new rule, the claimant must live in a Full Service area. It would also only apply in respect of new claims from 1 April 2017 or where a person, working full time but still entitled to UC, lost their job or reduced their earnings below the threshold. In the latter two cases such people would be entitled to the six months exemption if they had been in work for the preceding six months.

- (m) The definition of “the digital service computer system [operated by the Secretary of State?]” in regulation 3 seemed overly simplistic. Did it need further qualification, such as adding a clause about the computer system being for the purposes of assessing claims for, administering awards of and making payments in respect of, Universal Credit?**

The Department would check the wording of that provision with lawyers.

- (n) In paragraph 48 of the Equality Analysis it was explained that couples where both partners were eligible for UC would be exempted from the new rule. Would this incentivise young people to form partnerships merely for the purposes of securing housing costs?**

It could, although the rate for a single person was more than half the couple rate, and there was therefore some incentive to remain apart and claim separately.

- (o) In paragraph 4B(2) the word ‘parent’ was taken to include any person acting in the place of a parent. Did the legislation make clear what it was for another person to act in the place of a parent?**

The intention was to use existing definitions where possible. There was a presumption that there was an existing definition and consideration would be given to whether a link should be set out in paragraph 4B. The Department would check that point and provide further advice to the Committee.

- (p) How was the consultation conducted?**

Rather than set out the Department’s intended exemptions and invite stakeholders to comment on a list, the approach was to start with a blank piece of paper and invite stakeholders to say who should be exempted from the new rule. The consultation was more a series of one-to-one discussions between officials and the body in question, often more than once. It was mainly a very constructive exercise. When policy officials were satisfied that

all the major categories of people with justifiable grounds for exemption had been identified, they went to Ministers with detailed proposals.

- (q) The Chair advised the officials that the Committee's decision on whether the draft proposals should be taken on formal reference would be influenced by the scope of the Department's own consultation exercise, the information it had received as a result of it, and the effect of those representations upon the eventual outcome. Could the Department therefore advise as to whether anything recommended by stakeholders was not taken on by the Department in formulating the regulations?**

The vast majority of suggested exemptions had been accepted by the Department and were either explicitly set out in the regulations before the Committee or were already covered through existing safeguards. A couple of recommendations had not been accepted, one example being 18-21 year-olds who had not been in the care of their local authority as such but were described as being 'on the edge of care'. It had been put to the Department that young people in this category were often vulnerable and needed the protection of being exempt. The challenge would be capturing such an exemption accurately within legislation. Ultimately it was decided that it would not be included.

- (r) Which stakeholders did the Department consult?**

- Shelter
- Crisis
- Children's Society
- Salvation Army
- Centrepoint
- St Mungo's
- Prince's Trust
- Disability Rights UK
- Leonard Cheshire
- Barnardo's
- Nacro
- YMCA
- Citizens Advice
- The Joseph Rowntree Foundation
- Homeless Link

- Stand Alone
- Sheffield University
- Depaul UK
- Chartered Institute of Housing
- Scottish Federation of Housing Associations
- Convention of Scottish Local Authorities
- Local Government Association
- Welsh Local Government Association
- London Councils
- Glasgow & West of Scotland Forum of Housing Associations
- Scottish Local Government Partnership
- National Housing Federation
- St Basils
- Albert Kennedy Trust
- Springfield Lodge
- Centre for Social Justice
- Department for Communities and Local Government
- Scottish Government
- Northern Irish Government
- Welsh Government
- HM Treasury
- Ministry of Justice

**(s) In consulting local authority organisations was the Department satisfied that the proposals would not put an additional strain upon them because of their responsibility to house any homeless person?**

In England the duty to house a single homeless person only applied where they fall within a priority group. Anyone in a priority group for these purposes would inevitably be someone with barriers to work and therefore exempt from the new rule as a matter of course. It was acknowledged that this was not the same for the other administrations where there was no concept of 'priority group'. Given that homelessness was usually caused by some kind of vulnerability it was almost certain that these people would be exempt. In

particular, the Department would expect LAs to ascertain whether a young adult could return to the parental home before they accepted a responsibility for them so they would be exempt on that ground. Nonetheless, given the Department's approach in having a very extensive set of exemptions and ensuring, as far as possible, that everyone affected could either take a job or go to their parental home, it was fully expected that the local authority could similarly expect the person to return home.

- (t) NACRO and Barnados were amongst those organisations who suggested that discharged prisoners should be automatically exempt. Why was this not accepted?**

Again it is difficult to imagine a situation where a discharged prisoner would not be exempt, particularly on the grounds that it would be inappropriate to return to the parental home.

- (u) Would the Department be giving specific guidance in respect of young people estranged from their parents on the basis of their gender identity, sexuality or religion? And would those things be grounds for allowing an exemption?**

Yes; that was an area where the Department was very clear that the guidance would be sympathetic to young people in such a situation.

- (v) In implementing the policy was there a potential shortcoming in so far as the Decision Maker would be relying upon a complex set of information given in written form by a work coach who had spoken to a, possibly, vulnerable young person lacking an ability to express themselves well?**

The point made was acknowledged, although that was often the case with decision making already. Most of the exemptions were based upon objective, factual tests. The area of discretion came where these tests were not satisfied, for example, in determining whether it was inappropriate for the claimant to live in the parental home. It should also be stressed that the policy was underpinned by a Youth Obligation commitment so that the individual would be seen by a work coach as soon as the UC claim had been made. The issue of housing would, where necessary, be discussed at that point.

- (w) Had the Department considered having specialist work coaches for these kinds of issues?**

No, but it was perhaps worth considering. The Department was engaged in ongoing discussions with operational colleagues.



3.7 The Chair thanked the officials for attending and responding to the Committee's questions. In relation to the final question he pointed out that the Committee had seen a number of recent regulatory packages where the burdens being placed on Work Coaches in terms of additional guidance seemed to be growing inexorably. It was becoming a matter of concern to the Committee that individual members of staff were being required to have a level of knowledge and life experience that was unrealistic.

3.8 After a period of private discussion, the Chair advised the officials that the Committee had decided not to take the proposals on formal reference. The Committee had been impressed by the Department's thoroughness in consulting stakeholders and drawing up exemptions which have been based on information received from those with direct involvement with those who stood to be affected by the policy. Although the Committee noted that the list of those consulted could have been strengthened by further contact with stakeholders with a specialist interest in physical and mental health issues, the Committee took the view that further consultation was unlikely to yield information that was not already available to, and which had been considered by, the Department. The Committee had expressed concerns about how the policy would operate in practice and whether it would be evaluated but those were matters for further consideration as the changes were introduced. The issue surrounding the test of 'inappropriateness' and appeal rights was a serious one, but the Committee was content that the Department was committed to thinking again about this matter, along with a number of other issues raised in discussion.<sup>5</sup>

#### **4. The Welfare Reform and Work Act 2016 (Consequential and Transitional Savings Provisions) Regulations 2017 (SSAC Paper 32/16)**

4.1 The Chair welcomed Kay Bradshaw and Rebecca Hepplestone (G7 and SEO respectively from the Department's Labour Market team) to the meeting. The amendments proposed in these regulations had been brought forward to accompany the coming into force of section 17 of the Welfare Reform and Work Act 2016 from 3 April 2017 which would change the conditionality requirements for the parent with caring responsibility for a child of below school age. Because the regulations would be made within six months of the coming into force of the primary power, they were not subject to formal reference to the Committee. As such the Committee was presented with the proposals for information and informal scrutiny.

4.2 The Committee had considered draft regulations relating to section 15 of the Welfare Reform and Work Act 2016 (withdrawal of the work-related activity component in Employment and Support Allowance and the equivalent in Universal Credit) in October. The Department had advised the Committee that it intended to join those draft regulations with these in a single statutory instrument.

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<sup>5</sup> See [letter from SSAC to the Minister for Welfare Reform about Universal Credit housing costs for people aged 18 to 21](#) dated 16 November 2016.

4.3 Section 17 of the Welfare Reform and Work Act 2016 imposed greater conditionality upon a lone parent, or the caring parent in couple cases, where they were responsible for a child aged 1-4. It applied to Universal Credit cases. At present the requirements were that the responsible parent of a child aged 1-2 was only required to attend a work-focused interview, whilst the responsible parent of a child aged 3-4 was subject to additional work preparation requirements. From 3 April 2017 the responsible parent of a child aged one would, as now, only have to attend a work-focused interview. For those with a child aged two there would be additional work preparation requirements, whilst those with a child aged 3-4 would be subject to all work-related requirements. Failure to comply with any such requirement without prompt notification of good cause would, as now, lead to a benefit sanction.

4.4 The Department's intention with these draft regulations was to ameliorate the possible effect of increased conditionality for those with responsible for a child aged 3-4. Because the current test required the responsible parent to demonstrate that they had reasonable prospects of obtaining work, Ministers took the view that this should be replaced with a less stringent, and possibly more realistic, test of being available for work in a way that the Secretary of State considered was compatible with their caring responsibilities. The draft proposals therefore gave discretion to the Secretary of State (in practice, the work coach) to agree weekly hours of availability for the responsible parent that were compatible with their caring responsibility.

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

**(a) Did the draft regulations achieve the policy intention? The insertion of sub-paragraph (aa) in regulation 88(2) of the Universal Credit Regulations 2013 did not appear to add anything.**

The Department would check that point and get back to the Committee.<sup>6</sup>

**(b) In the amended version of regulation 88(2)(b) the Department was qualifying the reference to a child by specifying that it must be over compulsory school age. However in Scotland parents can defer their child's start date for school for a year. Would it therefore be preferable to refer also to whether the child is actually attending school as is the case in the Jobseeker's Allowance definition<sup>7</sup>?**

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<sup>6</sup> The Department subsequently advised the Committee that the proposed regulations supported the policy intent to provide an additional safeguard which ensured that caring responsibilities were taken into consideration specifically for those responsible carers whose youngest child was below compulsory school age when agreeing expected hours. Inserting sub-paragraph (aa) was needed to effectively remove the 'reasonable prospects of obtaining work' test.

<sup>7</sup> Regulation 17B of the Jobseeker's Allowance Regulations 1996 (SI 1996 No 207) as amended.

The Department would check that point with lawyers and get back to the Committee.<sup>8</sup>

**(c) Was there any evidence in relation to the anticipated impact of this change? Would there be any evaluation of the policy?**

The Department knew that between 2010 and 2016 there has been a nine per cent increase in the number of lone parents in employment. The lone parent employment rate was at its highest on record at 66 per cent.

The Department would be undertaking ‘evidence sprints’ to ensure that the regulation changes were implemented effectively. Evidence sprints gather information which would inform future recommendations, identify gaps in current learning and evidence, inform the potential need for further testing, and help inform the UC Full Service development.

The regulation changes would be reflected in guidance to work coaches, illustrating the different circumstances some parents manage and how the work coach could take these into consideration when agreeing expected hours of availability for work.

**(d) A fundamental building block of this policy was the Government’s programme of extending the availability of free childcare provision, but childcare was a devolved matter and there were no plans to replicate the provision for childcare in Scotland.**

Decision-makers north or south of the border would still need to take into account the childcare provision specifically available to the individual claimant in determining the appropriate number of hours for which they were required to be available for work. Work coaches would be receiving the same guidance regardless of the part of Great Britain in which they worked. Guidance would provide work coaches with the national free child care offer available in England, Scotland and Wales as well as signposting claimants to local services.

**(e) Paragraph 8 of the Explanatory Memorandum referred to a clarification of the legal requirement upon work coaches to take childcare responsibilities into account when setting appropriate weekly hours of work availability. Should this be seen as a tightening of rights?**

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<sup>8</sup> The Department subsequently advised the Committee that a parent could consider deferring the date their child starts school for up to a year depending on when the child was born. The term ‘compulsory school age’ was used to determine when a local authority must provide primary schooling based on a child’s birth date. The Department would ensure that guidance sets out clearly what should happen in cases where a child’s start date at school was deferred. The question raised had been considered but a change in the wording of the draft legislation was not believed to be necessary.

No, it should be seen as a safeguard to protect the claimant from having to be available for work in a way that conflicted with child-caring commitments.

**(f) The Equality and Impact Analysis did not mention disabled children. Should it?**

Parents of disabled children should not be placed in the work-related requirements group, and so the issue should not arise.

**(g) What was the position on availability requirements when a parent had suffered a bereavement but had not been entitled to a bereavement benefit?**

The rules on exempting bereaved people from availability requirements for a period depended upon the fact that a defined relative had died, and not upon any entitlement to a benefit as a result of that bereavement.

**(h) How did the increased conditionality rule fit with, what for many people would be, added child-caring commitments during school holidays?**

The changed circumstances of school holidays would be factored in to the requirements for individuals. The guidance would cover this point.

4.6 The Chair thanked Kay Bradshaw and Rebecca Hepplestone for attending and responding to the Committee's questions.

## **5. The State Pension Credit (Alternative Finance Arrangements) Regulations 2016 (SSAC Paper 33/16)**

5.1 The Chair welcomed Tim Roscamp (Grade 7, DWP Homeowners Housing Support Strategy Team).

5.2 Introducing the item, Tim Roscamp noted that a system of support for mortgage interest (SMI) was well established in income-related social security benefits. SMI provided help with the costs of paying interest on a mortgage and certain other loans in connection with housing, net of arrears, up to a maximum of £200,000 in income-related benefits for those of working age, or to a maximum of £100,000 in State Pension Credit (SPC) cases. When Universal Credit (UC) was introduced in 2013 provision was made for owner occupiers who had taken out a Sharia mortgage<sup>9</sup> to receive help in a similar way and to an equivalent extent as the help available to those with traditional mortgages. The legislation referred to Sharia mortgages as 'alternative finance arrangements.'

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<sup>9</sup> Under Sharia Islamic law, charging interest is prohibited. Sharia mortgages are therefore based on the principle of shared risk-taking so that the customer and the bank share the risk of any investment on agreed terms, and divide any profits between them.

5.3 To date UC had been the only DWP benefit which had provided support for housing costs to those with alternative finance arrangements. Ministers had decided that such support as was available under UC should now be extended to SPC, although advised that it was unaware of any specific external pressure for this change. The Department's intention was to introduce draft regulations as soon as it could, although it had not devised a precise time-table. Consequently support would now be available to SPC claimants with alternative finance arrangements up to a maximum of £100,000 or £200,000 in cases where SPC was claimed within 12 weeks of the award of UC terminating. The support on offer through this amendment would be made available without necessitating any change in the IT system.

5.4 The following main questions were raised by Committee Members in discussion:

(a) **Was the Department able to say how the system of helping people with Sharia mortgages in UC was working?**

No, to the best of the knowledge of those with policy responsibility for housing costs in the Department, nobody had so far benefitted from these rules. Because the calculation of the amount to be paid was complicated, the expectation was that staff in the relevant local office would have been in touch to seek advice had anyone with such a mortgage made a claim for UC. As it happened nobody had so far been in touch.

(b) **In communicating the change for State Pension Credit would the Department be contacting any national Muslim organisations?**

Yes, the Department would be doing that.

(c) **Had the draft regulations been run past somebody in a Sharia bank in order to check that they would work as intended?**

HMT had the lead in Sharia finance and they were clear that the draft regulations worked as intended. Departmental officials were due to speak to an imam about Sharia loans in general, although loans would not affect the draft regulations specifically.

5.4 The Chair thanked Tim Roscamp for presenting the proposals and for answering the questions put to him. The Chair advised him that the Committee was content that the draft regulations could be made and laid without the need for formal reference. A notification to that effect would be sent by the secretariat.

## **ITEM 6**

*[RESERVED ITEM]*

**Attendees**

Guests and Officials

- Item 2: Trevor Pendergast (G7, Employment and Support Allowance and Work Capability Assessment policy)  
Claire Foale (G6, External Communications Team)  
Brian Ah-Chung (Temp SEO, Universal Credit Sanctions & Hardship Payments Policy & Strategy)  
Amy Morgan (Lead Analyst in the Department's ESA Analysis Division)  
Olwen Mitton (HEO, Universal Credit Sanctions & Hardship Payments Policy & Strategy)
- Item 3: Geoff Scammell (G6, Deputy Head of Housing Strategy)  
David Slovak (SEO, Homeowners Housing Support)  
Andrew Stocks (G7 Housing Analysis)
- Item 4: Kay Bradshaw (G7, Labour Market)  
Rebecca Hepplestone (SEO, Labour Market)
- Item 5: Tim Roscamp (G7, Homeowners Housing Support)

Observers Thomas Patey (HEOD, Housing Support Strategy)  
Ian Chetland (SEO, Private Pensions and Stewardship)  
Edward Quinn (EO, Homeowners Housing Support)  
Hazel Norton-Hale (A/G7, Private Pensions and Stewardship)  
Claire Blue (G6, Universal Credit Labour Market Policy Design)

Secretariat: Denise Whitehead (Committee Secretary)  
Will Farbrother (Researcher)  
Michael Coombs (Assistant Secretary)  
Paul Mackrell (Assistant Secretary)