

20 June 2018

**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  
David Chrimes  
Carl Emmerson  
Chris Goulden  
Jim McCormick  
Seyi Obakin  
Judith Paterson  
Charlotte Pickles  
Liz Sayce  
Victoria Todd

Apologies: Philip Jones  
Grainne McKeever  
Dominic Morris

Secretariat: Denise Whitehead (Committee Secretary)  
Paul Mackrell (Assistant Secretary)

**1 & 2. Private session**

*[RESERVED ITEMS]*

**3. The Universal Credit (Transitional Provisions) (Managed Migration) Amendment Regulations 2018**

3.1 The Chair welcomed the following officials to the meeting: Neil Couling<sup>1</sup> (DWP, Director General, UC Programme), Dr James Bolton (DWP, G5 UC Policy Deputy Director), Peter Loosely (DWP, G5 UC Programme, Head of Strategic Design), Dave Higlett (DWP, G6 UC Policy, Legislation), Nina Young (DWP G7, UC Policy, Disability) and Mick Ney (HMRC G7, Tax Credits, UC Transition).

3.2 The Department's aim in bringing forward these draft regulations was to have them in place for the start of 2019 when the process of testing the managed migration process was set to begin. Roll-out was planned over a four-year period concluding in 2023, by which time claimants in receipt of one or more of the six income-related 'legacy' benefits for working-age people (i.e., income-based Jobseeker's Allowance, income-related Employment and Support Allowance (ESA), Income Support, Housing Benefit, Working Tax Credit and Child Tax Credit) would

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<sup>1</sup> Because of an important prior commitment, Neil Couling could only attend the session until mid-way through the question and answer part of the discussion.

have been migrated to Universal Credit (UC). The Department had estimated that, by the end of the process, 2.09m households would have been migrated, involving 2.87m individuals, the majority of whom would have come from either tax credits (54 per cent) or ESA (36 per cent). The draft regulations were subject to the affirmative resolution procedure in Parliament and would therefore need to be debated in both Houses before becoming law.

3.3 The main features of the proposals included the following aspects:

- a preparation period of around four to six months to be given for individual claimants alerting them to the need to make a claim for UC, warning them that their existing entitlement to legacy benefits would be ending and preparing them for the migration process. Subsequently, a deadline date of at least one month would be set by the Department who would engage with claimants to help them through the process of claiming UC;
- the deadline date could be extended at the request of the claimant for good reason. The Secretary of State could also extend the date or cancel the notification altogether if she so decided. Up to one month's backdating of a late claim for UC was available, including for the additional ground of official error. If, however, no claim for UC had been made by the deadline date (extended by a possible one month if grounds for backdating could be established), any award of an existing legacy benefit would be terminated. Any subsequent claim for UC would be dealt with in the normal way, but would not have any of the transitional protections available to those who made an in-time claim;
- transitional protection (TP) meant that a monetary sum would be included within the UC award to ensure that, in cases where UC entitlement would otherwise have been less than the entitlement to legacy benefits at the point of change, entitlement would remain the same level. Tax credit claimants with capital in excess of £16,000 would have their capital above £16,000 disregarded for a period of 12 months in order to avoid being disentitled to UC on the grounds of failing to meet the financial conditions of entitlement. Students currently entitled to a legacy benefit would also not be required to meet the UC condition of entitlement that recipients should not be receiving education for the remainder of their course of study. Also Housing Benefit claimants would be entitled to the additional two weeks' payment on migration to UC. Finally self-employed claimants not in the "start-up period" but found to be genuinely self-employed would have a grace period of six months before the minimum income floor rule was applied;
- TP would be retained if a successful repeat claim to UC was made within three months of the cessation of the original award because of a 'spike' in earnings. It would be lost however if the UC award was terminated for other reasons or if earnings took a person off UC for longer than three months. Couples who separated or individuals who formed a couple would also lose entitlement to TP. Although changes of circumstances otherwise resulting in a higher award of UC

would normally erode TP entitlement, there was an exception for changes on account of increased earnings or because of an increase in the element included in the UC award for child-care costs; and

- claimants entitled to the Severe Disability Premium (SDP) as a component part of their existing benefit would not be migrated to UC. Those who had been migrated naturally and had lost their SDP would be considered for a transitional arrears payment payable from the start of the UC award.

3.4 Opening the session Neil Couling explained that, although the draft regulations provided the backbone to the process of migration, the Department's aim was to deliver migration with the help and support of third parties and others. The Department was currently half-way through its programme of rolling out UC to every Jobcentre and aimed to complete the task by December 2018. At that point the process of moving claimants with an ongoing award to one of the legacy benefits to UC would begin. This was a process the Department had termed "managed migration". The intention behind the TP rules was to follow the UC ethos of keeping it simple, so that, although the amount could be recalculated if required, a straightforward one-off comparison between legacy benefit entitlement and an indicative UC entitlement at the point of migration would provide the basis for the TP calculation. The TP would become part of the UC maximum amount, which would mean that work incentives were preserved. As with the UC programme itself, a 'test and learn' approach would be applied to the migration process with small volumes in the initial phase, followed by a slow but increasing acceleration over time when considered safe to do so.

3.5 Neil advised the Committee that the most difficult challenge for the Department was to ensure that claimants engaged with the Department, particularly claimants who might not have had any previous contact with DWP, or who were anxious about the move. Such engagement was vital to making a smooth transition, and DWP would need help from external partners to achieve it. Tax credit claimants who would be subject to work search requirements for the first time might need particular help. The Department would be working closely with external partners over the summer to see how co-operation on this task could be secured. A conference in early autumn was also to be held, for that purpose.

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

#### The Overall Migration Timetable

- (a) **It was understood that the Department had previously advised that there would be a testing period of 12 months before the main stage of roll-out would begin. The explanatory memorandum however referred to the testing period lasting from January 2019 to July 2019. Had the plan changed?**

The Department originally intended to bring the draft regulations to the Committee earlier in 2018, so that the legislation could be passed and testing

begin in July 2018. Although the plans had had to be changed on the timing of the legislation, the principle that there should be 12 months of testing was unchanged. July 2019 would mark the start of an increase in numbers being rolled out but the onward period would still be a period of testing, albeit with slightly higher numbers. Volumes would not pick up significantly until the end of 2019 and the beginning of 2020. The lessons from the test and learn approach would have to be absorbed and time was needed to make any necessary changes which emerged. That required the Department to work with a small volume initially; otherwise staff would be swamped by numbers, particularly as much of the work would have to be done clerically at that stage.

**(b) But did the Department not require a critical mass in order to make the test and learn approach fully effective?**

Much of the test and learn would be focused on assessing claimant behaviour and reactions with a view to ensuring that they do the right things at the right time. It would also be used for developing and improving operational processes. For these purposes high numbers were not needed in the test and learn phase.

**(c) Would the Department be making public the results of its monitoring and evaluation? It would be helpful to know what measures were being used and what data was being examined. Useful data from third parties was often available, for example. The Committee would like to see specific examples of the metrics and data points that the Department would be using to monitor the migration process.**

The Department would be making available metrics and the data on the managed migration. DWP have published a considerable amount of data already. Third parties have also published data but caution had to be exercised in using it. The important lesson from that experience had been to test and learn as progress was made without setting artificial deadlines. The Department did not want to commit to a detailed timetable until it was known how people responded to the migration process.

**(d) The Department's desire to use the test and learn approach to make this process of migration work as efficiently as possible was appreciated. Were there limits to the extent to which changes could be made as a result of test and learn?**

There were some fundamental principles within UC which were set and could not realistically be changed. The monthly assessment period was an example of that. The principle of digital by default would also continue. In the face of the ever-increasing use of digital technology, it would be inappropriate at this stage to row back on this point. Evidence, for example, showed that nine out of ten adults were recent internet users. There were other principles within UC, such as claimants taking responsibility for managing their own financial affairs, where there was some scope for manoeuvre for vulnerable claimants who may need additional support or coaching. The Department would need to see what the evidence uncovered. As far as the managed migration

exercise was concerned, there were few aspects to it which would not be open to adjustment to some extent under the test and learn approach.

- (e) Would the basic administration be in place and stable enough to allow for the proposed ramping up of numbers being migrated from 2020 onwards?**

The Department would be setting entry and exit criteria for each stage of the process. The criteria would have to be met before going on to the next phase. The details of those criteria had yet to be determined but would be structured in accordance with the nature of the caseload as established by the evidence as it began to emerge during the testing phase.

- (f) Why had the Department decided to do everything up-front, instead of getting people on to UC first and then applying UC principles at a later stage?**

The decision to require people to make a claim for UC rather than simply transfer them had been taken because the Department wanted to make sure that a claimant's circumstances had been accurately captured at the start of their UC award. Indeed it was possible that the information held in relation to existing awards of legacy benefits would be insufficient for the Department to make a UC assessment. For example, no information on capital or other benefits received was held in respect of claimants in receipt of tax credits. The information provided in connection with a new claim for UC might also bring out some existing errors where, for example, previous changes of circumstance had not been declared. It would also allow the Department to inform claimants more fully as to what the new UC regime would entail for them, since it was likely to be very different from their existing benefit regime. Additionally, the Department could not simply assume that all existing claimants would want to claim UC - some form of formal consent from a claimant was needed, and requiring a claim did that. Requiring a claim at the outset which, in terms of the specific question about doing every up-front, also avoided double-handling.

- (g) The Department would be moving claimants from existing benefits to UC at a time when others, who had already been migrated, would be losing their TP due to changes in circumstances such as working more hours and coming off UC for a longer period than would enable them to retain the TP. This would present a difficult communications challenge.**

The rules on TP had been designed so that, once the UC award was up and running, the amount of management involved in the TP aspect would be minimal. There were only a few change of circumstances which would mean that TP reduced or ended.

- (h) In the managed migration process would there be a point at which the Department would consider that all the testing and learning had been done and that it was time to 'turn on the tap'?**

No. The emphasis would begin to shift after the first 12 months of testing but there would never be a point at which the testing and learning could be said to be over. There would always be a place for continuing to learn and responding appropriately. This had been the approach throughout the UC experience. On some occasions an issue had arisen and the flexibility of the system had allowed a solution to be found and put into operation in a matter of a few days. On other occasions it had led to a period of careful thought and further testing.

- (i) **On the issue of landing claimants 'safely' on to UC, would the Department be getting data on fall-out rates? And if so, would it be publicly available?**

It was important that the Department should collect evidence in relation to fall-out rates. In particular it was necessary to know if the Department was doing anything which could contribute to a failure on the part of claimants to make a UC claim in time. Any attempt to improve the take-up rate would need that basic information as a starting point, although it had to be borne in mind that some claimants may choose not to claim UC. The Department would consider publishing the data when gathered.

#### Claimant Contact

- (j) **Mention was made of the success of the project being dependent upon the support of external partners and others in delivering a smooth transition between different benefit systems for claimants. Were any negotiations with external partners under way on this issue?**

Nothing had been set in motion as yet but the Department would be looking to do what it could to secure the assistance of outside bodies. The Committee had heard earlier in the meeting that a conference was to be convened in early autumn. That conference would be largely focusing on the practical aspects of how such help could be usefully employed for the benefit of claimants.

- (k) **Those external partners and outside bodies would probably look to the Department for some flexibility around the rules before agreeing to assist in the way the Department would like. If it was felt that the Department were creating 'no-go areas' where there was a determination not to row back, it might lead to a break-down in any negotiations. The relationship between the Department and external partners varied around the country, but there were parts where it was quite poor and the Department was considered to be 'not listening'. If outside organisations were to be given the opportunity to contribute to the process and know that their intelligence would be heard, considered and, if necessary, acted upon by the Department, it would go some way to putting the relationship on a far better footing.**

Thank you. It was certainly true that colleagues in operations were keen to build good and lasting relationship with relevant third party bodies.

- (l) Would communications to claimants about the migration process from tax credits to UC be DWP branded, HMRC branded or a joint branding?**

This had yet to be determined but the presumption would be that, because it was a DWP exercise, it would have DWP branding, but that the content would require considerable input from HMRC. Communications were being tested through moving people from live to full service. Any communications needed to be simple, clear and engaging.

- (m) Would the 'warm-up' letter, the notification itself and subsequent reminder letters referred to in the explanatory memorandum be available for the Committee to see and comment upon?**

Yes, the Department would make those documents available to the Committee.

- (n) Would claimants get a single letter if they were in receipt of more than one legacy benefit?**

Yes. The process was being centrally managed to avoid the kind of confusion that could arise if claimants got multiple letters in respect of different legacy benefits.

- (o) Would HMRC be doing any warming up of tax credits claimants who might have difficulties with the process?**

HMRC colleagues were heavily involved with DWP to determine a communications strategy, although no details had been finalised. The managed migration process allowed the Department to contact individuals to warm them up to the process. This was different to natural migration. More information about what would be happening would become available over time as plans developed.

- (p) It was noted that of the group subject to managed migration, 36 per cent of them would be coming from ESA. When it came to communications some of that group would have access requirements which were commonly overlooked by members of staff. Using the example of a visually impaired person being sent a letter, would that constitute 'official error'?**

The intention was that the Department would check a person's requirements using information on the system before terminating entitlement to a legacy benefit. The Department would use different contact methods. Flexibility had been built into the regulations to make allowances for claimants' needs. The Secretary of State also had powers to slow or halt the migration process if, at any point, it was considered appropriate to do so.

- (q) The broad circumstances in which a person might have a good reason for having the deadline extended in their case by the Secretary of State**

were set out in paragraph 36 of the explanatory memorandum. Decisions on this issue might be taken by several thousand people administering the test for around three million people. There was therefore considerable scope for discrepancies and variations in decision making to arise. Would it be appropriate to have more specific and relevant circumstances set out in the legislation?

That point was acknowledged, but it was the very reason why the test and learn approach was considered so important by the Department. The intention was to carry out small scale testing across a range of different people. This was the kind of area where adjustments in the light of experience could be considered.

- (r) **Would the Department be contacting third parties known to be supporting claimants in order to help them through the migration process? If so how would the Department circumvent the problem of requiring the claimant's consent before sharing information with the support worker?**

That aspect of the process had still to be looked at. The Department would need to consider this issue although it should be mentioned that the Secretary of State could always intervene to halt or delay the process.

- (s) **Paragraph 106 of the explanatory memorandum referred to the migration process as it involved claimants engaged in caring duties where entitlement to the Disability Living Allowance, the Personal Independence Payment was an issue and where entitlement to SDP was relevant. How would this work in Scotland where benefits for disability and for caring duties were a devolved matter and where different provisions for carers planned by the Scottish Government would take an estimated two years to roll-out?**

There were two main things that this part of the legislation did: implement a gateway to hold people with the SDP on legacy benefits; and carry out a one-off check on former recipients of SDP who had already migrated to UC. For claimants in the latter group, the Department would consider paying a one-off lump sum covering the period that they had been on UC and also give on-going payments. The question as to the stage at which the devolutionary process had reached should not therefore be relevant.

- (t) **Would a person who had previously been in receipt of a legacy benefit which included the SDP element but whose UC entitlement had ended prior to the regulations coming into force be eligible for the additional payments?**

No. The principle behind the transitional payment was that it should apply to current cases where the individual circumstances meant that the person concerned would have satisfied the conditions for the SDP had they been on a legacy benefit.



## Transitional Protection

- (u) **The requirement to make a new claim was unique in migrating claimants from one benefit to another. Given the prospect of a claimant missing the deadline and losing a substantial amount of benefit for a very long time, could the Department not have provided more generous backdating provisions? An alternative might be to provide an extended back-dating or linking rule, where people subsequently made a late UC claim after missing the deadline.**

The Department had taken the view that a deadline was needed in order to achieve the desired result. The approach was therefore to provide the necessary support before the deadline was reached at the same time as building in some safeguards which would allow the deadline to be extended or the notification cancelled if that was considered necessary. Existing circumstances in which a claim for UC could be back-dated were considered sufficient in these circumstances, except for the addition of a further prescribed category for back-dating – that where ‘official error’ had occurred. The categories for back-dating would not be outside the scope of change if the test and learn process found it to be necessary.

- (v) **The experience of ‘natural migration’ to UC had shown that mistakes had been made and were continuing. An example of this was where ESA claimants with limited capability for work were, on claiming UC, being subjected to conditionality requirement erroneously.**

The Department was aware that the UC journey for individuals with health conditions and disabilities could be improved. There was a lot of focus on this at the moment.

- (w) **In comparing the legacy amount with the indicative UC amount for the purposes of determining the TP element, was there any human involvement in the matching?**

The Department’s intention was to draw as much information as possible from the legacy system, but there may be some gaps in information, which needed to be obtained from the claimant, e.g., such as the need to submit a declaration of the amount of capital held.

- (x) **Would UC decision notices include details as to how an individual’s TP had been calculated, so that the comparison between the different benefits at the point of change could be seen?**

This aspect of the communication was still being considered. However, the assumption was that people would need to know how much TP they had.

- (y) **On the 12 month protection for tax credit claimants with capital in excess of £16,000, the TP rule meant that someone marginally over the threshold and whose capital dipped below the threshold before rising above it again would lose entitlement to the TP. In contrast, someone**

**whose capital exceeded the threshold by a substantial margin would not be affected in the same way by any such fluctuations. In this scenario the better-off claimant would fare better.**

The Department was aware that the communications about the rules around capital and dropping below £16,000 needed to be clear. The Department had considered drawing up entirely new rules, but discounted that option on the grounds that it would add another layer of complexity in circumstances where only a relatively small number of claimants were likely to be affected. The rule by which tariff income would be calculated would continue to apply in all cases. The Department did not see a difference between claimants affected by fluctuating capital around £16,000 and new UC claimants in terms of no longer having entitlement to benefit if their savings increased above £16,000.

**(z) Did the Department have any information on the vulnerable claimants in this group who had low income and substantial capital who would be affected by the capital disregard rule?**

No. HMRC did not record data on capital as it was not relevant to the tax credits calculation of entitlement, but it was not expected to be many. DWP do not have much data on these claimants as they had no contact with them which is why it was taking a test and learn approach.

**(aa) Could the Department explain how draft regulation 55(1)(b) should be interpreted?**

Regulation 55 provided for the determination of the amount of the transition element to be awarded once the comparison calculation between the total existing award and the indicative UC amount had been carried out.

Regulation 55(1)(b) provided for those managed migration cases where the earnings or unearned income the claimant had been receiving would have reduced the UC indicative amount to a figure below zero. In these cases it would be necessary to take the amount where the UC indicative amount would have fallen below UC in calculating the amount of the TP element to ensure that the claimant's benefit entitlement was fully transitionally protected.

Where it was earnings that would have reduced the UC indicative amount below zero, the amount of the transition element should be the amount of the legacy entitlement plus 63 per cent of any of the earnings that fell to be deducted in calculating the UC indicative amount. This would take into account the UC earnings taper. And where it was unearned income that had resulted in the UC indicative amount falling below zero, it would be by 100 per cent of the unearned income that so fell to be deducted.

**(bb) What was the Department's intended approach to in-work conditionality? Would it be light-touch until 2023? When would in-work progression come in?**

The assumption was that the current system would continue to apply for now, although there were some on-going labour market trials on this which might inform subsequent decisions.

- (cc) The explanatory memorandum referred to the impact of the proposals on equality and diversity. Would a fuller version be available in due course? There would appear to be a number of areas where one could envisage these proposals having a disproportionate impact upon claimants with protected characteristics.**

A full Equality Impact Assessment (EIA) was produced at the time the Welfare Reform Bill, which introduced UC, and was put through Parliament and made publicly available. Since then equality impacts have continued to be considered.

- (dd) The uniqueness of these proposals with a deadline which, if missed, could have a significant and long-lasting impact upon a claimant meant that a separate EIA was appropriate for these specific provisions. In some ways the term 'migration' is inappropriate because the responsibility for making the transition is ultimately with the claimants themselves. In the past people were passive in being migrated from one benefit to another. In these circumstances where claimants are required to be active, perhaps a term other than 'migrated' should be found.**

The Department would happily consider an alternative term, but until something more apt emerged, would continue to refer to migration. The Department was continuing to iterate the equality impacts and would welcome any additional information the Committee would like to provide.

- (ee) Had the Department assessed the impact upon the loss of TP for a member of a couple whose partner die or who went into a hospice?**

Yes. In those circumstances the single person would be entitled to a benefit run-on during which time TP would continue. Once that had ended, however, it would mean they would have to claim UC as a single person, as they would under the legacy system. That would, in turn, mean the cessation of TP, which would have been based on a couple award.

- (ff) Would this still apply if, for example, a member of the couple had died and the couple had been in the 12-month period during which the capital disregard rule entitled them to UC?**

Yes. The claimant would still be entitled to the benefit run-on during which the capital disregard would continue. At the end of the run-on the capital disregard would stop and so, if the remaining member of the couple had capital exceeding £16,000, there would be no entitlement to benefit. If the capital had fallen below £16,000, the remaining member would claim UC as a single claimant and any TP would cease.

- (gg) The principle in the recent judgment affecting ESA claimants with an element for SDP who moved address to an area where they had to claim UC, and who lost their SDP as a consequence, could be applicable in other instances where SDP was lost. Would the Department be looking at those other groups and making similar provision for those who lose SDP because of a change of circumstances?**

No. The Department saw the group of claimants who were the focus of these draft regulations as being in a unique position. Committee members would wish to know that the Department were actively considering seeking leave to appeal against the judgment in question.

- (hh) Protection had been provided in these provisions for students who would otherwise be adversely and disproportionately affected after moving to UC. However there were other groups who might similarly be impacted. An example would be claimants who did not require a right to reside in order to access tax credits, but did for UC. Had the Department considered this?**

The Department had fully considered the impact of the regulations and would be willing to address any further concerns that the Committee might wish to raise.

3.7 The Chair thanked the officials for attending the meeting and answering the questions that had been put to them. After a time of private deliberation he advised them that the Committee had decided that the draft regulations should be subject to the formal reference procedure. The Committee would launch a public consultation exercise before the end of the week which would seek information and evidence in relation to the proposals. The Committee would also wish to undertake a small number of stakeholder workshops as part of its consultation process. To ensure that interested stakeholders had an opportunity to comment over what would be a peak holiday period, the public consultation exercise would run over two months until 20 August. The Committee would endeavour to submit its report to the Secretary of State by the end of September.

#### **4. Private session**

##### ***AOB/Current Issues***

##### ***The Child Benefit, Tax Credits and Childcare Payments (Section 67 Immigration Act 2016 Leave) (Amendment) Regulations 2018***

4.1 The Committee agreed that it was unnecessary for officials from HMRC to attend the meeting in order to present these draft proposals. The draft regulations would amend child benefit, tax credit and childcare payment legislation so that unaccompanied children accepted into the country from conflict countries such as Syria would have the same access to benefit entitlements as a child of a refugee. This had become known as the “Dubs amendment”. No questions arose in connection with the proposals which were seen as being entirely beneficial. The secretariat were asked to stand down HMRC officials.

**Date of next meeting**

4.2 The next meeting was scheduled to take place on Wednesday 25 July 2018 at Caxton House in London.

**Attendees**

Guests and Officials

Item 3: Neil Couling (DWP UC Director General)  
James Bolton (DWP UC Policy Deputy Director)  
David Higlett (DWP UC Policy, Legislation)  
Nina Young (DWP UC Policy, Disability)  
Peter Loosely (DWP UC Programme, Head of Strategic Design)  
Mick Ney (HMRC Tax Credits Policy, Universal Credit Transition)

Observers: Paul Towers (DWP UC Policy, Legislation)  
Beatrice Fannon (DWP UC Policy, Legislation)  
Gary Rodgers (DWP UC Policy, Passport Benefits)  
James Hurkett (DWP UC Analysis)  
Nic Vaughan (DWP UC programme, Managed Migration Project)  
Ben Medcalf (DWP UC Managed Migration Design)  
Steve Lawrence (DWP UC Policy, Disability)

Secretariat: Denise Whitehead (Committee Secretary)  
Paul Mackrell (Assistant Secretary)