AGENDA ITEM 1
Minutes

8 November 2017

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) Rachael Badger Bruce Calderwood Carl Emmerson Colin Godbold Chris Goulden Gráinne McKeever Dominic Morris Seyi Obakin Judith Paterson Charlotte Pickles Victoria Todd
Apologies:	Jim McCormick Liz Sayce
Guests and Officials:	See Annex A

1. Private Session

[RESERVED ITEM – NOT FOR PUBLICATION]

2. The Social Fund Funeral Expenses (Amending) Regulations 2017

2.1 The Chair welcomed Fatima Uzzaman and Gwenllian Williams (G7 and SEO respectively in the Department's Children, Families and Disadvantage team).

2.2 The draft regulations would make six specific changes to the scheme as it was currently being administered:

(i) it would enable a claim for a Funeral Expenses Payment to be made electronically;

(ii) the time within which a claim could be made was being extended from three months after the date of the funeral to six months;

(iii) anyone in a local authority supported care home would be exempted from any obligation to contribute to the cost of a funeral;

(iv) the legislation was being clarified to ensure that the allowable funeral costs included the cost of acquiring a burial plot, regardless of whether the plot had been allocated to a single owner;

(v) any costs incurred from having to provide a death certificate for a burial or cremation would be included, should a charge be levied in the future; and

(vi) any contributions towards the funeral from a charity or a relative would no longer fall to be deducted from the payment which would otherwise be made to the claimant.

2.3 Introducing the draft regulations, Fatima explained that the Department had begun to develop a set of policy proposals for payments in respect of funeral expenses in February 2017. Those proposals, constrained by Treasury spending limits, had led to a public consultation exercise in the Summer, culminating in the draft regulations which the Department aimed to introduce in April 2018.

2.4 Questions and comments on the proposals were as follows –

(a) The Equality Analysis referred to the fact that the Department was intending to introduce a shorter and simpler claim form in cases where the funeral was in respect of a child. Could a simpler form be similarly designed for adults?

With adult funerals the issue arose as to whether or not there were other relatives not in receipt of a qualifying benefit who should take responsibility for the funeral costs. Exploring this aspect of entitlement necessarily complicated the claim process in a way which meant a different claim form was required. Nevertheless, the Department had conducted its annual internal review of the claim form and, in doing so, had looked at the balance between retaining questions required by the wording of the legislation and striving for increased simplicity.

(b) Did the consultation produce any suggestions for simplifying the claim form?

The proposal that a shortened claim form for children be introduced was supported by all who responded to the question, but there were no specific suggestions for simplifying the claim form further – either for children or adults.

(c) Whilst acknowledging the point about developing the policy within set spending constraints, had the Department made any assessment about the proposals in relation to funeral poverty more generally?

Although the draft regulations would make a number of changes to the scheme, the overall spend on funeral payments would remain broadly

unchanged, for the reasons previously stated. The Department was anxious to clarify eligibility at the outset so that funerals were arranged with a clear understanding of what financial assistance would be available at the end of the process. Currently 25 per cent of claims for a Funeral Expenses Payment were being disallowed, indicating that a fairly high proportion of people were unaware of the rules. Of those cases, some might incur a debt that they might otherwise have avoided if there had been greater awareness of the circumstances in which the Department provided financial support. Extending the time limit for claiming to six months from the date of the funeral or cremation should be beneficial by allowing more time to make enquiries about the level of support available. That particular change would also help those who needed a longer grieving period before thinking about making a claim for a benefit.

(d) Paragraph 6 of the Equality Analysis stated that in 2016-17 around 27,000 awards were made, totalling around £40m. Of these, 34 per cent went to those of pension age, 10.5 per cent to the unemployed, 8.7 per cent to disabled people and 2.4 per cent to lone parents. That accounts for just over 55 per cent. Where did the remainder go?

The Department undertook to examine those figures further and respond to the Committee outside of the meeting.[1]

(e) Although the spending constraints previously mentioned indicated that the overall impact on funeral poverty would be broadly unchanged, the fact that the Department proposed disregarding charitable contributions towards the cost of the funeral meant that there was likely to be some impact. Could the Department indicate the scale of the help it would be giving in connection with this proposal?

It was not expected to make a significant impact on the total spend (in 2016-17, the average Funeral Expenses Payment was £1,427). Whenever a large-scale disaster occurred and a trust to help families of the bereaved was established, the legislation was inevitably amended to disregard payments donated by members of the public. This particular change would be targeted at a more local level where a campaign, typically aided by social media, was established to provide support to individuals affected. Numbers of people affected would generally be low. The Department was keen to avoid a scenario where work colleagues, for instance, had a 'whip-round' in the office to help with the funeral costs of a colleague, only for the amount to be deducted from any Funeral Expenses Payment that might be payable to a family member.

(f) While acknowledging the need to work within set spending limits, there was still a question about the adequacy of the Funeral Expenses

[1] See Annex B.

Payments to cover the cost of a basic funeral. In practice people often needed to turn to credit providers as the only way to meet their commitments. A budgeting loan was a helpful solution for some people, but the cap on the loan meant that a proportion of claimants still fell short. Had any consideration been given to increasing the limit?

The Department had considered that option but the emphasis in Universal Credit was to replace budgeting loans with budgeting advances which were not designed for this kind of scenario. Officials undertook to ask policy colleagues dealing with Universal Credit whether this position could be reviewed.

(g) In extending the claim period to six months, had the Department taken note of the Committee's 2015 report on Bereavement Benefits which suggested that the Department should consider whether it could offer some support to those bereaved?

The Department was indeed aware of SSAC's report, although many of the points made in it fed more naturally into the April 2017 changes that had been introduced in relation to Bereavement Benefits rather than having a direct impact on Funeral Expenses Payments. Policy officials were working closely with operational colleagues to manage the expectations of claimants with regard to funeral expenses. There was a need to see DWP help as a contribution towards the costs rather than guaranteeing settlement of full costs incurred. A steering group dealing with bereavement was looking at speeding up the process of paying the Funeral Expenses Payment when entitlement had been established.

(h) In draft regulation 5 the new paragraph (ff) of regulation 8(2) of the Social Fund Maternity and Funeral Expenses Payments Regulations 2005 the definition of a local authority was made by reference to the Local Government Act 1972 or the Local Government etc (Scotland) Act 1994. Those references were not used generally elsewhere in benefit legislation (see, for example, regulation 28(2) of the Personal Independence Payment Regulations 2013). Should the definitions be aligned?

The intention was straight-forward – if a person was living permanently in a care home supported, in part or in full, by a local authority, they would not be expected to take responsibility for the funeral costs. Officials would take the specific question back to lawyers and respond outside of the meeting.[2]

[2] See Annex B.

(i) In the consultation exercise some people were reported as having suggested that students not eligible for a qualifying benefit should be exempt from being classified as a 'responsible person'. Why had the Department rejected that suggestion?

The Department considered that opening up the gateway to students not in receipt of a qualifying benefit would raise the expectations of other groups and raise the prospect of a legal challenge. Having a wider range of potential exemptions would also increase any potential for abuse. On this occasion the Department wanted to get beneficial amendments in place early, and did not want to hold them up while the issue of students was considered. It would be possible for them to be included in a future amending package.

(j) Did the Department have any information on the numbers of students who could be affected?

Numbers were low. Although some respondents to the consultation had mentioned students, the issue had not garnered strong support. There had been a recent high-profile case where a student had been denied a Funeral Expenses Payment, but in that instance the issue had been about giving entitlement to the Payment and not about exempting students from responsibility for the costs.

(k) Would claimants still be able to make a claim by traditional means?

Yes, the change to electronic claims would simply give claimants a wider choice about the method of claiming the payment.

2.5 The Chair thanked the officials for attending the meeting and answering the questions that were put to them. He noted that the Committee was content that the regulations could proceed without the need for their formal reference. A letter would be sent from the secretariat confirming that decision. Meanwhile, the Committee would await a response from the Department on the specific points which arose in discussion where a full answer was not forthcoming.

3. The Universal Credit and Miscellaneous Amendments Regulations 2017

[These proposals were originally shared with the Committee in confidence as Parliamentary Business and Legislation Cabinet Committee approval had yet to be achieved. This section of the minutes was therefore not published until 23 January when such approval had been received]

3.1 The Chair welcomed Liz Crowther (G6, Working Age), Lynne Isaacson (A/G7, Working Age) and Dave Higlett (G6, Working Age) to the meeting. The draft regulations were being introduced to make a number of disparate amendments, principally to the Universal Credit Regulations 2013, but also to several other sets of regulations affecting recipients of income-related benefits for those of working age.

3.2 The amendments being introduced were as follows:

(i) a change was being introduced to prevent an unnecessary and disproportionate level of disruption to the Department and claimants alike which sometimes arose when a decision was made revising or superseding an earlier decision determining the date of claim and consequent start of entitlement in an individual case. Because an individual's monthly assessment period was based on the date of claim, a belated change in the date of claim may have significant repercussions in the administration of the award. The amendment was designed to give decision-makers discretion to allow the original monthly assessment cycle to stand but make an additional and discrete assessment based on a period of less than a month;

(ii) an anomaly that had been identified in the existing regulations relating to student couples entitled to Universal Credit (UC) was being addressed. This amendment would ensure that the student member of the couple would not be subject to work-related requirements during term time;

(iii) an amendment was being introduced in relation to claimants subject to work search and work availability requirements. The rules currently provided that those requirements could be temporarily suspended during periods of short-term ill-health. The change was in relation to claimants found not to have limited capability for work following a work-capability assessment and was to the effect that any suspension in the work search/availability requirements would only be applied if the short-term health condition from which they would be suffering, was different from any condition from which they were suffering at the time of the work-capability assessment;

(iv) the list exempting certain categories of claimants aged 18-21 from the housing costs exclusion rule in UC was being extended to include anyone in receipt of the Armed Forces Independence Payment;

(v) an amendment was being made so that claimants were required to supply information or evidence required by the Secretary of State in connection with an advantageous change of circumstances within 14 days, rather than one month;

(vi) the proposals provided a general default rule for the effective date on which any new secondary legislation would take effect;

(vii) an amendment was being made to the Universal Credit (Transitional Provisions) Regulations 2014 so that a recipient of tax credits, given a final notice under section 17 of the Tax Credits Act 2002, may be treated as entitled to a tax credit with effect from the start of the tax year if, in certain circumstances, they had good reason for their late claim;

(viii) an amendment was being introduced to treat any payments of foreign pensions or payments from a payment protection fund as unearned income so

that it would be taken into account for the purposes of UC. Such payments were considered by the Department to be analogous to a State Pension;

(ix) a significant change was being put in place to avoid the current difficulties that often arose when claimants were placed in temporary accommodation. Existing rules meant that if a claimant entered and left temporary accommodation within a single assessment period, no assistance with housing costs was available within UC. The Department's approach was to cease classifying rent payment for temporary accommodation as housing costs. The intention was that help with such rent payments could be allowed through Housing Benefit in respect of the period the temporary accommodation was occupied; and

(x) the Universal Credit (Surpluses and Self-Employed Losses) (Digital Service) Amendment Regulations 2015 were being amended in a way that was designed to future-proof the legislation in the light of planned reforms to the National Insurance contributions payable by the self-employed.

3.3 The Department's intention was that the draft legislation should come into force on 5 February 2017.

3.4 Introducing the legislation, Lynne Isaacson explained that the Department had presented the Committee with an early draft of the regulations which had included consequential amendments affecting the benefit cap as a result of the proposed changes in relation to temporary accommodation. However upon further reflection, officials had concluded that the changes would have no practical effect upon the way in which the benefit cap operated. For that reason it had been decided to omit amending provisions relating to the benefit cap.

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

(a) In amending regulation 33 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment Support Allowance (Decisions and Appeals) Regulations 2013, why did the Department believe it was necessary to be reduce the one month rule to 14 days?

The rule was already 14 days for a change of circumstance that resulted in a decrease in benefit. The aim was to keep a simple and uniform approach in UC; having two different rules for reporting and verifying a change of circumstances within UC could lead to confusion and delays in paying the correct amount of benefit. The change also simplified the IT build.

(b) The supporting documentation stated that there was no evidence that the 14 day rule in the Live Service had had any adverse impact. How did the Department reach that conclusion?

The test and learn approach used in UC suggested that having a 14 day rule in relation to all changes of circumstances would make for consistency, simplicity and an improved delivery of service. The Department's experience was that most people on the Universal Credit Live Service, where this policy was being tested, provided evidence to support a reported change of circumstances within 14 days. Also some claimants were unaware whether the change of circumstances in question would lead to increased or decreased benefit. Having a 14 day rule for disadvantageous changes and a one-month rule for advantageous changes was confusing. It was important that claimants knew that there was a single 14 day rule which applied whatever the nature of the change in circumstances. The change would mean that the information given by the Department to claimants in relation to changes in circumstances could be clearer and simpler.

(c) Did the Department consider having a simplified and consistent rule around one month?

Due to the way that assessment periods worked in UC, even if the evidence was provided after the 14 day period but within the same assessment period, there would be no adverse effect on the customer's payment. In such cases many claimants would be receiving the correct benefit on time. In contrast, the one month rule almost inevitably meant that any claimant producing the required evidence near to the deadline would be too late to receive the increased benefit on time. Instead an adjusting payment of arrears would be required. It was therefore in the claimant's interest to provide the required information promptly. This amendment did not affect the discretion given to decision-makers to extend the time limit for producing evidence and information. This might apply, for example in the case of a tenancy agreement, where the required documentation may take longer to obtain. It was also the case that the Department was now able to do some of its own checking on-line. An example of this would be checking to see that the claimant was in receipt of Child Benefit. This meant that the amount of evidence a claimant was required to produce had decreased.

(d) Could claimants potentially lose out because of that rule?

Yes – if a claimant failed to provide the required information or evidence within 14 days, the decision-maker saw no grounds to extend the time limit and the date on which the evidence was produced came in the following assessment period, the increased amount of benefit would only be payable from the date the reported change was verified.

(e) Was the statement that "we already allow 14 days in UC Live Service and it has had no adverse impact" reached on the basis of statistical information received?

That statement should perhaps have been qualified. It was more of a subjective and anecdotal view based on the fact that it had not been recorded as an issue of concern, rather than being statistically-based. There was no

management information in relation to these decisions and, in practice, the circumstances on the last day of an assessment period determined the amount of UC to be paid. Any change of circumstances notified and verified before the last day would therefore be accommodated in the payment due at that time. However it was not possible to know whether the lack of any impact was due to the timing of the assessment period or whether the claimant would have benefitted from discretion had it been required.

(f) Was there a problem with childcare costs? Given that people were often invoiced monthly how would they be expected to provide verification within the 14 day period, or would there be specific guidance in relation to applying discretion in such cases?

It was true that child-care costs often vary each month depending upon hours worked. However if child-care costs were to go down, that was still a change that had to be substantiated within 14 days anyway. Clearly if it was unrealistic for the documentation to be provided within 14 days, that would be a prime case where discretion should be applied in the claimant's favour.

(g) In regulation 4(7) – the provision which amends regulation 89 of the Universal Credit Regulations – the aim was to ensure that students who were members of a couple entitled to UC were not inadvertently subjected to work-related requirements. Was there scope for this to be extended to anyone in vocational training?

The change was a technical one and referred to a narrow group of people who were eligible for UC, had their student income taken into account but who were subject to the work-related requirements regime. It was a point identified by the Committee in relation to the Social Security (Treatment of Postgraduate Master's Degree Loans and Special Support Loans) (Amendment) Regulations 2016. Anyone undergoing vocational training would be placed in an appropriate conditionality regime following a one-to-one discussion with their work coach.

(h) It had been observed during a recent Committee visit that DWP operational staff who had been asked about student provision within UC Full Service were uncertain as to the rules relating to students and conditionality. It appeared to be their understanding that the guidance was "a work in progress." Was this so, and could the Department ensure that due consideration would be given to expanding and improving existing guidance?

The Department would review the guidance when the new rules came into force.

(i) Draft regulation 8 proposed a change to the wording of regulation 3 of the Universal Credit (Surpluses and Self-Employed Loses) (Digital Service) Amendment Regulations 2015 so that the policy intention of deducting national insurance contributions from the earnings of the

self-employed was preserved after the Government's intended reform of the contributory system for the self-employed was in place. However an unintended consequence of the proposed wording might be that the self-employed could opt to pay class 3 contributions with the result that their UC award would increase by the same amount. Had the Department considered this?

The Department agreed to look into this and provide an answer to the Committee outside of the meeting.

(j) On the same amendment, the reference to "trade, profession or vocation" in connection with payments of national insurance contributions and income tax had been re-ordered. Whereas previously it was possible to consider national insurance and income tax more generally and make appropriate deductions, the new provision seemed to require something more specific. It was not possible to draw a clear distinction between a trade, a profession or a vocation for tax purposes and yet the new regulation appeared to require it. Could the Department check that what was now required would work in practice?

The Department agreed to look into this and respond to the Committee outside of the meeting.

(k) On the proposed amendment to regulation 99 of the Universal Credit Regulations 2013 and regulation 16 of the Jobseeker's Allowance Regulations 2013 in relation to short term periods of ill health, would the work-related requirements be switched off if the claimant suffered a flare-up of a previous condition? Could the Department clarify the policy intention with this provision and particularly so in relation to mental health conditions?

If it was the same medical condition as the claimant had had at the work-capability assessment then there would be no automatic switching off of the work-related requirements. The policy was that if it was a re-occurrence or a worsening of a previous condition they should see their work coach in the normal way so that appropriate advice could be given. It could mean that the person needed to be allocated to a different conditionality regime.

(l) What would happen if there was a significant change or deterioration in the claimant's condition?

The work coach still had discretion to switch off the conditionality requirement, but this provision simply addressed the automaticity of it.

(m) So would the Department require a different medical diagnosis in these cases?

The Department undertook to respond to the Committee in writing outside of the meeting.

(n) There appeared to be a difference in approach between regulation 41 of the Universal Credit Regulations which provided that a failure without good reason to fill in or return a questionnaire would lead to a claimant being treated as not having limited capability for work, and parallel provisions in other sets of regulations which related a decision on treating a person as not having limited capability for work more generally to failing to provide the information requested. That meant that a person could be treated as not having limited capability for work on slightly different grounds. That would affect decisions about short term periods of sickness and could be critical because a failure to return a questionnaire or attend an interview could be attributable to an underlying mental condition. Was there a policy reason for a different approach? Could the Department look at the wording of regulation 41 and consider whether it might be too tightly drawn?

The Department agreed to look into the matter further and respond to the Committee outside of the meeting.

(o) With regard to regulation 4(3) and (4) which amend regulation 21 of the Universal Credit Regulations 2013, could the Department provide some examples as to how this would work?

It would only apply in cases where the award was in progress and was, at least, into its second assessment period. It would also only apply if, for some reason, the decision maker decided to back-date the date of claim or if it was determined that the date of claim was earlier ,or should be treated as made on a date earlier, than that assigned in accordance with the original decision. If that happened then the claimant should already have received at least one payment of benefit and a cycle of assessment periods have been established. Rather than reconfigure the entire cycle of payments, it made good sense to enable the back-dated period to be treated as a discrete entity for benefit purposes, whilst all other aspects of the award be allowed to continue undisturbed. This would benefit claimants and the Department alike. The rationale was to make the necessary changes with minimal disruption for the claimant.

(p) Were there any circumstances where the claimant would still be in their first assessment period and the discretion would be applied to retain the original start date?

In those circumstances the Department would simply adjust the start date of each assessment period as now, and proceed on that basis. Claimants should not lose out on benefit whichever way the decision maker deals with this.

(q) What would happen if there were earnings in the first assessment period?

The Department would respond to the Committee in writing outside of the meeting.

(r) Could the Department explain how the new rules affecting temporary accommodation would work? And what was the impact upon the benefit cap?

It had become important to devise a way to ensure that local authorities received financial recognition for the costs they incurred when UC claimants were temporarily housed in short-term accommodation, but left before the end of the assessment period cycle had been reached. Because UC operated on the basis of circumstances appertaining on the last day of an individual's assessment period, it was possible for a claimant to incur actual housing costs but not be reimbursed for them in their UC. At the outset of devising a new approach for those in temporary accommodation the Department wanted to ensure that nobody would, on the basis of a different system of reimbursing temporary tenants and landlords for rental commitments, be inadvertently caught by the benefit cap. In looking at this in more detail however, it became clear nobody would be affected in this way. In fact there may be some people who may come out of the cap because of it.

(s) Claimants currently had recourse to Discretionary Housing Payments (DHPs). How might this change affect that scheme?

There would still be a need for DHPs to be available for UC claimants in temporary rented accommodation. The need for help with a deposit and paying rent in advance would still exist. That said, it would mean a lessening of the pressure upon DHPs. Annual numbers of those in temporary accommodation was around 90,000 a year. Of them only some were currently on UC and of them, only some would need a deposit or rent in advance. For example, the Department had worked with Croydon Council and were assured that they were pleased with the proposal. Although UC had yet to be fully rolled out, Croydon Council was confident that, overall, the pressure on its DHP budget would be lighter.

(t) On the point about the final day of an individual's assessment period being critical for determining housing costs, was there a case for the Department looking more critically at the policy? Earnings over the course of the entire month were taken into account, for instance. The Department did not look at earnings on the last day of the assessment period and base entitlement on the earnings of that day. The Department's general approach to changes of circumstances must result in some very arbitrary results – some claimants losing out and some claimants gaining. The amounts involved could be quite substantial.

The Department acknowledged that point, but advised that the change of circumstances rule was fundamental to the operation of UC and went much deeper than the limits of this particular set of regulatory proposals.

(u) Since DHPs had been devolved to the Scottish Government, was the Department working with the Scottish Government on that issue?

The Department was working with the Scottish Government on the issue.

(v) Could the Department clarify whether a change of address would trigger a requirement to claim UC?

If a claimant on HB changed address within the same local authority, that would be a change of circumstances for HB purposes and would not require a claim to UC. If the move was to an address within a different local authority, that would previously have required a new claim to HB. If the new address came within in a Full Service area (or if the claimant met the gateway conditions in a Live Service area), then they would be required to claim UC.

(w) Who would lose out under the current UC rules when a person ceased to have any rental obligation shortly before the end of the assessment period?

The claimant would lose out in legal terms because they had the rental liability. If, as a consequence, no rent for that month was passed to the landlord, it would be the landlord who lost out in practical terms.

3.4 The Chair thanked the officials for attending the meeting and answering the questions that were put to them. He advised them that the Committee was content that the regulations could proceed without the need for their formal reference. A formal letter would be sent confirming that decision. Meanwhile, the Committee would await an early response from the Department to the specific questions on which an answer had not been forthcoming during the course of discussion.[3]

4. The Social Security (Pensionable Age Consequential Amendments and Miscellaneous Amendments) Regulations 2017

4.1 The following officials were welcomed to the meeting by the Chair: Hayley Johnson-Hurst (G7, Working Age), Ursula Brennan (HEO, Working Age), Caroline Pearce (G7, Ageing Society) and David Tottey (HEO, Ageing Society).

4.2 There was a need to update the legislation to reflect the fact that the process of equalising state pension age (SPA) will have been completed by December 2018. The legislation was therefore being amended so that previous references to people of a specific age would be replaced with a more general reference to “state pension age”. In that way the legislation would be future-proofed against further extensions to State Pension age. The Department had also taken the opportunity of this

[3] A response from the Department on all outstanding issues can be found at annex C to these minutes.

legislative vehicle to make other outstanding miscellaneous amendments considered necessary by the Department.

4.3 The other amendments being proposed by the Department were as follows:

(i) a provision that a claimant whose entitlement to income support (IS) was wholly dependent on their continuing to receive disability living allowance (DLA) inclusive of the highest rate care component (of whom there were thought to be around 1,000), would continue to be entitled to IS (inclusive of the disability premium) upon being migrated from DLA to personal independence payment (PIP), provided their award of PIP included the enhanced rate of the daily living component;

(ii) an adjustment to the rules affecting polygamously married people in receipt of State Pension Credit where at least one member was over state pension age and another member under it. The reason for this change was to ensure consistency of treatment, although the Department was doubtful as to whether there was anyone in this category to be affected either way;

(iii) a change in the Housing Benefit rules on earnings disregards for State Pension Credit claimants for the purposes of childcare payments. This was to ensure consistency of treatment; and

(iv) an amendment to existing rule so that Housing Benefit claimants leaving Great Britain were required to notify the Department in line with the fact that the rule on temporary absences had been shortened from 13 weeks to four weeks.

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

(a) People were already being migrated from DLA to PIP. Was the Department confident that people were not currently losing out because the change to be introduced by these draft regulations was not yet in place?

As far as the Department was aware, no-one had lost their entitlement to IS on account of migrating from DLA to PIP. But the Department was wanting to safeguard the position of the claimants potentially at risk as quickly as it could. So this proposed change was due to come into force on 21st December 2017 – much earlier than the changes in references to reflect the equalisation and extension of state pension age.[4]

(b) But could it be that someone may have slipped under the radar? If a person's award of DLA had stopped, with the consequential loss of entitlement to Income Support (assuming the disability premium was the element that ensured overall entitlement was secured), they may have successfully claimed the PIP including the enhanced rate for daily living, but not been eligible for Income Support.

[4] DWP subsequently notified the Committee that the answer initially provided may have misdirected the Committee and provided clarification of the position. The Department's full response can be found at annex D to these minutes.

The Department could feed that point back to operational colleagues dealing with the Personal Independence Payment.[5]

(c) By substituting "age 65" for "state pension age" in the regulations, there was a danger that the Department might unintentionally prevent itself from being able to apply the legislation retrospectively.

That point had been recognised by lawyers. The Department therefore intended to adjust the proposed wording so that it still retained a reference to age 65 but added the words "or, if higher at the time, pensionable age").

(d) Could the Department provide more detail on the requirement to notify a temporary absence from Great Britain which would exceed four weeks?

That followed the general rule which tightened the rules on entitlement to State Pension Credit during temporary absences from Great Britain. Temporary absences were previously defined as an absence of 13 weeks, but that was reduced to four weeks in 2016. The point was that the circumstances of some claimants would exempt them from the four week rule, but in order to allow the Department to make a decision regarding entitlement, the reason for the absence as well as the absence itself needed to be reported if it was going to, or may possibly, exceed the four week permitted absence period.

(e) The Housing Benefit and State Pension Credit (Temporary Absence Abroad) (Amendment) Regulations 2016 came into effect in July 2016. Had there been a problem over the intervening 15 months?

No, but it was important that the legislation was updated to mirror the change to four weeks.

(f) Would the Department be notifying local authorities of this change?

Yes, changes which affect Housing Benefit require prior consultation with bodies representing local authorities. Those changes would then create a need for guidance to local authorities to be updated. That guidance was available on GOV.UK.

4.5 The Chair thanked the officials for attending the meeting and for their readiness to address questions raised. He advised them that the Committee was content that the regulations proceed without a need for their formal reference. A formal letter would be sent confirming that decision.

5. The State Pension Credit (Additional Amount for Child or Qualifying Young Person) (Amendment) Regulations 2018

[5] Departmental policy officials subsequently advised that they had written to operational colleagues requesting that they continue to pay anyone in this situation whilst approval for making extra statutory payments from HMT was sought.

[These draft proposals are subject to Parliamentary Business and Legislation Cabinet Committee clearance. The proposals have been shared with the Committee in confidence in anticipation of such clearance, and we will publish this section of the minutes when that has been received.]

6. Private Session – Current issues/AOB

Postal Regulations

6.1 The Committee had received two linked sets of draft regulations from HMRC – the Childcare Payments (Amendment No 2) Regulations 2017 and the Childcare Payments (Eligibility) (Amendment) Regulations 2017. The postal sub-group had agreed that they were suitable for postal scrutiny. The Committee was content that both sets of draft regulations could proceed and that no questions for HMRC arose in connection with them. The Chair asked the secretariat to notify HMRC colleagues of that decision.

Date of next meeting

6.2 The next meeting was scheduled to take place on 13 December.

AGENDA ITEM 1
Minutes

Annex A

Attendees

Guests and Officials

Item 2:	Gwenllian Williams (SEO Children, Families and Disadvantage)	
	Fatima Uzzaman (G7, Children, Families and Disadvantage)	
Item 3:	Liz Crowther (G6, Working Age)	
	Dave Higlett (G6, Working Age)	
	Lynne Isaacson(T/G7, Working Age)	
Item 4:	Ursula Brennan (HEO, Working Age)	
	Hayley Johnson-Hurst (G7, Working Age)	
	Caroline Pearce (G7, Ageing Society)	
	David Tottey (HEO, Ageing Society).	
Item 5:	Jane Autherson (G7, Project Lead)	
	Timothy Hefferon (HSTO Analyst)	
	Liam Parker (SEO, Ageing Society)	
	Keith Roberts (G6, Ageing Society)	
Secretariat:	Denise Whitehead	(Committee Secretary)
	John Halliday	(Assistant Secretary)
	Paul Mackrell	(Assistant Secretary)

Annex B

The Social Fund Funeral Expenses (Amending) Regulations 2017
DWP Response to Follow-up Questions

The Department subsequently provided the following answers –

Question at minute reference 2.4(d) –
Paragraph 6 of the Equality Analysis stated that in 2016-17 around 27,000 awards were made, totalling around £40m. Of these, 34 per cent went to those of pension age, 10.5 per cent to the unemployed, 8.7 per cent to disabled people and 2.4 per cent to lone parents. That accounts for just over 55 per cent. Where did the remainder go?

Answer –
The relevant figures provided a breakdown of recipients by claimant type and were taken from the Social Fund Annual report for 2016/17 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630382/social-fund-annual-report-2016-2017.pdf. The remaining 44.2% not referenced in the Equality Analysis were classified as 'other' for the purposes of the above publication (the discrepancy of 0.2% was due to rounding). The graph included in the Equality Analysis provided a breakdown of recipients by qualifying benefit rather than by claimant type and so the two were not directly comparable.

Question at minute reference 2.4 (h) –
In draft regulation 5 the new paragraph (ff) of regulation 8(2) of the Social Fund Maternity and Funeral Expenses Payments Regulations 2005 the definition of a local authority was made by reference to the Local Government Act 1972 or the Local Government etc (Scotland) Act 1994. Those references were not used generally elsewhere in benefit legislation (see, for example, regulation 28(2) of the Personal Independence Payment Regulations 2013). Should the definitions be aligned?

Further Answer –
The definition of a local authority in provisions relating to PIP, as for example in regulation 28(2) of the Personal Independence Payment Regulations 2013, sought to identify particular services supported out of local or public funds which could not also be covered by payments of PIP. As such, they required a precise definition. On the other hand, the provision the Department was seeking to insert could be less precise as the sole intention was to identify circumstances in which a person was supported, in full or in part, by a local authority when resident in a care home in order to exempt them from having responsibility for funeral costs. This required a wider definition of what was meant by "local authority" and could, for example, include situations where the type of support a person was receiving from the authority for the costs of being in the care home was derived from something other than the list of statutory provisions contained in section 85(2) of the Welfare Reform Act 2012. The Department also advised that it was fairly common in legislation of all descriptions to use as a definition of the expression "local authority" the meaning given to that term by the Local Government Act 1972 Act for England and Wales and the Local Government

etc (Scotland) Act 1994 Act. That definition had the advantage that it captured "top tier" principal authorities in two-tier areas and unitary authorities in such areas - and those are the types of authority which had social service functions and was consequently the most appropriate for present purposes.

Annex C

The Universal Credit and Miscellaneous Amendments Regulations 2017

DWP Response to Follow-up Questions

Question at minute reference 3.5(i)
Draft regulation 8 proposed a change to the wording of regulation 3 of the Universal Credit (Surpluses and Self-Employed Loses) (Digital Service) Amendment Regulations 2015 so that the policy intention of deducting national insurance contributions from the earnings of the self-employed was preserved after the Government's intended reform of the contributory system for the self-employed was in place. However an unintended consequence of the proposed wording might be that the self-employed could opt to pay class 3 contributions with the result that their UC award would increase by the same amount. Had the Department considered this?

Answer
Yes. Regulation 57(2) of the UC Regulations was amended by SI 2015/478 to cross-refer to Class 2 contributions under section 11(2), (6) and (8) of the Contributions and Benefits Act. Subsection (6) covers voluntary Class 2 contributions and we want to maintain the substance of that provision for voluntary Class 3. However, we also want to take this opportunity to future proof the treatment of National Insurance contributions, so far as possible, by dropping the current reference to particular classes of contribution and instead allowing deduction of all contributions paid in respect of the self-employed trade, profession or vocation – whether mandatory or voluntary.

Question at minute reference 3.5(j)
On the same amendment, the reference to "trade, profession or vocation" in connection with payments of national insurance contributions and income tax had been re-ordered. Whereas previously it was possible to consider national insurance and income tax more generally and make appropriate deductions, the new provision seemed to require something more specific. It was not possible to draw a clear distinction between a trade, a profession or a vocation for tax purposes and yet the new regulation appeared to require it. Could the Department check that what was now required would work in practice?

Answer
This seems to be working well in practice. The intention of the amendment is to maintain the current basis for the assessment of self-employed earnings for UC, which is closely aligned with HMRC's simplified cash basis accounting, with claimants self-reporting these earnings to us on a cash-in and cash-out basis. Any additional earnings as an employee are reported separately to us, generally via the employer, with any relevant tax and National Insurance contributions deducted from

those earnings. This allows us to asses total combined earnings, after all tax and National Insurance paid, in each monthly UC assessment period.

Question at minute reference 3.5(l)
What would happen if there was a significant change or deterioration in the claimant's condition?

Expanded answer
We want to simplify our processes for claimants, and provide consistent messages and support for claimants to move into work at the earliest opportunity once they have been found 'fit for work' following a Work Capability Assessment. We also want to align Universal Credit with Jobseeker's Allowance, where claimants would be expected to look for and be available for work under similar circumstances. Automatically switching off work search and work availability requirements for a short period of time for the same (or substantially the same) condition, for which a claimant has been found fit for work, sends mixed messages to claimants and does not help them move forward in the search for suitable employment.

Question at minute reference 3.5(m)
So would the Department require a different medical diagnosis in these cases?

Answer
The Work Capability Assessment takes into consideration fluctuating conditions. It is not a snap-shot, so if a person cannot carry out a function repeatedly and reliably they will be treated as being unable to carry out that function at all. The assessment gives claimants with fluctuating conditions the opportunity to explain how their condition varies over time. Indeed the ESA50 health questionnaire, completed by claimants before their WCA, directly asks how the claimant's condition varies in how it impacts on their ability to complete activities over time, and if so to give details of how this affects them as an individual. Healthcare Professionals (HCPs) who undertake the WCA are trained and given guidance on how to consider fluctuating conditions. As part of a WCA the HCP will consider a claimant's functional capability against activities that an individual may undertake such as awareness of hazards, learning new tasks and mobilising unaided by another person (known as "descriptors"). The guidance to HCPs advises that where a claimant has a fluctuating health condition, they should be considered against those descriptors which apply to the claimant on most days. Both physical and mental health descriptors are considered.

Question at minute reference 3.5(n)
There appeared to be a difference in approach between regulation 41 of the Universal Credit Regulations which provided that a failure without good reason to fill in or return a questionnaire would lead to a claimant being treated as not having limited capability for work, and parallel provisions in other sets of regulations which related a decision on treating a person as not having limited capability for work more generally to failing to provide the information requested. That meant that a person could be treated as not having limited capability for work on slightly different grounds. That would affect decisions about short term periods of sickness and could be critical because a failure to return a questionnaire or attend an interview could be

attributable to an underlying mental condition. Was there a policy reason for a different approach? Could the Department look at the wording of regulation 41 and consider whether it might be too tightly drawn?

Answer

The policy on what happens where an ESA50 / UC50 health questionnaire is not returned to CHDA as part of the WCA process, depends on whether the claimant sufferers from a physical or mental health condition.

At the new claim stage, and during the gathering of information from the claimant. DWP will set a marker for mental health where the claimant has indicated that their condition is related to mental health. Where a claimant has this mental health marker set and doesn't return their ESA50 / UC50, then the WCA process will continue, and the impact of their condition will be based on the face to face assessment. At the assessment, the claimant is free to bring a family member or friend with them to provide support through the assessment process. If a claimant does not attend an assessment, then HCPs will refer the case to a Decision Maker who will consider whether the claimant had good cause for not attending the assessment.

Where a claimant does not have the mental health marker set, (and so is likely to be claiming on the basis of physical impacts of their condition) and the ESA50 / UC50 questionnaire is not returned, then decision makers will consider whether to continue the WCA process and will consider whether the claimant had good cause for not returning the questionnaire, and may choose to issue a duplicate ESA50 / UC50 to the claimant. Where no good cause is shown by the claimant, the decision maker may terminate the ESA award. In UC, the claim is not terminated if the claimant continues to meet the eligibility criteria. The claimant will remain in their allocated labour market regime, with appropriate work-related requirements set.

If, following a WCA, there is a relevant change in the claimant's circumstances, supported by appropriate medical evidence, a claimant will be referred for a new WCA.

The differences in the drafting change to the UC regulations and the JSA regulations are intentional and are due to inherent differences in how the two benefit regimes work. However, they have no policy implications.

The first difference is that UC provision (in new paragraph (4ZA) of Regulation 99 of the Universal Credit Regulations 2013) allows for work search and work availability requirements to be lifted on the basis of a fit note (under paragraph (4) of that Regulation) in the period between the Secretary of State deciding to reassess a claimant in a Work Capability Assessment and when determination is made following that assessment. Once such a determination is made and no LCW is found, paragraph (4ZA) disapplies paragraph (4) so that the work requirements can no longer be lifted on the basis of a fit note relating to the same or substantially the same health condition in respect of which the WCA was made.

However, the analogous JSA provision (in new paragraph (5A) of Regulation 16 of the Jobseekers Allowance Regulations 2013) provides that work requirements cannot be lifted in those circumstances (under paragraph (5) of that Regulation) at

any time – there is no need for a provision for paragraph (5) to continue to apply pending a WCA determination, as there is no provision for reassessment for JSA claimants.
The second is that Part 5 of the UC Regulations allows for claimants to be "treated" as having LCW or LCWRA without the need for a WCA in certain circumstances (Regulation 39(1)(b), (6) and Schedule 8 for LCW; Regulation 40(1)(b), (5) and Schedule 9 for LCWRA), such as where the claimant is receiving treatment in hospital, prevented from work by law or terminally ill. If one of these circumstances had previously applied to a claimant but it is subsequently determined that it no longer applies, i.e. the claimant is no longer being treated as LCW/LCWRA, then new paragraphs (4ZA) and (4ZB)(a)(ii) would mean that a claimant could not have work requirements lifted on the basis of a fit note relating to the same (or substantially the same) circumstance.

In JSA, this circumstance could not arise. If a claimant had been treated as having LCW/LCWRA, they would have been prevented from claiming JSA on this basis. If they had been treated as having LCW/LCWRA in a prior ESA claim due to circumstances which no longer apply, this would not be relevant to the current JSA claim.

Question at minute reference 3.5(q)
What would happen if there were earnings in the first assessment period?

Answer
Where there is an established assessment period and backdating, change in application of waiting days, reconsideration or appeals means the effective date of claim needs to change, and therefore the associated assessment period, we would have the power to keep the current assessment period cycle and create a mini, longer or shorter assessment period to assess, and pay (if applicable) for this period.

In relation to the mini assessment period and earnings, earnings are gathered via RTE and the claimant(s) have up to 6 months of earnings if interest was set in previous claim(s). If not – they would need to self-report.

Earnings – SRE, SEE information is gathered by the claimant with a prompt for the claimant to declare gainful self-employment, or any other earnings.

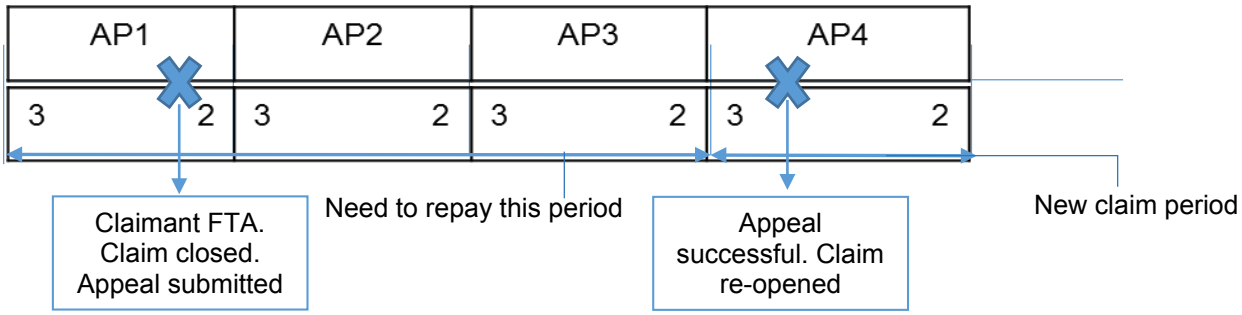
We apply the earnings policy and would take into account the earnings that are declared for the relevant assessment period, whether that is a weekly, fortnightly, four weekly or monthly amount received from RTE and apply that amount to the mini assessment period.

I have set out below a straight forward scenario to illustrate how the mini assessment period works. Earnings that were received in the mini assessment period would be taken into account in the normal way:

Scenario 1 – straight forward – recon/appeal – no new claim

Scenario:

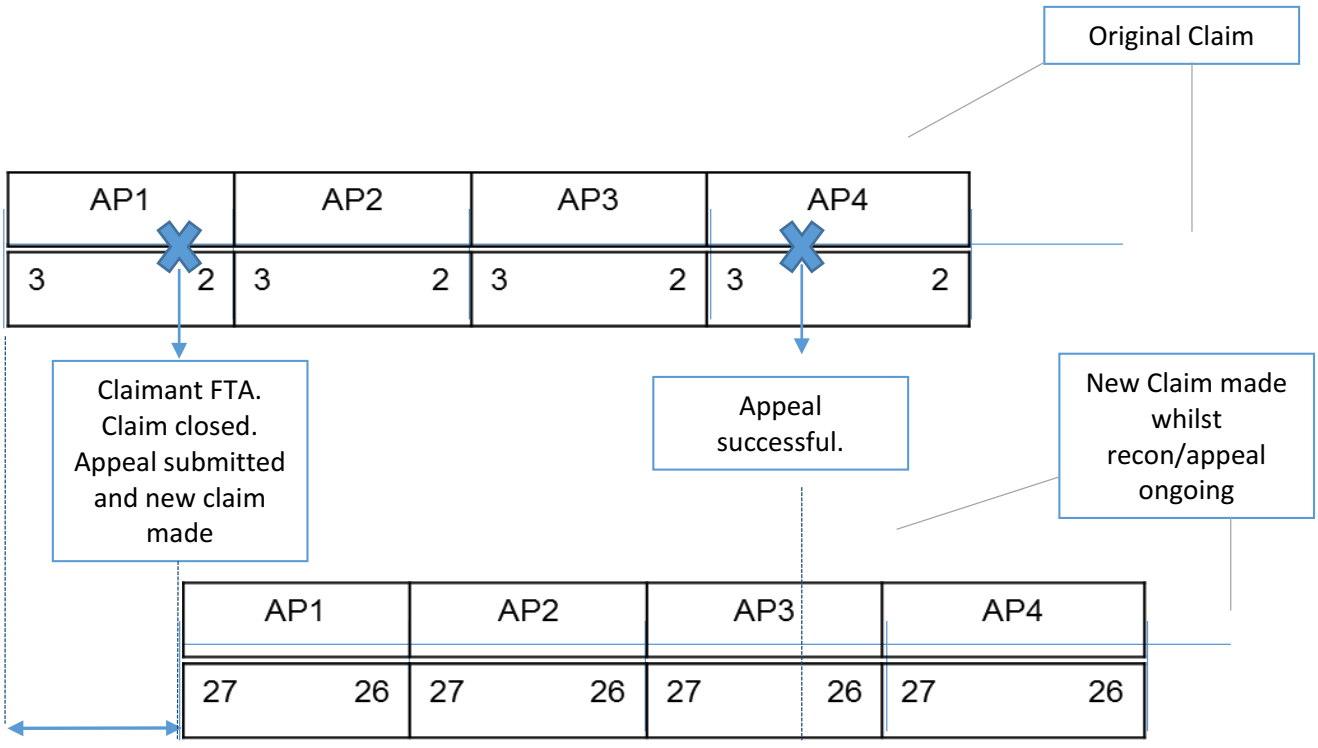
- Claim made on 3 June 2016. Claimant failed their HRT
- They were informed they were entitled on the 28 June
- They appealed on the same day as they were informed they weren't entitled
- They made a new claim on the 10 June
- Money due covers 1 Assessment Period (AP) and 7 days



This is to make a new claim from the new claim period, extend the AP back to cover the previous AP's in line with the regulations, but assume the data that applied at the new claim period was true for the previous 3 AP's back to the new claim date.

Scenario 2:

- Claim made on 3 June 2016. Claimant failed their HRT
- They were informed they were entitled on the 27 June
- They appealed on the same day and made a new claim AP 27 to 26
- Wins appeal on original claim into AP 4 of original claim and AP 3 of new claim



Need to repay this period – Mini AP period

This is to keep the new claim made on the 27 June and create a mini AP to cover the period of the 3 June to the 26 June and pay as arrears payment based on the data checked on the system on the 27 June claim.

Both scenarios above are inherently complex and there is an excess of 60 other variations, however the key variations of this process are:

- scenarios for non-entitlement;
- larger gap between non entitlement date and successful appeal;
- gap less than one month;
- couple and single claimant cases;
- change of circumstances between periods;
- non-entitlement in first AP and occurs in a subsequent AS;
- backdating prior to first day of first AP

Annex D

The Social Security (Pensionable Age Consequential Amendments and Miscellaneous Amendments) Regulations 2017

DWP Follow-up Advice

Question at minute reference 4.4(a) –
People were already being migrated from DLA to PIP. Was the Department confident that people were not currently losing out because the change to be introduced by these draft regulations was not yet in place?

Answer initially provided –
As far as the Department was aware, no-one had lost their entitlement to IS on account of migrating from DLA to PIP. But the Department was wanting to safeguard the position of the claimants potentially at risk as quickly as it could. So this proposed change was due to come into force on 21st December 2017 – much earlier than the changes in references to reflect the equalisation and extension of state pension age.

Further advice received from DWP –
On reflection, we regret that the answer we initially gave may have misdirected the Committee. The position is that, prior to 30 December 2009, the list of prescribed categories of person to whom income support (IS) is available (held at Schedule 1B to the Income Support (General) Regulations 1987) (S.I. 1987/1967), included, at paragraph 7(b), persons who were treated as incapable of work by virtue of regulations made under section 171D of the Social Security Contributions and Benefits Act 1992. Under regulation 10(2)(a)(i) of the Social Security (Incapacity for Work) (General) Regulations 1995 (S.I. 1995/311), this included people who were receiving a payment of DLA inclusive of the highest rate care component.

Paragraph 7(b) of Schedule 1B was revoked, *inter alia*, by regulation 2 of the Income Support (Prescribed Categories of Person) Regulations 2009 (S.I. 2009/3152) ("the 2009 Regulations") for new cases. So from that date, no-one has been able to claim IS solely and simply because they are receiving DLA inclusive of the highest rate care component – and that remains the position. However, there were savings provisions for those claimants who were entitled to IS by virtue of that sub-paragraph on 30 December 2009 – in effect, these claimants have their awards of IS transitionally protected for as long, thereafter, as they continue to satisfy the conditions of that category of prescribed person. But they are not entitled to IS indefinitely – as soon as they stop receiving DLA, or receive DLA which no longer includes the highest care component, they fall outside of the savings provisions, and (unless, exceptionally, they continue to satisfy a separate condition of entitlement to IS), their entitlement to IS will automatically terminate.

What - and all - the proposed amendment is designed to do, is to carry on protecting the IS claimants whose entitlement to IS was protected by virtue of the 2009

Regulations, and who have remained protected, without a break, ever since, in the circumstances where, by virtue of the DLA to PIP migration exercise, they lose their entitlement to DLA (as they are certain to do). Provided, following the termination of their DLA award, they immediately start receiving PIP inclusive of the disability living component at the enhanced rate, their entitlement to IS will survive.

So the proposed change is not about people who may have lost their entitlement to the higher rate care component of DLA (and with it, their entitlement to IS) for any reason other than as a consequence of the DLA to PIP migration exercise. We are not now allowing such people to re-claim IS on the back of any subsequent PIP award. Rather, we are introducing an IS condition of entitlement relating to receipt of PIP which is designed solely and exclusively to carry on protecting the same IS claimants as we have been protecting since 2009. This being so, it is not our intention to go out to PIP colleagues in the way suggested, to establish whether any former DLA recipient has, subsequently, successfully claimed PIP inclusive of the enhanced rate for daily living but not been eligible for IS. This is because entitlement to PIP has never been a basis, in itself, for entitlement to IS; and that remains the position.

We apologise for any confusion our original reply may have caused.