

26 July 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)
Bruce Calderwood
Carl Emmerson
Colin Godbold
Chris Goulden
Jim McCormick
Gráinne McKeever
Dominic Morris
Seyi Obakin
Judith Paterson
Liz Sayce
Victoria Todd

Apologies: Rachael Badger
Charlotte Pickles

Guests and Officials: See Annex A

1. Private Session

[RESERVED ITEM]

2. Northern Ireland: update on developments

2.1 The Chair welcomed the following three officials from the Department for Communities in Northern Ireland: Anne McCleary (Director), Bronagh Ramsden (Social Security Policy and Legislation, Working Age Strand Leader) and Caroline Hobson (Social Security Policy and Legislation, Universal Credit Strand Leader). The purpose of the session was to update the Committee on developments in Northern Ireland.

2.2 Anne McCleary explained that the Northern Ireland equivalent of the Welfare Reform Act 2012 had been introduced as an Order in Council in December 2016. That Order contained enabling provisions for the introduction of 'top-up schemes' as they have been termed. These were supplementary payments following recommendations made in Professor Eileen Evason's report about additional help for carers, those in ill health and claimants in families with low income. The NI (Welfare Reform) Act 2015 included a sunset clause providing for NI primary legislation equivalent to the Welfare Reform Act 2012 and the Welfare Reform and Work Bill to be passed through Westminster with power reverting back to the Northern Ireland

Assembly on 1 January 2017. The power to make secondary legislation for Northern Ireland on welfare reform was also extended to DWP in the Welfare Reform (Northern Ireland) Order 2015. This provision did not include a sunset clause and the power currently remains with DWP. That had meant that DWP had been working together with the Department for Communities to bring forward NI secondary legislation to a very tight time-scale. The mitigations which had been put in place seem to have gone smoothly, and no serious issues had arisen as a result of that approach.

An equivalent to the recent regulations on mortgage interest loans which came into force in Great Britain had yet to be brought forward in Northern Ireland; differences in land laws in Northern Ireland would mean that the legislation would take account of the differences however parity of policy would be maintained. Work was also under way in relation to pension schemes, but this would be for primary legislation.

2.3 Committee Members raised the following main questions in discussion:

(a) How were the arrangements between the DWP in Great Britain and the DfC working in practice?

From the point of view of the DfC, they were working well. There were weekly meetings between the two Departments. One of the differences was that the roll-out of Universal Credit (UC) in Great Britain had been conducted on the basis of the most simple cases first, and then taking on cases of greater complexity along with a programme of geographical roll-out. In Northern Ireland the roll-out was being conducted on a phased geographical basis using post-codes. As with Great Britain, the process was deliberately designed to be slow at first with an increasing degree of acceleration. The aim was to have completed the take-on of all new claims for UC by September 2018, allowing for the beginning of the managed migration process from July 2019.

(b) How would Northern Ireland be affected if there were to be a further delay in the roll-out of UC in Great Britain?

If there were further delays, there may be knock-on effects in Northern Ireland.

(c) Did any of the mitigations introduced in Northern Ireland require any changes in the IT?

No, a new NI specific IT system was introduced to manage the schemes.

(d) The Committee was aware that some working claimants currently in receipt of UC were being told to claim tax credits instead where a third child was born or joined the household unit. Was that also the case in Northern Ireland?

UC is being introduced in NI from September 2017. The new rule on the third child came into effect for tax credit cases from April 2017. As UC begins to be rolled out in Northern Ireland, potential claims involving three or more children would be re-directed to child tax credits until 1 November 2018. Thereafter

new claims from families with more than two children would be taken through UC.

- (e) **Did the approach to UC roll-out in Northern Ireland mean that some new situations were being encountered which had not been through the ‘test and learn’ approach?**

In practice the number of complex and unusual situations faced by the office in Croydon were such that the risk of an entirely new situation arising in Northern Ireland was not great, although it was acknowledged that some issues were Northern Ireland specific.¹

- (f) **Looking at the core flexibilities in the Northern Ireland system, was that integral to the system or was it bolted on?**

The flexibilities permitted related almost entirely to the payment of UC: split payments, payments twice-monthly, direct payments to landlords etc. Some of the flexibilities required legislative and IT changes to the system. The mitigations put in place applied to other benefits as well, and were not limited to UC. Separate legislation has yet to be made in respect of managed migration.

- (g) **The Committee had recently received a number of draft NI regulations for information. They were received shortly before they were due to come into operation, and officials advised that the changes were only minor. The question was whether a decision that a particular set of proposals need not come to SSAC for statutory scrutiny could legitimately be taken by DWP or DfC on the grounds that it was a parallel set of proposals to existing GB legislation apart from minor differences. Who was to determine what was minor?**

They were a batch of regulations, mainly affecting Universal Credit, which replicated existing GB provisions. They included regulations on reducing the earnings taper rate, another on amending the earnings rule in relation to the exception to the benefit cap, and another on prescribing the circumstances where 18-21 year olds were entitled to housing costs. There was also a miscellaneous set of amendments which, amongst other things, provided for specific NI disregards and removed references to the UC limited capability for work element which would not be included in awards of UC and other minor changes. In terms of the NI specific disregards, DfC had sought Ministerial and HM Treasury agreement to proceed with these changes. It was acknowledged that determining what constituted minor changes was very subjective and that the Committee would require further details.

¹ In response, it was suggested by a Committee member that, whilst the Croydon visit had proved useful in seeing how UC had settled, it would also be worthwhile visiting an office just starting to roll out UC in order to understand the teething problems involved. DfC agreed that this was a good suggestion.

- (h) Would the two Departments be taking the same approach to amending legislation as a result of Brexit as that taken with regard to other social security legislation?**

The DfC was working closely with DWP on identifying all the legislation that would need changing as a result of Brexit. Work was at an early stage and would take a lot of resource. The DfC was looking to take its lead from DWP so that once the GB legislation had been identified, it would be a matter of checking to see whether the NI equivalent in each case also needed review.

- (i) Claimants in supported housing had sometimes received inconsistent advice and treatment over the interplay between housing benefit and UC which applied for them. The financial implications were greater in supported housing where costs were higher.**

Noted.

- (j) Has there been any consideration of cross-border issues and the impact of RTI, bearing in mind that there were around 30,000 cross-border workers?**

Yes. DfC had been working with DWP colleagues to consider cross-border issues. There was a common recognition that NI's land border with a member nation of the European Union meant that the implications of Brexit had a far greater potential impact for NI as opposed to GB.

- (k) Was there any information on the ongoing court case on child-care costs?**

No. DfC was aware of this case but was not directly involved in it. It was a tax credits case concerning the use of a childcare provider in the Republic of Ireland by a claimant in NI and was currently subject to appeal by HMRC.

- (l) Was there any chance to share information with DWP, even though the rules and the administrative arrangements differ?**

Yes, the DfC was working with colleagues on the sharing of information. Assurances were also given in the Assembly that there would be a proper evaluation of the mitigation payments.

- (m) Were the differences between the systems charted anywhere?**

Yes. Although there were clear differences in UC, particularly around payment flexibilities and a softer sanctions regime, other differences in other welfare reforms were small and largely inconsequential.

- (n) The way in which the social fund was being operated impressed the Committee when it visited Northern Ireland. Would that be carried forward into UC?**

The Social Fund had been replaced in Northern Ireland by Discretionary Support. This allowed claimants to apply for either a short term loan or a

grant in exceptional or crisis circumstances. Discretionary Support would continue under UC.

2.4 The Chair thanked the officials for attending the session and for handling the questions put to them. He said that the Committee would follow up the issue of who should determine whether a set of draft regulations contained nothing more than minor changes separately in correspondence.

3. Private Session

[RESERVED ITEM]

4. Current issues/AOB

Postal Regulations

4.1 The Committee considered the following sets of draft regulations:

- The Social Security (Infected Blood and Thalidomide) Regulations 2017
- The Social Services & Well-being (Wales) Act 2014 & the Regulation & Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Order 2017
- The Universal Credit (Qualifying Young Persons Participating in Relevant Training Schemes) (Amendment) Regulations 2017

4.2 In each case the postal sub-group had been content that formal reference was not required and that the draft regulations could be considered by post, although it was a more balanced decision in the case of the Qualifying Young Persons Regulations where the secretariat was awaiting various answers to questions from sub-group members, including why the provisions only applied to Full Service.

4.3 The Committee additionally asked why the training was limited to six months and how it fitted in with other vocational training opportunities available in tertiary colleges and elsewhere. The secretariat would forward those questions to officials.

4.4 The Committee agreed that the outstanding questions need not delay the process, and agreed that all three sets of proposals could be made and laid without having been taken on formal reference. Nonetheless, the secretariat should seek early responses to the outstanding questions.ⁱ

Future meetings

4.5 The next meeting was scheduled to take place on 13 September.

4.6 The meeting dates for 2018 had been confirmed as:

24 January	25 July
7 March	12 September
11 April	10 October
23 May	7 November
20 June	12 December

Annex A

Attendees

Guests and Officials

Item 4: Anne McCleary (Director, Department for Communities, Northern Ireland)

Bronagh Ramsden (Social Security Policy and Legislation, Working Age Strand Leader, Department for Communities, Northern Ireland)

Caroline Hobson (Social Security Policy and Legislation, Universal Credit Strand Leader, Department for Communities, Northern Ireland)

Secretariat: Denise Whitehead (Committee Secretary)
John Halliday (Assistant Secretary)
Paul Mackrell (Assistant Secretary)
Will Farbrother (Researcher)
Ateeqa Khan (Secretariat)

ⁱ The Department subsequently provided answers to the Committee's written questions as follows:

Why were changes being made to UC full service and not to the live service?

The Youth Obligation was a result of a 2015 Manifesto Commitment, which set out how unemployed 18 to 21 year-olds would receive a separate benefit called a Youth Allowance and no longer be eligible for housing support. A further decision was made to deliver these commitments through UC rather than introduce a new benefit, with a new Youth Obligation programme to provide tailored work-related support for this claimant group. The Manifesto Commitment to remove housing benefits for 18 to 21 year-olds can only be delivered in UC full service areas, so it follows that the Youth Obligation also would run in full service areas only.

Why were the JSA regulations not being amended?

The Youth Obligation, launched in April 2017, was solely designed for UC claimants aged 18 to 21 in full service areas subject to all work-related requirements. This included those in receipt of contribution-based JSA under the 2013 Regulations who also received a UC top-up. Regulation 45 of the JSA Regulations 2013 specified that a person was not a QYP and so would not be treated as 'receiving relevant education' (and thereby disentitled on those grounds). Claimants on the Youth Obligation could in theory also be in receipt of contribution-based ESA under the ESA Regulations 2013 plus a UC top-up. However, in ESA legislation, *not* being in relevant education was not a basic condition of entitlement. It was only those who qualified for ESA via the 'youth condition' who must not be receiving full-time education; but since May 2012, ESA legislation has not allowed any new claimant to qualify for ESA by virtue of the 'youth condition', as per section 1(3A) of the *Welfare Reform Act 2007*. Given this rule, and that the current form of contributions-based ESA was itself not introduced until 2013, there will therefore not be any claimants receiving ESA by way of the 2013 Regulations who qualified by way of the 'youth condition' who have to satisfy the 'education condition'.

Why was it that just the ESA legacy regulations were being amended and not the ESA 2013 regulations?

This amendment related to the rules permitting benefit claimants to participate in Department for Education (DfE) traineeships in England. UC and JSA regulations were previously amended by *the Social Security (Traineeships and Qualifying Young Persons) Amendment Regulations 2015* to allow young benefit claimants to access longer periods of training through traineeships in England. *The Universal Credit (Qualifying Young Persons Participating in Relevant Training Schemes) (Amendment) Regulations 2017* brought forward the same changes for claimants in receipt of ESA under *The Employment and Support Regulations 2008*.

As with the reply to the previous question, there should not be any ESA claimants receiving benefits under the 2013 Regulations who were subject to an 'education condition' which prevented them from participating in full-time training. This meant there was no need to make amendments to the 2013 Regulations to allow access to the DfE traineeship scheme. Amendments were therefore only being made to the 2008 Regulations only.

Are amendments needed to include schemes in Scotland and Wales?

The amendment to the ESA Regulations described in the previous question related to traineeships only, a DfE scheme for young people in England. No equivalent scheme existed in Scotland or Wales. This amendment therefore would not apply to claimants outside England.

The amendment to the UC Regulations related to training for young people who were on the Youth Obligation. The definition of a Youth Obligation "relevant training scheme" introduced by this amendment was broad enough to encompass a wide range of training activity, whether funded by DfE in England, the Scottish or Welsh Governments, by another body such as a local authority, or directly by DWP.

Was there any scope for a longer period of training than six months? And how did this kind of training fit in with other types of vocational training on offer through other means?

The amendments regarding training for Youth Obligation participants did not prescribe a maximum duration. The regulations however made it clear that training must be designed to assist a claimant to gain the skills needed to obtain paid work, more paid work or better-paid work. Claimants must also be referred by the Secretary of State (in practice, by a Jobcentre Work Coach) as a work preparation requirement or as voluntary work preparation. The type of training in scope would be non-advanced

education designed to address the basic and employability skills gaps that unemployed young people may still have on leaving education.

The provision that training should last no longer than six months related to DfE traineeships. Traineeships were open to all young people, regardless of whether benefits were in payment. The six-month limit on traineeship duration was set by DfE, a policy supported by DWP: evidence on traineeship delivery showed that few people spent longer than three months on a traineeship, including the work experience placement. Where opportunities were longer, they tended to be for trainees aged 16 to 18, who were unlikely to be claimants. Consideration was currently being given by DfE to whether the maximum length of a traineeship for those aged up to 18 should be extended to twelve months, building on the link to Study Programmes. This younger cohort were more likely to be focused on English and maths, as opposed to those aged 18 and above where the chance to improve job prospects and enter work was the key consideration for many. Traineeships for those aged 18 to 24 were designed to prepare participants for an apprenticeship or other employment, where trainees are looking for a short, tailored placement to maximise their chances of work. Alternative support was available for benefit claimants who required additional help to engage in the labour market.

The principle remained that those claiming benefits on the basis of unemployment or low income were required to remain engaged with the labour market whilst on training. For those who wished to study full-time, financial support was available through advanced learner loans and student finance. Learners may also be eligible for funding from their college or university if experiencing financial hardship. Apprenticeships offer another route into skilled employment for people of all ages, enabling apprentices to study towards a qualification in a wide range of sectors whilst receiving a wage. Apprentices did not have to contribute to the costs of their learning.