25 January 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 Charlotte Pickles Liz Sayce Victoria Todd
Apologies:	Rachael Badger
Guests and Officials:	See Annex A

1. Private Session

[RESERVED ITEM]

2. The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 (Paper 7/17) and the Child Tax Credit (Amendment) Regulations 2017 (Paper 8/17)

2.1 The Chair welcomed the following officials to the meeting: James Wolfe (Deputy Director, Universal Credit Policy), Dave Higlett (G6, Universal Credit: Transition, Legislation, Planning, Entitlement & Assessment), Lynne Isaacson (G7, Universal Credit: Transition, Legislation, Planning, Entitlement & Assessment) Rama Salih (DWP Legal Advisers: Universal Credit and Housing Support); David Woodhouse (HMRC), Amanda Williams (HMRC), Charles Barton (HMRC) and Laura Carruthers (HMT). James Wolfe noted that three Government Departments (DWP, HMRC and HMT) had collaborated, and were continuing to do so, in the development of this policy – hence the long list of officials.

2.2 Opening the discussion the Chair noted that Victoria Todd had helped the Low Incomes Tax Reform Group develop its response to the Department's consultation relating to these proposals. The Chair confirmed that he was comfortable that no conflict of interest existed, but was placing this information on the record for the sake of transparency,

2.3 Providing the background to the two sets of proposed regulations, Dave Higlett said that the Welfare Reform and Work Act 2016 had established the broad policy which would remove the Family Element in those claims to Child Tax Credit

(CTC) from families who were responsible only for a child or qualifying young person born on or after 6 April 2017 and the higher Child Element in new Universal Credit (UC) cases, as well as limiting support through the individual element of CTC and the child element of UC to a maximum of two children or qualifying young persons (QYPs) in each household. The provisions would take effect from 6 April 2017 and the regulatory proposals were designed to set out the exceptions to the limit. As such the draft UC regulations were exempt from formal reference to the Committee and were being presented for information only while the draft CTC regulations were being presented under the Memorandum of Understanding between SSAC and HMT/HMRC.

2.4 In summary, there were four exceptions to the limit for third and subsequent children. The first was in a multiple birth situation where the exception would apply to the second and subsequent child born within that same pregnancy. The second was where a child was adopted from local authority care. A third was where a child was taken in on a long term basis by family or friends in a formal caring arrangement or in an informal arrangement where the child would otherwise be likely to be looked after by a local authority. The final exception was where a child was conceived non-consensually. Dave Higlett noted that the Government had consulted on the details and delivery of the exception proposals, and that this aspect of the policy in particular had been developed as a result of that exercise and the further thought that had been given to it in the light of comments received. The Government response to the consultation had been published on 20 January.

2.5 Continuing, Dave Higlett said that anyone seeking to make a new claim for UC on or after 6 April which would incorporate three or more children or QYPs would be directed to claim a legacy benefit and, if not already entitled, CTC. That would be for an interim period in order to fit in with the Department's plans for rolling out UC. The legislation made provision for that interim period which would extend to November 2018. The legislation would also ensure that existing UC claimants with more than two children/QYPs would have their entitlement transitionally protected. There would also be a six months linking rule. The protection would similarly extend to the higher rate child element for the first child which would continue to be payable for children born before 6 April 2017.

2.6 The following main questions[1] and comments were raised by the Committee in discussion:

(a) The supporting paperwork did not provide much detail regarding the consultation responses received. Did any of the responses to the public consultation propose additional exceptions which the Department did not accept? If so, what were they and why were the recommendations not accepted?

Most responses to the consultation commented on the policy in general including raising exceptions that were discussed during the passage of the

[1] Committee members had a number of technical and detailed operational questions which it was agreed would be dealt with by correspondence outside of the meeting. The questions and responses received are attached at annex A to the minutes.

Welfare Reform and Work Act 2016. These primarily included exceptions in relation to children with disabilities and for new claims to UC where families already had more than two children.

(b) In the event of a person getting benefit in respect of a third or subsequent child or QYP, there was a clear risk, through a simple process of elimination, that third parties could deduce that the reason for an exception had been a non-consensual conception. Did the Department have any plans for safeguarding the privacy of the parents and the child in question in such situations? Some parents might, for example, choose not to claim the extra benefit if they felt that there was a risk of disclosure and significant consequences for the family. What arrangements were being put in place to ensure that parents in such a case were able to make an informed choice?

The Department acknowledged the sensitivities in this area and had been thorough in taking data protection issues into account. The Department's lawyers were satisfied that the process did not breach the Data Protection Act in any way. There would be some protection insofar as award notices would not state the reason for the exception. A child or qualifying young person would not therefore be able to find out through, for example, inadvertently reading an award notice. Whilst it was accepted that an inference may be drawn as to the reason for an exception being in place, this risk was unavoidable, given the limited range of exceptions in place, and was outweighed by the financial benefit to the claimant in being granted the exception.

The Department was familiar with holding sensitive data securely, including for example, information about domestic violence, transgender status or instances where sensitive health information was held on one partner in a joint claim. The same approach on privacy was being followed by HMRC. Ultimately it was for the parent, normally the mother, who would make the decision to claim.

(c) How would decision-makers within the Department make a decision on a non-consensual conception on the balance of probabilities? What sort of training would they receive, and had any thought been given to a decision which effectively meant 'we do not believe you'? Would a claimant have a right of appeal against such a decision?

While the decision on this matter would rest with either DWP or HMRC, it was important to understand that the substance of the issue itself rested with the third party professional to be identified in guidance. That was not unusual. The same general approach applied where medical assessments were required. In this case the third party professional would confirm that the incidence of non-consent had been reported to them, and that the accompanying evidence as conveyed in the narrative as relayed to them was consistent with the conditions of the exception. Because the resultant decision regarding entitlement to the exception would be for DWP or HMRC, the decision itself was subject to appeal rights, as with most other award

decisions. Nevertheless the process was deliberately designed in such a way that DWP or HMRC staff would be excluded from making their own value judgments about the credibility of the claimant or as to the likelihood or otherwise of conception being non-consensual. The intention had been to be helpful to claimants and it was felt important that the test should not be placed so high as to limit it to a requirement that there had been a criminal conviction in cases of non-consensual conception. The benefit of keeping a relatively tight list of the third party professions to whom the circumstances surrounding the non-consensual conception could be reported was that they would be experts in the field and used to dealing with the kinds of incidents and relationships likely to feature in many of the narratives.

(d) Regulation 13(8) of the proposed Child Tax Credit (Amendment) Regulations 2017 referred to the 'likelihood' of the offence or injury resulting in the conception of the child. That suggested a determination which took account of the claimant's credibility.

Staff applying the policy would never need to go beyond the evidence given by the third party professional.[2] The regulations provided a power for the Department to make a positive determination on the likelihood of non-consensual conception based solely on evidence provided by the third party professional which demonstrated that (i) the claimant had had contact with them or another approved third party; and (ii) their circumstances were consistent with the legal test for the exception.

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[2] HMRC have since clarified that their response at the meeting was based on an apprehension that this question was a continuation of the questioning about third party evidence and was intended to probe how the position described under (c) above was reconcilable with the fact that the regulation required HMRC to be satisfied on a 'balance of probabilities'. In response, it was explained at the meeting that although regulation 13(1)(b)(i) required HMRC to determine whether the child or qualifying young person was 'likely' to have been conceived as a result of non-consensual intercourse, regulation 13(7) explicitly enabled that determination to be made wholly in reliance on the third party evidence. HMRC have subsequently added that regulation 13(8) had nothing to do with third party reporting but rather served the limited role assigned to it in the final segment of regulation 13(7) which related to the relevance of a previous conviction or criminal injuries compensation award). The purpose of that final segment of regulation 13(7) was to ensure that the exception from the two child limit would apply only if the conviction or award was a relevant one, i.e. that it was 'likely' that the claimant was the victim and that the child was conceived as a result of the offence or injury. This would ensure, for example, that the exception would not apply if the conviction was for a rape that occurred 3 years before the birth of the child. Regulation 13(7) articulated that likelihood test in broad brush terms, but regulation 13(8) provided explicit clarification that, in assessing the likelihood that the offence or injury resulted in the conception of the child, any possibility that the conception resulted from another such offence or injury was to be disregarded (regardless of whether any conviction or award had occurred in respect of that other offence or injury). This would mean, for example, that if a woman was raped by three men on the same occasion, but only one of them was caught and convicted, the conviction would be relevant even if the claimant was unable to prove that the child's father was 'likely' to be the rapist who happened to be caught and convicted rather than one of the other two rapists. Another example would be where it came to HMRC's attention that the convictions were for 'specimen' counts of rape (i.e. representative of more systematic conduct that was repeated frequently during the course of a relationship). In such circumstances, there would be no need to show that the actual conception was likely to have resulted from one of the specimen instances that happened to have been selected for formal prosecution. Consideration would be given to making the limited relevance of regulation 13(8) clearer on its face.

(e) There was an analogy here with the work capability assessment where the health care professional asked the detailed questions and completed the form, but the decision-maker had responsibility for making the decision in the light of the assessment.

While there were some parallels, there was a difference in scale. The numbers of cases where a claimant with two existing children or QYPs sought to claim UC or CTC on the grounds of a non-consensual conception and where there was a suggestion of a fraudulent statement would be small.

(f) How would that be covered in guidance? Would claimants know who, as an identified third party professional, to approach?

The detailed content of the guidance was still being developed. That was the important next stage of the process of developing and securing the policy. There would be guidance for claimants, for staff and for third party professionals. The Department was working jointly with HMT and HMRC to develop a list of approved third party professionals and to ensure consistent messages.

(g) Would GPs be on the list?

Yes, along with other health care professionals.[3]

(h) That suggested a considerable communications challenge in ensuring that all the GPs in the country get the information they need to provide the required information.

That was accepted.

(i) What would happen if the claimant wished to challenge the evidence of the third party professional, for example if it was stated that, in the opinion of the professional, the story was not credible?

The Department or HMRC were unlikely to be presented with such a statement. The more likely scenario would be that any claimant who felt that their account had not been accepted, would go to another professional for a second opinion. There was no limit on the number of professionals to whom they could turn in such circumstances. They only had to secure a single third party's assurance that the evidence given in relation to a non-consensual conception was consistent with the requirement of the exception. As a threshold to be met, it was a relatively low one.

(j) Had the Department or HMRC had discussions with any of the expert bodies representing the professions due to be named in the guidance as providing the information necessary for claimants to meet the

[3] The Department subsequently advised that claimants in these circumstances (during or after pregnancy, when conception was as a consequence of rape or during a coercive and controlling relationship) were likely to come into contact with healthcare professionals who were qualified to deal with the issue or able to refer to the relevant health expert.

requirements of the non-consensual conception test? And if so, were they willing to take on the responsibilities required of them?

Engaging with third party professionals would be the next stage of work which the Department would be taking forward as a priority.

(k) Could any professional body refuse to participate?

The next step was for the Department to finalise the list of third party professionals and prepare the necessary guidance. Third parties could refuse to participate, but by doing so they would be limiting the scope of professionals available to assist claimants in this scenario so could adversely impact vulnerable claimants.

(l) Even if DWP and HMRC staff were not involved in the substance of the decision-making process, it would be important that the content of any communications to claimants was developed with considerable care and attention. Noting that the exception would not apply if the perpetrator of the non-consensual conception continued to live with the claimant, how would the Department balance the policy of not increasing the income-related benefit with an amount in respect of the child with the fact that the amount was provided for the child? There would also be situations where there were particular constraints to keep the parents together regardless of the circumstances of the conception. As an example, there would be people from particular religious and ethnic backgrounds where separation would be difficult. Similarly it might be that a disabled claimant required care and the only person able to fulfil that role was the perpetrator.

The Department recognised the difficulty of this area. The consultation exercise had elicited a number of responses on that point. The difficulty was in justifying a scenario where two families, each with three children, lived next door to each other but the one with an abusive relationship received more state benefit than the other by reason of the abuse itself. Furthermore, benefit was paid to couples on a joint basis, and could be paid directly to the controlling partner. That inequity could be perceived to be rewarding the abusive behaviour and would be hard to defend.

(m) How would the Department or HMRC know that the person with whom the claimant was living was the perpetrator in the non-consensual conception?

The draft regulations provide that it was up to the claimant to confirm that she was not living with the alleged perpetrator. The Department and HMRC would need to rely on that declaration given by the claimant when claiming the exception, or in response to any notification of a change in circumstances involving the composition of the household. In such instances the question would be asked as to whether the claimant was living with the alleged perpetrator in question.

(n) Operationally how would this work? If someone was in an abusive relationship and represented that the third child was conceived without consent, would the DWP or HMRC ask for the current status of their relationship with the perpetrator?

The Department was used to dealing with situations where domestic violence was alleged, and there were some similarities here. In the case of non-consensual conception where the claimant was living with a partner, they would have to say whether they were living at the same address as the alleged perpetrator. However, no direct identification of that person or further proof would be required (in the absence of a criminal conviction).

(o) If the claimant moved into a refuge would they be eligible for the exception?

Yes.

(p) Would that then be an incentive to leave, and if so, how would that answer the earlier point about not wanting benefit to be seen to be going to abusive families?

The starting point for Government policy to limit support to two children in CTC and UC was restoring fairness to the welfare system. Families supporting themselves solely through work did not see their incomes rise in the same way when they have more children. The next step for the policy was to define the exceptional circumstances where an exception was justified. The four defined exceptions fall into one of two categories. The first was situations where the child would otherwise be in local authority care and where the principle of no support for the third child would counter Government policy to encourage kinship care arrangements and avoid the more expensive costs of local authority care. The other was situations where the parent had limited control or choice. With multiple births that applied to the second or subsequent child within that pregnancy. It was also self-evidently established in cases of non-consent. With non-consensual conception the Government felt that it was important to step back from any situation where extra public money could be received by an abusive partner as a result of that abuse.

(q) A couple with two natural children could adopt a third and would receive additional support. But another couple with two adopted children would not receive additional support if they subsequently had a child of their own. How did the Department/HMRC justify that approach? It would be a simple administrative task to check that the children of the second couple had been adopted.

The second couple would have made a choice to adopt in the first instance. That decision would have taken finances into account. At the point at which they decided to have a child of their own they again would need to take their finances into account.

(r) The difficulty with that defence was that circumstances change. The couple could have been high earners at the point at which decisions on adopting a child and having a child of their own were taken. They did not have a child of their own thinking that the state would have to support them.

The policy had nonetheless been based around the decision that would have been taken at the time of conception or adoption as to whether the additional child could be afforded.

(s) Earlier, the example was given of two families living next to each other and it being difficult to justify one receiving more support from the Government than the other. Could the same logic be applied where two families with two adopted children and one of their own receive different amounts of benefit depending solely upon the order in which the children arrived?

It was acknowledged that this was a difficult area, but the critical issue was the decision facing a family where there were two existing children.

(t) A similar question arose in connection with a woman who may have been looking after a sibling's two children for entirely altruistic reasons. She too would not receive any help if she wanted a child of her own. That could deter someone from taking on the children of a friend or family member if they understood that they would not receive state support if they had children of their own. Did this not run counter to the argument about saving the Government money and avoiding a child going into local authority care?

The crucial aspect of the policy was the timing of the decision about adopting, caring for the child of another or having a child of your own. The key consideration was the situation at the point at which a decision to extend the family beyond two children was taken.

(u) It was understood that HMRC did not intend to investigate individual circumstances when a claim was made, or a change in circumstances notified, where the issue of a third child was relevant. Instead, it was understood that they would be directed to GOV.UK and left to find out the rules for themselves. This would seem to be an unprecedented approach. Some people would not be able to access GOV.UK and there was a possibility that the information the website carried would be insufficiently detailed in any event. The danger would be that potential beneficiaries would lose out. Also, could HMRC advise on the rules about backdating benefit when a claimant belatedly notified the details which established that an exception from this rule applied? It had been suggested that the one month backdating rule would apply in such cases.

HMRC were not able to make changes to the claim form (TC600), which had already been prepared for April 2017. Instead, as an interim solution for 2017-18, they would insert a flyer in the tax credits claim pack which would

contain information about the exceptions, where to go for more information and how to claim the exceptions. HMRC Contact Centre staff would refer claimants who had a third or subsequent child born on or after 6 April 2017 and who believed that they were entitled to the individual element of CTC as a result of an exception to a dedicated HMRC operational team who would handle all the exceptions. Claimants would need to consider the available guidance and, just as currently happened if they had an additional child, notify HMRC of their third or subsequent child, including in cases where an exception may result in an award of the individual element of CTC in respect of that child.

(v) The exception might not be relevant to the third child. The questions that HMRC would need to ask would be very detailed and complex, and there was little indication that they would be asked or asked to a sufficient depth.

On the issue about the third child, the approach was that each child would be assigned a date. For natural children that would be their date of birth. For adopted children or those in non-parental caring arrangements, that would be the date on which the claimant, or their partner, took responsibility for them. It was possible therefore that an adopted child would still be the third child for the purposes of this policy, but older than the first and second child. To that extent questions about qualifying for the exception would always be directed at the circumstances surrounding the conception, the birth or the arrival into the home of the third child.

(w) Paragraph 74 of the Explanatory Memorandum stated that because some of the relevant court orders expired when a child reached age 16 the Regulations were drafted to allow that a child (now a QYP) would be exempt from the maximum limit if the responsible adult had been continuously responsible for them since that time. What would happen if the QYP had been admitted to a mental hospital or detained in a young offenders' institution and then returned home?

In Universal Credit, temporary absences which were expected to, or did, last six months or less should not affect the continuing application of the exception as the claimant would still be deemed responsible for that child or QYP while they were absent.[4]

(x) The fact that abortion was illegal in Northern Ireland except under very limited circumstances meant that there were greater limits to the choices that could be made about deciding to continue with a pregnancy, even where the pregnancy was not planned, than would be

[4] The Department subsequently advised the Committee in writing that where the absence was expected to exceed, or did exceed, six months, the claimant's responsibility would end. A QYP in this circumstance may be able to make a claim for UC in their own right (even where they were below 18 years) if they could show they were without parental support.

the case in Britain. The Impact Assessment had not mentioned this in the section on religious belief. Had any contributions to the consultation exercise raised that issue and had the Government considered it?

The Department had been in touch with the Department for Communities in Northern Ireland and various religious organisations and those issues had been raised. The Government did not have a policy on how many children a family should have and it was important to emphasise that Child Benefit was available regardless of the number of children in the family.

(y) Given the current political situation in Northern Ireland, did the Department have any plans for bringing this legislation into effect in Northern Ireland and tailoring it to the particular circumstances there should the need arise?

The Department for Communities was still functioning and it would be for that department to consider whether and how to implement it for UC in Northern Ireland.

2.7 The Chair thanked the officials for attending and responding to the Committee's questions, especially as there was no statutory obligation for them to do so on this occasion. He advised the officials that the Committee would be writing to Ministers expressing some of its main concerns about the proposals which had arisen during the course of the discussion.

3. The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017

3.1 The Chair welcomed Beverley Walsh and Marie Savage (G7 and SEO respectively in the Department's Housing Benefit Reform Team within Working Age Division).

3.2 Outlining the background to these proposals, Beverley explained that at the inception of the spare room subsidy rule for the social rented sector (SRS) in 2013, Government policy had been to have a very robust rule which admitted very few exceptions. Since then there had been a succession of court cases which had made certain inroads into that approach. These draft regulations were presented to the Committee as a result of a Supreme Court judgment which concerned seven joined cases relating to the spare room subsidy in the SRS. The Supreme Court found against the Department in respect of two of the appellants (with disability-related needs) where the Court held unanimously that the existing legislation unlawfully discriminated against them. The other five cases were unanimously rejected. This included Case A – a claimant in a sanctuary scheme. In a majority decision of five to two, the Court held that the existing legislation, which would not allow an extra bedroom in a case where the individual had to stay in the same property for sanctuary reasons, did not discriminate unlawfully against women.

3.3 The Department was optimistic that this particular case would mark the end of what had been a protracted sequence of litigation. The Court had held that Discretionary Housing Payments (DHPs) were a sufficient mitigation in the five cases

which the Department won, and there was some confidence amongst lawyers that the availability of DHPs would be enough to counter any potential future litigation involving claimants in similar circumstances to those cases, where their needs required individual assessment.

3.4 Following previous Court judgments concerning the Local Housing Allowance, the Committee had previously considered amending legislation to both the SRS and private rented sector (PRS) rules which allowed an extra bedroom in cases where a disabled adult needed a non-resident overnight carer and where a severely disabled child was unable to share a bedroom with a sibling on account of their disability. To implement the recent judgment, the Department intended to extend the size criteria rules across both sectors to include situations where a disabled child needed a non-resident overnight carer, a disabled adult non-dependant needed a non-resident overnight carer, and a couple where one or both are severely disabled resulted in them being unable to share a bedroom. The draft legislation was due to come into force from 1 April 2017.

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

(a) The principle seemed to be that where someone had a transparent medical need for a spare bedroom, the claimant should be provided with an extra bedroom under the size criteria rules. Were there any further cases where a transparent medical need existed but provision had yet to be made?

The Department did not believe so. The Court held that the current legislation identified certain disabled individuals who had a transparent medical need but not others (children who cannot share a bedroom, but not adults; adults who require an overnight carer but not children or adult non-dependants) and there was no justification for this difference in treatment. The legislation was therefore being amended so that those with a transparent medical need not currently catered for, would be in the future.

(b) It was noted that, unlike Universal Credit (UC), Housing Benefit had a discretionary rule for disabled people who did not meet the higher or middle rate care component test. This discretionary rule looked like an example of the 'transparent medical need' referred to by the Supreme Court. Should it therefore be available in UC as well?

The move towards simplification and the on-line claim process militated against extending that discretion in UC cases. The Department was interpreting 'transparent medical need' to mean a physical disability that prevented a claimant sharing with their partner or required a child/adult non-dependant to have an overnight carer. For other types of cases the Supreme Court found that DHPs continue to be an appropriate mitigation to help vulnerable people whose needs required individual evaluation. The Department was therefore content to rely upon the availability of DHPs in defence of its position in the event of any further litigation.

(c) Was the Department confident that the funding for DHPs was adequate?

Yes, the overall budget for 2017/18 would be increased to £185m, of which £60m is for the Removal of the Spare Room Subsidy.

(d) Were there any plans to reduce the DHP budget in the light of the judgment and the extension to the number of exemptions?

DWP had no current plans to reduce the DHP funding for the Removal of the Spare Room Subsidy but could not say what was likely to happen in the future.

(e) It was understood that a disabled child who needed overnight care from a non-resident carer would be provided with one extra bedroom for that carer or a team of carers. What would be the position where the family had more than one disabled child who each needed overnight care?

Under the existing size criteria rules, a claimant who under-occupied their property would be entitled to one extra bedroom for a carer (or team of carers) if they or their partner required an overnight carer. This rule is merely being extended to incorporate children and adult non-dependants into the definition of persons who required overnight care from a non-resident carer.

(f) Would that approach not be in danger of being in breach of the discrimination rules?

The existing size criteria rules allowed only one extra bedroom for a carer or team of carers when it was the claimant or partner who required overnight care from a non-resident carer. The policy was that a disabled child or disabled adult-non-dependant would also be included if they had a non-resident overnight carer (or team of carers).

The policy was similar to that which applied to foster children. Only one additional bedroom was allowed under the size criteria rules, regardless of the number of children being fostered.

(g) Would that still apply if there was a transparent medical need for the carer having an additional room?

The rules were not being amended to cover that scenario since the existing rules currently allowed for only one additional bedroom for a carer or team of carers. The Department believed that this was sufficient. It should also be borne in mind that in the PRS a claimant would be as limited to a maximum of four bedrooms regardless of the number of children, or any disabilities of adults or children within the home. If this limit had already been reached then claimants were restricted to the four bedroom local allowance rate for their Broad Rental Market Area.

(h) One of the new exemptions applied where a disabled adult non-dependant needed a non-resident overnight carer. What was the situation with joint-tenants? For example if two joint-tenants both had a disabled adult non-dependant how many extra bedrooms would be provided for a carer or team of carers?

The Department requested time to consult with lawyers to check the response and get back to the Committee.[5]

(i) What plans did the Department have for finding potential beneficiaries?

DWP would not be searching for potential beneficiaries. LAs had been alerted to the judgment and the fact that DWP would be making changes. DWP would also be providing LAs with guidance on how the new rules applied. Further, the draft regulations would not affect claimant entitlement prior to the regulations coming into force.

(j) How would affected claimants be told about the change?

The Supreme Court did not strike down the existing legislation as unlawful. The legal advice to the Department was therefore that it would continue to be in force until the new legislation came into effect and superseded it. These draft regulations would not affect entitlement prior to the regulations coming into force. Any backdating would therefore be to the date the new legislation came into effect.

The Department would provide guidance to both LA and UC decision makers and model letters for them to send out.

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[5] The Department subsequently provided the following written response: "The first thing to point out is that it is only when a claimant is considered to be under-occupying their property that the question of whether the Housing Benefit or Universal Credit claimant is able to have an extra bedroom comes into question.
In response to the scenario outlined at the SSAC meeting (e.g. two joint tenants living together, both benefit claimants, each with a disabled adult non-dependant who requires overnight care from a non-resident carer), the answer to the question is dependent upon whether the joint tenants live in the PRS or SRS.
In the PRS there is a maximum limit of four bedrooms. As the two joint tenants would each be allocated a bedroom and the two disabled adult non-dependants would each be allocated a bedroom, making four in total, the maximum limit has already been reached.
In the SRS there is no maximum limit. In theory, each joint tenant (assuming they are both Housing Benefit claimants) would each be allocated an extra bedroom for their disabled adult non-dependant both of who require overnight care from a non-resident carer under the regulations. In reality however they are very unlikely to be living in social sector property that has five or six bedrooms and therefore they are unlikely to be impacted by the RSRS.
Using a different scenario - two joint tenants, both benefit claimants, who live in a four bedroom property. Both of them are disabled and require overnight care from a non-resident carer. Joint tenant one is single, but joint tenant two has a disabled adult non-dependant who also requires overnight care from a non-resident carer.
In the PRS the first joint tenant would be awarded a bedroom for himself and an extra bedroom for his overnight carer. The second joint tenant would be awarded a bedroom for himself and one for his adult non-dependant and consequently the four bed limit has been reached.
In the SRS the first joint tenant would be awarded a bedroom for himself and an extra bedroom for his overnight carer. The second joint tenant would be allocated a bedroom for himself, a bedroom for his non-dependant and would receive one extra bedroom for an overnight carer (or team of carers) for himself and his disabled adult non-dependant. In reality they are unlikely to live in a 5 bedroom property in the social sector and therefore they are unlikely to be impacted by the RSRS.

3.6 The Chair thanked the officials for attending and addressing the questions raised by the Committee. He advised them that the Committee was content that the proposals could proceed without the requirement for their formal reference.

4. The Bereavement Support Payment Regulations 2017 (SSAC Paper 10/17)

4.1 The Chair welcomed Lisa Sutherland (SEO Disadvantaged Groups – Social Fund and Bereavement Benefits) to the meeting. These Regulations had already been laid in Parliament and were due to come into force on 6 April 2017. Because the enabling power (section 30 of the Pensions Act 2014) which made provision for the new Bereavement Support Payment was also due to come into force on 6 April 2017, these Regulations were not subject to formal reference and were being submitted for information and informal scrutiny. Lisa apologised for the fact that there had been a delay in presenting the material to the Committee and that the supporting paperwork was incomplete.

4.2 By way of background, the Bereavement Support Payment would replace existing bereavement benefits in cases where a death occurred on or after 6 April 2017. It was a non means-tested benefit which was not taxable. It would also be paid once a person qualified, regardless of whether they re-married or entered into a partnership with another. It would consist of an initial payment of £3,500 for surviving spouses with a dependent child, followed by 18 monthly payments of £350. For survivors with a dependent child the initial payment would be £2,500 and the 18 monthly payments would be set at £100. The surviving spouse would be entitled if the deceased met the national insurance contribution conditions and the survivor was under pension age on the date of their spouse's death. The monthly payments would only continue whilst they remained under pension age.

4.3 The Chair expressed the Committee's thanks to the Department for accepting the recommendation of the Committee, subsequently echoed by the Work and Pensions Committee, that the original proposal for 12 monthly payments should be extended.

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

(a) Could the Department provide an update on progress with the new application form the Bereavement Support Payment?

The claim form had yet to be finalised, but would be available for the start of April. The Department had originally intended that it would be possible to make an on-line claim to the new benefit but that had not been possible. It was however still the aim to introduce that facility later.

(b) How would that interact with the Tell us Once service?

The Tell us Once service ensured that multiple Government Departments and others who needed to be informed of a death were notified once someone had notified that death.

(c) Was there an opportunity to interface with claims for a funeral grant under the regulated Social Fund scheme?

The rules in respect of these two benefits varied considerably. The Bereavement Support Payment was available where a spouse had died, whereas a funeral grant could be paid in respect of a family member as defined. There were also other key differences, such as one being an income-related benefit and the other a contributory benefit. The scope for any interface was therefore limited.

(d) Even so there was surely scope for some interface where there was a potential overlap in entitlement. Making it easier for people at a time when they were vulnerable for obvious reasons would be very helpful.

The Department would give further thought to this and come back to the Committee in writing.

(e) Had the Department undertaken any evaluation of the policy in order to understand the impacts? It would be helpful in Scotland where the regulated social fund had been devolved.

The Government committed to a review of the policy in the Impact Assessment of 2013. The review would be carried out once robust and sufficient data was available to consider.

(f) What was the process for determining when payments cease when a surviving spouse reached pension age?

If the spouse was under pension age at the date of death they would get the lump-sum regardless of when it was actually paid. As far as the monthly payments were concerned, it depended upon the circumstances at each monthly anniversary. The monthly payment would be made if, on that date, the person was under pension age. Conversely it would not be paid if, on any monthly anniversary, they had reached pension age. This would be set out clearly in guidance. The guidance would also make it clear that entitlement to the new benefit depended upon the date of death of the spouse and not the date on which the benefit was claimed.

(g) How would the lump sum and the monthly payments be treated for the purposes of other DWP income-related benefits?

The Department was due to bring forward, very shortly, a set of proposed consequential amending regulations and these kinds of issues would be covered there. The intention was that BSP would be paid in addition to other income related benefits so that the least well off would not be disadvantaged.

4.5 The Chair thanked Lisa for attending and responding to the Committee's questions.

5. Private Session

[RESERVED ITEM]

6. Current issues / AOB

Postal Regulations

6.1 The Committee endorsed the recommendation from the *Postal Regulations Sub-Group* that the following regulations may proceed without the need for further scrutiny at the meeting:

- *The Social Security (Income-Related Benefits) Amendment Regulations 2017*
- *The Social Security (Invalid Care Allowance) (Amendment) Regulations 2017*
- *The Social Fund (Amendment) Regulations 2017*
- *The Universal Credit (Reduction of the Earnings Taper Rate) Amendment Regulations 2017*
- *The Social Security (Fees Payable by Qualifying Lenders) (Amendment) Regulations 2017*
- *The Social Security (Regulation and Inspection of Social Care (Wales) Act 2016 (Amendment) Regulations 2017*

6.2 The Chair instructed the Committee Secretary to convey that outcome to the Department.

Date of next meeting

6.3 The next meeting was scheduled to take place on Wednesday 8 March 2017 in Caxton House.

Annex A

The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 and the Child Tax Credit (Amendment) Regulations 2017

Written question and answer exchange outside of the meeting

(a) In regulation 7 of the proposed Regulations (Restrictions on amounts for children and qualifying young persons – consequential changes to housing benefit) it was understood that the default in housing benefit would be that a claimant would get no more than two child allowances. To access the exceptions, a claim for CTC was needed. What would be the process for people without an award for CTC?

For those who had not claimed CTC, the limit would apply. Guidance to local authorities would state that people who consider that they should have more than two child allowances in their HB would be advised to claim CTC.

(b) Would local authorities automatically invite a claim for CTC where there were more than two children in the family?

See above. Local authorities cannot invite a claim to CTC, but the Department would make clear in the guidance how they should advise a claimant with more than two children who felt that an exception should apply to them. The claimant would then be responsible for any claim to CTC

(c) Would local authorities ensure, in particular, that people knew they needed to follow HMRC procedures to access the exceptions, beyond merely completing the claim form?

HMRC had informed the Department that it was on track regarding its preparations for April.

(d) Would local authorities similarly ensure that people knew they needed to claim CTC to access exceptions, even if they knew they would not be entitled?

Local authorities cannot prejudge the outcome of a Tax Credit claim. As stated above, guidance to local authorities would state that those who considered that they should have more than two child elements in their HB should be advised to claim CTC.

(e) When a tax credits claim resulted in no entitlement, would the decision notice always say which children would have had a child element included, even if there was no entitlement for reasons other than income? For example, a person might not be entitled to CTC through opting for tax-free childcare, or because did not have a right to reside.

There might be many reasons why a CTC decision notice might not contain such information (for example, failure to provide relevant information to HMRC). However, HMRC advise that when a properly made claim for CTC was made, the decision notice would include details of the children included in the assessment, even where no CTC was actually payable owing to the income assessment.

For those who were considering accessing tax-free childcare rather than tax credits, it would be a matter for them to consider whether tax-free childcare or tax credits would be more beneficial. (Support for eligible childcare costs in the tax credit system was provided through the childcare element of the Working Tax Credit (WTC), and not CTC. In order to be eligible for tax-free childcare, both parents – or a lone parent – must not be in receipt of any support through tax credits, whether CTC or WTC.)

(f) Currently, a person can get a child allowance for each child for which they have responsibility. If that person received child benefit for the child, that would indicate that they had responsibility for the child. It was not necessarily the case that a person always claimed CTC as well as child benefit. For example, separated parents who share care of their children may decide that one parent should claim child benefit for the children whilst the other claimed CTC. Creating a link between HB child allowances and a CTC claim would affect these type of shared care arrangements. With the change in rules could parents preserve these arrangements? As an example, take a woman with twins and another older child who has claimed child benefit for all three children whilst her former partner has claimed CTC for them. Could she make a claim for CTC for all three children in the knowledge that it would result in a 'no entitlement' decision as a result of the competing claim with her former partner, but having to do so in order to get the housing benefit (HB) needed?

If the "other partner" had claimed CTC for the three children (with a presumption that there was an entitlement for them), then the partner could not be held as responsible for the same three children. It therefore followed, by logical extension, that her claim for CTC would be refused on the basis that the "other partner" was responsible for the children.

(g) A person can be entitled to HB and UC, but unable to access CTC – eg people in specified accommodation. Could the Department confirm that the limit for them would be relevant to their UC but not to their HB because they would always be passported to maximum HB?

For supported exempt accommodation, entitlement to UC meant that all the claimant's income and capital would be disregarded in the HB assessment. So, in this respect UC acted as a "passporting" benefit for such cases, and full eligible HB would be paid.

(h) In regulation 3 of the proposed Regulations (Universal Credit – transitional arrangements regarding restrictions on amounts for children and qualifying young persons), the new regulation 37 of the Universal Credit

(Transitional Provisions) Regulations 2014 prohibits a claim for UC during the interim period if the claimant had responsibility for more than two children or QYPs. However there were no amendments to the raft of commencement orders that provided that a claim for CTC in a UC full service area could be made (an example being Article 7 of the Welfare Reform Act 2012 (Commencement No. 23 and Transitional and Transitory Provisions) Order 2015 (SI 2015 No. 634). Was the Department confident that these provisions did not need to be amended to make sure that claims for CTC (and other legacy benefit) would still be possible?

The Department considered that no amendment to the commencement orders was strictly necessary as the prohibition on claims for legacy benefits in full service areas would only be activated where a person could claim UC. But, as SSAC have raised the question, the Department would consider a consequential amendment to article 7 of the no. 23 Order to put this beyond doubt.

(i) What would be the process for directing families with more than two children to legacy benefits?

As part of the Universal Credit claim process claimants complete a 'Postcode Checker' online which directs them to make their Universal Credit claim via the appropriate service based on their geographical location. From April 2017 the Postcode Checker was being updated to include a question on the number of children, before the claimant would be directed to claim Universal Credit. If the claimant had more than two children they would be directed to claim legacy benefits via existing routes. The application processes for legacy benefits were also being updated to ensure that claimants with more than two children were allowed to move through the legacy claim process. The Department was also updating the legacy telephony scripts to do the same so that claimants would not be directed back to Universal Credit. Housing Benefit communications products were also being developed for local authorities so that a claim for Housing Benefit would be taken where a claimant had more than two children.

(j) At present, people were sometimes wrongly routed by the DWP to claim UC when they were ineligible to do so. Sometimes people themselves made a mistake about whether to claim UC or a legacy benefit. If this were to happen and someone mistakenly claimed UC in a full service area, would the Department curtail the claim process and direct them back to legacy benefits? If not what would happen?

The Department would curtail the claim process and direct the claimant back to legacy benefits.

(k) In regulation 9 of the draft regulations (Housing Benefit – transitional provisions for restrictions on amounts for children and qualifying young persons) could paragraph (3) be explained? Perhaps some examples could be cited to help clarify how and when this provision would apply.

This provision, along with regulation 9(4), was designed to cover the following type of scenario:

(i) family with three children, entitled to HB on 5th April 2017 with the three child amounts included in the HB assessment. The need for CTC would only arise where a new child arrived or a repeat claim for HB was made;
(ii) family has fourth child in June 2017;
(iii) family's HB does not revert to two-child limit upon arrival of new child as far as the three existing children are concerned;
(iv) instead, HB continues to include elements for three children included as of 5th April 2017 until new claim for HB made;
(v) the fourth child would not attract an amount unless a claim for CTC was made and this resulted in an individual element of CTC being awarded to all 4 children.

Annex B

Attendees

Guests and Officials

Item 2:	James Wolfe (Deputy Director, Universal Credit Policy) Dave Higlett (G6, Universal Credit: Transition, Legislation, Planning, Entitlement & Assessment) Lynne Isaacson (G7, Universal Credit: Transition, Legislation, Planning, Entitlement & Assessment) Rama Salih (DWP Legal Advisers: Universal Credit and Housing Support) David Woodhouse (HM Revenue and Customs) Amanda Williams (HM Revenue and Customs) Charles Barton (HM Revenue and Customs) Laura Carruthers (HM Treasury)
Item 3:	Beverley Walsh (G7, Working Age, Housing Benefit Reform Team) Marie Savage (SEO, Working Age, Housing Benefit Reform Team)
Item 4:	Lisa Sutherland (SEO Disadvantaged Groups – Social Fund and Bereavement Benefits)
Observers:	Jade Adesola (Strategy Directorate) Dr Edith Cameron (Strategy, Health and Science) Kim Jones (Disability, Employment and Support Directorate) Karen Taylor (Analysis Group, UC Planning, Forecasting and Policy) Sophie Tidman (Analysis Group, UC Planning, Forecasting and Policy) Denise Welsby (Working Age Strategy, Policy and Analysis Group) James Wurr (Labour Market, Self-Employment)
Secretariat:	Denise Whitehead (Committee Secretary) Paul Mackrell (Assistant Secretary)