

**24 July 2019**

**Social Security Advisory Committee  
Minutes of the meeting held in room 5.21/5.22  
Caxton House, Tothill Street, London, SW1H 9NA**

Chair: Liz Sayce

Members: David Chrimes  
Carl Emmerson  
Chris Goulden  
Jim McCormick  
Philip Jones  
Dominic Morris  
Charlotte Pickles  
Victoria Todd

Apologies: Sir Ian Diamond  
Bruce Calderwood  
Grainne McKeever  
Seyi Obakin

**1 & 2 Private sessions**

*[Not for publication]*

**3. The Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019**

3.1 The Vice Chair welcomed Neil Couling (Director General, Change Group) and James Bolton (Deputy Director, Universal Credit Policy). Because of the desire of the Secretary of State to introduce these draft regulations urgently, a number of Committee members had met with James and other officials on 12 July. As a result of that meeting, the Committee had agreed that the draft regulations could proceed without a requirement for formal reference. A formal notification of that decision was issued on 17 July.<sup>1</sup> However, the Committee wanted to seek clarification on a number of points that had arisen during the course of the earlier meeting.

3.2 By way of background, the regulations for Universal Credit (UC) managed migration as they were originally proposed had come to the Committee in the Summer of 2018. Those proposals included a specific rule that claimants in receipt

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<sup>1</sup> The Regulations were laid on 22 July 2019 as SI 2019 No 1152 with regulations 2 and 3 coming into force on 24 July 2019 – the day of the Committee meeting.

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of a legacy benefit which included a severe disability premium (SDP) would not move to UC via natural migration, but instead would remain on legacy benefits by means of the SDP gateway until they were moved by the Department via managed migration. Those who had already moved to UC would receive transitional payments in respect of the lost SDP for the period which they had been on UC and ongoing payments. The Committee took the draft Universal Credit (Managed Migration) Regulations 2018 on formal reference and reported to the Secretary of State. The Department then put forward a second set of proposals which came to the Committee shortly before Christmas 2018. These separated out the SDP Gateway provisions from the managed migration package; the remaining provisions were re-laid with the inclusion of a provision that restricted the managed migration exercise to a pilot. The Universal Credit (Transitional Provisions) (SDP Gateway Regulations 2019 (SI 2019 No 10) were duly laid in Parliament and came into force on 16 January 2019, whilst the draft Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 were for affirmative resolution and awaited dates for a debate in both Houses of Parliament.<sup>2</sup>

3.3 While the draft regulations were before Parliament, the High Court judgment in the cases of claimants *TP*, *AR* and *SXC* was handed down on 3 May 2019.<sup>3</sup> The court found that the differential treatment between recipients of the Severe Disability Premium (SDP) who had already moved to Universal Credit (UC), and those who were prevented from moving to UC by the Gateway Regulations was not justified. As a result, the Secretary of State had to address this differential treatment. The current set of proposals sought to achieve this by removing the block on SDP claimants moving to UC under the managed migration project. This would take place in 2021 as that would be when it was operationally feasible to do so.

3.4 In addition, the regulations:

- increased the levels of the transitional payments for former SDP recipients who have naturally migrated to UC;
- exclude Housing Benefit (HB) only claimants who had SDP included in their HB award calculation from receiving transitional payments. These claimants had never received an additional cash amount for SDP and evidence showed that most claimants in this category were likely to be better off in receipt of UC than they had been under legacy benefit; and

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<sup>2</sup> The Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 (SI 2019 No 1152) were for negative resolution since a provision in the previously proposed version making certain decisions of the Secretary of State non-appealable, was removed.

<sup>3</sup> [TP AR & SXC, R \(On the Application Of\) v Secretary of State for Work And Pensions \[2019\] EWHC 1127 \(Admin\) \(03 May 2019\)](#)

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- extended the ability to make transitional payments to other groups, for example, to those identified in the Legal Entitlement and Administrative Practices exercise.

3.5 The main questions which arose in discussion were as follows –

- (a) **Could the Department confirm that the one-off test to ensure that the Transitional Payment was restricted to those currently entitled to UC could have a beneficial or negative impact on claimants, depending on when the test was conducted?**

Yes, that understanding was correct. It was the reason the Department had wanted to introduce the regulations without delay. In fact, the first payment had been made that morning.

- (b) **Could the Department have looked at a past period of entitlement and provided help in respect of that period?**

It would have been administratively burdensome and complicated to unravel a past period and calculate an appropriate amount.

- (c) **Could the Department have made provision for a situation where a disabled couple were in receipt of the SDP and then one of them died?**

The rules on losing Transitional Payments in situations where couples form or separate reflected the cessation rules that applied when transitional protection was required.

- (d) **That may be so, but could the Department not have made an exception in these circumstances?**

Making an exception would have introduced complications and differential treatment into the system. It was the fact that the Department had introduced separate rules for the SDP cohort of claimants that gave rise to the recent High Court judgment. It had always been the case that any significant change of circumstances had impacted any transitional protection.

- (e) **Could anyone previously on HB-only lose out through not being eligible for the SDP transitional payments under the revised legislation?**

The numbers of HB-only cases where there was SDP entitlement were already relatively small. A person would generally need to be single, severely disabled and meeting the criteria for the SDP but earning sufficient wages to remove any potential entitlement to an income-related DWP benefit. Their notional entitlement to SDP would not result in a direct payment for that SDP,

but could raise the level of HB award received by way of offsetting against any income the claimant received. Any loss in the overall amount of the HB award would be very difficult to calculate as there would be no precise comparison due to the treatment of income, rather than any actual SDP amount lost.

**(f) Anyone in this category would be in work and the removal of any entitlement to TP could undermine work incentives.**

Work incentives would probably not be undermined – the evidence was that most were better off on UC where they would benefit from the standard allowance and more generous rates. The group itself was very complex. The Department had taken an admittedly small sample, and worked out that the numbers of losers would be tiny. In fact, the Department was not certain that any existed. However, if there were, there was the option of seeking Discretionary Housing Payments, although there could be no guarantee that they would be available. The general point was that it was not possible to devise a specific policy that applied to this group, as they did not have an SDP loss. A pragmatic approach had to be taken on the basis of broad principles.

**(g) It was appreciated that any numbers would be tiny, but there had been a lot of noise on this issue. Could they be included in any evaluation and possibly tracked? There would be implications for Northern Ireland and Scotland.**

As the previous draft legislation had never been introduced, there could be no detrimental impact on account of the changes to the provisions in the current regulations. The amount of available data was not great at present, but there could be more information going forwards.

**(h) Why did the Department change its stance on the need for affirmative legislation?**

This was a direct consequence of removing regulation 63 from the Universal Credit Regulations 2013, which was a clarification of appeal rights relating to procedural issues of the issuing, extension or cancellation of an appeals notice. Ministers decided that, for the pilot, there was no need to include this provision. There was no change in policy, however, as the regulation was only providing a clarification. Having a negative set of regulations meant that the Department could pay people more quickly.

**(i) Would that same approach be adopted once the pilot phase had been completed?**

Ministers would revisit that decision when the next tranche of legislation had to be drafted.

3.6 The Vice Chair thanked Neil and James for attending the meeting and responding to the Committee's questions.

#### **4. The Universal Credit (Childcare Costs and Minimum Income Floor) Amendment Regulations 2019**

4.1 The Vice Chair welcomed Niamh Parker (Strategy Universal Credit Policy) and Rebecca Huxford (DWP Legal Advisers). She thanked them for coming at short notice to address some questions raised by Committee members that had not been fully resolved following correspondence between the Department and the Committee.

4.2 The draft regulations comprise two unrelated amendments:

- **Childcare costs** – changes in childcare costs in Universal Credit (UC) currently had to be reported in the assessment period in which they occur. Anything later than that and late reporting issues would come into play, making it uncertain that claimants would get help to meet charges. This made it administratively onerous for the Department and frustrating for claimants if the charge was imposed towards the end of the assessment period. This change enabled the claimant extra leeway in the reporting period – the assessment period in question *plus* the assessment period following.
- **Minimum Income Floor (MIF)** – a clarification was needed following a legislative amendment which left room for an ambiguous interpretation. The policy intention, as stated by the Department, had always been that any gainfully self-employed claimant whose earnings exceed the conditionality earnings threshold (CET) would be included in the “all work-related requirements” conditionality group for MIF purposes. Although an employed earner whose earnings exceeded the CET would be exempt from conditionality, the Department's view was that the structure of the MIF would be under-mined if the same rule applied equally to the self-employed. Ministers therefore wanted to amend the legislation to ensure that it properly captured the original policy intention.

4.3 The Committee indicated that it welcomed the proposed amendment in relation to reporting changes in childcare payments. The only questions that arose were in relation to the MIF.

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

- (a) **It was appreciated that the amendment was designed to restore the position with regard to self-employed people and the MIF. However, the amendment highlighted issues of disparity of treatment between the employed and the self-employed. Regulation 90 of the Universal Credit Regulations 2013 sets the threshold for earnings for conditionality purposes so that if a person earns above a certain threshold they are not subject to any work-related requirements. In determining the person's weekly earned income, no account is taken of income tax, national insurance contributions or relievable pension contributions. If this were to cover employees as well as the self-employed, that would self-evidently ensure parity of treatment. However, by making this change and excluding the self-employed from this provision, the Department was effectively wiping out the pension contributions of the self-employed since the MIF was calculated on a different basis and does not include relievable pension contributions. Had the Department given thought to that matter?**

The Department was simply restoring what had always been the intention behind the policy relating to the MIF.

- (b) **But if it was now becoming apparent that the self-employed were being treated differently from the employed, the Committee would consider it reasonable to ask why that was so, and inquire as to any objective justification for the disparity in treatment.**

The policy of the Department was to encourage the self-employed to increase their earnings where possible. There had always been an intention to treat them slightly differently from those in employed earners' employment.

Wider issues of the legality and application of the MIF was being challenged in the courts by way of Judicial Review. The Department would come back on that issue when the result of that case was known.

- (c) **Would it not make sense to await the outcome of that case before making this amendment?**

The amendment being made was urgent, but only a secondary issue on the wider matter of the MIF itself. The Department would contact the Committee as soon as the judgment was handed down and set out its position in more detail.

4.5 The Committee decided that the draft legislation could proceed without the need for formal reference. The Vice Chair advised Niamh and Rebecca that the Committee was, however, keen to follow through on the policy intention behind the MIF and would await the outcome of the Judicial Review with interest.

**5. The impacts of localised council tax support schemes – Robert Joyce, Institute for Fiscal Studies**

5.1 Robert Joyce (Deputy Director at the IFS and Head of the Income, Work and Welfare Sector) had been invited to the meeting to talk about recent research by the IFS into local Council Tax support schemes. Introducing his presentation, he noted that, since devolving responsibility for administering support for people on low incomes with Council Tax bills in 2013/14 to local authorities, the Government could be said to have washed its hands of the issue. Certainly there was no evidence that it had tracked schemes to find out how it was working in practice. The only databases of councils' scheme choices are maintained by third sector organisations – notably the New Policy Institute (NPI) and Entitledto, which the IFS had drawn on heavily in order to conduct its research. IFS considered it important to know what was happening, and particularly how different schemes would fit alongside Universal Credit, which is of direct consequence for central government policy.

5.2 Although the average amount of the reduction in the council tax bills as a result of council tax support was fairly modest in comparison with, for example, housing benefit awards, the number of beneficiaries eclipsed those of any other income-related benefit. In 2017/18 there were 4.9m households in Britain receiving help. The cost to local authorities was £4.1bn a year, reducing their overall annual council tax revenue by 11 percent to £33bn. In England £1.8bn went to 2.4m working age claimants with an average reduction in the annual council tax bill of £770.

5.3 326 local authorities in Great Britain were tasked in 2013/14 with designing their own localised support schemes for working age claimants to replace Council Tax Benefit (CTB). At the same time funding was cut by 10 percent of the CTB budget. Because pensioner entitlement was set nationally and largely protected, working age claimants effectively faced a higher cut and particularly so in areas with higher numbers of older low-income people. Because the devolved governments largely maintained the previous schemes as they had been administered, the greatest changes were experienced by working age households in England. In 2013/14 the aggregate cut to council tax support for those households was 14 percent, relative to the scenario where the old national system had been maintained, but in 2018/19 that cut had grown to 24 percent. That is partly because other, nationwide benefit cuts (e.g. the working-age benefits freeze) since 2013/14 have had knock-on effects on council tax support, which would naturally have happened even under the old system of CTB; without these the aggregate cut for working-age households in England would have grown to 20 percent.

5.4 IFS found that over time schemes had changed, the most common change being the minimum amount of Council Tax that beneficiaries were required to pay.

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The 3.6m households that would, in 2018/19, have been entitled to CTB if the pre-2013/14 nationwide system had remained in place lose £196 per year, on average, as a result of local authorities reducing the generosity of the scheme. Of them, 1.4m households have to pay some council tax even though their council tax would have been fully rebated under CTB; 1.6m would have had to pay some council tax under the old CTB system but are liable for more as a result of the cuts; and 0.5m still have no bill to pay – either because they are in one of the 20 percent of local authorities who have not introduced a minimum council tax payment, or because they are in a group whom their local authority has specifically singled out for protection from that minimum payment. Of those who would have been entitled to a full rebate under the old nationwide CTB system, only 27 percent still had no council tax liability.

5.5 The IFS also found that low-income working age people were more likely to lose support as a result of localisation if they lived in a poor area. Richer areas had fewer people needing to rely on council tax support and hence it was a smaller part of their budget, meaning that they were more likely to have chosen to absorb the 10% funding cut for council tax support rather than pass it on to claimants. On the other hand, for those living in an affluent area who lost out under their local authority's council tax support scheme, the extent of the loss was greater on average because council tax bills are higher in richer areas.

5.6 Robert noted the findings gave rise to some important lessons for policy makers and particularly so in the context of devolving responsibilities and funding. The first lesson was that temporary incentives can have a long-term impact. This can be seen in that many local authorities have an 8.5 percent minimum payment threshold, reflecting the fact that in the first year of localisation, central Government gave additional funds if the minimum payment was no higher than 8.5 percent. That rule was temporary and only lasted for the first year, but many local authorities kept with that starting figure and did not increase (or reduce) it. IFS also identified that even with local authorities who introduced a minimum payment rule after the first year had elapsed, some of them still chose to fix it at the 8.5 percent level, even though there was not any direct financial incentive to do so at this point. It was thought that this was probably due to local authorities aligning their schemes to other local authorities surrounding them.

5.7 As a second lesson it was also found that the way funding streams are labelled can affect how they are spent. The evidence was that local authorities were more likely to have made a larger cut in their local council tax support scheme if they saw a bigger cut in central government funding for the scheme in 2013–14. Where government cuts to a local authority were labelled as a specific cut in the support scheme the local authority was more likely to pass on that cut in their scheme. But where there was a more general and unlabelled cut in central government funding for local authorities, there was less likelihood of the local authority choosing to alter their scheme arrangements.



5.8 Another set of findings related to the impacts of cuts to council tax support on the households themselves. There is strong evidence that the cuts have substantially increased rates of council tax arrears – particularly among lone parents, renters and people living in local authorities that already had low rates of council tax collection. Overall, around 25 percent of the additional council tax liability created by cuts to council tax support has not been collected. This compares with the average non-collection rate across local authorities for council tax of about 2.5 percent, meaning that the non-collection rate of this extra council tax from low-income households is 10 times higher than the typical non-collection rate of council tax. This low collection rate is not simply a short-term phenomenon while households adjust to the new system; it persists for at least five years. Essentially all of the increases in council tax arrears appear to have been among households that would not, under the old nationwide CTB system, have had to pay any council tax at all; for those who would have had to pay some council tax anyway, and who are subject to an increased bill, no increase in arrears was detected. The conclusion from these findings was that it was not so much the amount of the bill that was critical, but the fact that it was a new bill. There could be a number of reasons why this should be so and IFS would like to follow this, and other aspects, through in future work.

5.9 The Vice Chair thanked Rob Joyce for attending and giving such an informative and interesting presentation to the Committee.

## **6. Current Issues and AOB**

### ***Consideration of 'postal' Regulations***

6.1 The Committee agreed that the following regulations may proceed without the requirement for their formal reference:

*The Social Security (Employment and Support Allowance) (Transitional Provisions) (Amendment) Regulations 2019*

6.2 The Vice Chair asked the secretariat to notify the Department accordingly.

### ***Date of next meeting***

6.3 The Committee's next meeting was scheduled to take place on 4 September at Caxton House.

**Attendees**

Guests and Officials

Item 3: Neil Couling (Director General, Change Group)  
James Bolton (DWP UC Policy Deputy Director)

Item 4: Niamh Parker (Strategy Universal Credit Policy)  
Rebecca Huxford (DWP Legal Services).

Item 5: Robert Joyce (Institute for Fiscal Studies)

Observers:

Item 3: Beatrice Fannon (Strategy Working Age Benefits)  
Craig Dutton (Strategy Working Age Benefits)  
Kevin Owens (Strategy Working Age Benefits)  
Paul Towers (Strategy Working Age Benefits)  
Richard Grennan (Strategy Working Age Benefits)

Item 4: Richard Grennan (Strategy Working Age Benefits)

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