AGENDA ITEM 3
MINUTES

30 January 2019

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

Chair:	Sir Ian Diamond
Members:	Bruce Calderwood David Chrimes Carl Emmerson Chris Goulden Philip Jones Jim McCormick Grainne McKeever Judith Paterson Charlotte Pickles Liz Sayce Victoria Todd
Apologies:	Dominic Morris Seyi Obakin
Secretariat:	Denise Whitehead (Committee Secretary) Paul Mackrell (Assistant Secretary)

1. Private Session

[Reserved item - not for publication]

2. (i) The Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019

(ii) The Universal Credit (Restriction on Amounts for Children and Qualifying Young Persons) (Transitional Provisions) Amendment Regulations 2019 (2019 No 27)

2.1 The Chair welcomed the following officials to the meeting: Dr James Bolton (DWP, UC Policy Deputy Director), Ian Wright (UC Programme Director) Nina Young (G7, UC Policy), Lara Sampson (Digital Product Design) and Rosie Grigalis (Policy Officer, UC Policy). He noted that the Committee had welcomed the two additional measures introduced by these proposals, and had previously confirmed to the Department that it did not wish to take the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 on formal reference. The Chair also advised the officials that the Committee had welcomed the Secretary of State's recent reply to its letter of 11 January; and that it looked forward to receiving a response to its earlier letter of 14 December.

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

2.2 Since the Committee's report on the original set of proposals relating to the managed migration programme of moving claimants on legacy benefits to Universal Credit (UC), the Department had submitted a revised set of proposals, giving effect to a number of the Committee's recommendations. After further consideration the Department had then made further changes: separating out the provisions relating to the Severe Disability Premium gateway under a separate statutory instrument, and introducing into the remaining provisions a separate regulation which would limit the application of the regulations to the first 10,000 awards made in accordance with the managed migration process. This was designed to provide assurance that the first phase of the roll-out would be properly evaluated and tested before bringing forward further legislation to allow for migrating the very large number comprising the remainder of those needing to be manage migrated to UC.

2.3 The draft regulations were for affirmative resolution. The Department had laid them in Parliament but dates for debate in both Houses had yet to be determined. The aim had been to guarantee the net was cast as wide as possible to ensure that as many different scenarios as possible were encountered during the initial testing phase. These were being gathered as 'problem statements', which were being worked through in terms of claimant experience as part of the managed migration design, which would then be tested. An ongoing collaborative experience was envisaged.

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

2.4.1 <u>General</u>

(a) How would the Department approach the issue of risk with regard to the 10,000? If some missed the deadline for making the claim they could face destitution. Whilst acknowledging that it would be easier to put in place a safety net when numbers were low, would there be a safety net for the 10,000?

Yes – there would be a safety net in place and all individuals would be tracked all the way through the journey. The Department had always intended to start small. This was what happened with the start of UC itself when DWP started in Sutton in order to control numbers and did not continue until the Department was ready. The difference between the start of UC roll out and managed migration was that the Department would have a greater control of the numbers involved in managed migration owing to the Department's control of the issuing of migration notices. The benefit of starting small was that it allowed the Department to worry less about the cost of running the programme and think more about how it could help people migrate safely from legacy benefits to UC. As solutions were found to emerging difficulties, the next stage would be to think about how that solution could be adopted to scale.

The Department was confident that by tracking each individual issued with a migration notice and following them up, if necessary with a home visit, the risk that some would inadvertently fail the process would be minimised. The aim was to do this first phase of testing as safely as possible. Once the basics were in place, the Department could work on scaling things up.

(b) **Given that the Department had limited itself to 10.000 awards, was there confidence that this would include sufficient numbers of the homeless, those with different types of disability and those with a mental health issue to enable to evaluate the full range of circumstances that would arise when the main phase of migration started?**

The Department has used the figure of 10,000 awards as an indication that it would not scale up without returning to Parliament. The number itself was not particularly critical; what mattered was the learning on the way to the making of 10,000 awards. The intention was to build up very slowly, starting with numbers in the tens and, when satisfied that it was safe to progress, moving to hundreds. The Department was not looking for the pilot to provide representation of every type of circumstance that may occur; rather it would be using the pilot to learn and respond to the design of the migration experience. Work with delivery partners would be vital in reaching people who might otherwise be missed by DWP. Delivery partnerships were key in this and the development of such partnerships would be a major aspect in the next phase of the programme.

(c) **Did the Department have sufficient information to enable adjustments to be made to the process for those who needed it? As an example, would there be a record about a person's visual impairment which would prevent them from being sent a letter?**

This was not a new challenge for the Department. In Full Service, DWP had the ability to record the needs of individuals to ensure that these needs were understood. The challenge with migration was that the claimant's needs must be recorded throughout the migration journey as well as when they arrive on UC. It was important that the format of any communications was appropriate to the needs of the individual. The main thing was that those needs must be understood at the point of contact. The Department was putting a stress on making a detailed forensic analysis of the particular circumstances and needs of the individual and then addressing them.

(d) **How did the Department go about selecting the 10,000? Would it follow the previous pattern of UC roll-out by looking at the most simple first and building it up to tackle the harder ones later, or was it to identify more complicated cases, get them on safely and learn the lessons?**

The Department had not selected 10,000; rather it had used 10,000 as a rough indication of how far it will have tested the user experience of moving to UC before returning to Parliament. The Department would not just select the easiest to move. It was more a case of finding as wide a range as possible in order to learn as much as possible. That said, there were some aspects of

full service UC which were not mature enough, and such cases would be excluded from the 10,000 exercise whilst solutions to the aspect in question continued to be sought. An example of this was corporate appointees. Some cases would be simple enough in strict benefit terms but reaching and communicating effectively with them could be the challenge. The Department acknowledged that the low numbers involved in the first phase could mean that sub-groups of those successfully migrated may not be statistically representative.

(e) **How many people would need to receive a migration notice in order to reach the 10,000 limit?**

That was unknown. The answer to that question would be an important lesson in itself for the Department and could raise other questions to be pursued in the design. Had the legislation stipulated that the limit would be set at the numbers of notices issued, the result might have yielded insufficient numbers to allow the full range of testing.

(f) **The Minister had stated publicly that the first phase would include a "non-mandatory" approach to managed migration. Would they be a part of the 10,000 and how does a "non-mandatory" approach comply with the legislation which requires a migration notice to be issued which, in turn, requires compliance from the claimant in order to be migrated successfully?**

It was correct that once the migration notice was issued, the individual would be locked into the process. However, the regulations allow for the Department to extend the notice period or cancel migration notices. The Department would be looking at a voluntary approach in due course but not necessarily from the beginning of the pilot.

(g) **Would that undermine the integrity of the testing? Volunteers would inevitably be willing and compliant. That would effectively de-risk the process. Some claimants would be better off on UC and would be incentivised to volunteer. It would be important to keep the numbers of volunteers to a limited proportion in order not to diminish the learning.**

That point about numbers was taken.

(h) **Would the Department be able to find out the reasons for those who failed to complete the process of claiming?**

That was certainly the intention. The Department was making the understanding of that issue a major part of the pilot. There was a good deal of discretion within the process to protect those who might otherwise fail to make a successful claim. DWP would be putting in a lot of effort into finding those who would be reliant on support to help them through the process, and that would include home visits where necessary, which would give an indication of the size of this population.

(i) **Whilst acknowledging the discretion available to the Department up to the individual deadline set, how would those who missed the deadline be tested? This might be more of an issue once the 10,000 awards had been made.**

Automatic extension of the deadline day would be used at the beginning of the pilot in order to give assurances to people. The Department could not continue it throughout the whole of the pilot, and this would be part of the later stages.

(j) **But the slower the start, the quicker things will need to be at the end.**

Even after the first phase of testing, the Department would build volumes gradually. From the Autumn of 2020 the Department would begin scaling up, but again, that would only be if the learning was in place. There was nothing in the legislation which required the Department to have successfully processed 10,000 UC claims by a set date. Neither was there a requirement that 10,000 awards had to have been made before embarking upon the next phase. The figure of 10,000 awards had been inserted for the sake of precision in the legislation, but it was an upper limit and the likelihood was that DWP would be evaluating the pilot without the exact figure of 10,000 having been reached.

(k) **There were a couple of possible approaches to the testing phase the Department could have adopted –**

a) **define the criteria by which success would be judged at the outset, reach the 10,000 awards threshold and then evaluate the results to determine whether the success criteria had been reached; or**

b) **set no initial success criteria but learn as the process was applied gradually and adapt and adjust along the way.**

From what has been said, it was the second of those two options the Department has favoured. So come Autumn 2020, how did the Department envisage success to look like?

It was correct that the second option was being followed. There were simply too many things to learn and too many different types of claimants and their circumstances to enable an accurate prescription of success to be defined at the outset. Success would be defined by the Department's ability to identify who needed support, how it should be given and its effectiveness in getting them through the process with the correct entitlement (including transitional protection), and that at the end of it claimants understand the new benefit world and how it worked for them.

(l) **Would the testing phase be able to cover all the different client groups and household circumstances?**

The testing phase will look to test a range of claimant types but it should be recognised that it may not be possible to test every single permutation of claimant circumstances as some groups will be incredibly small. Defining every single group risked paralysing the Department in a mass of granular detail. The important point was that the testing would be penetrative and intricate in a way that informed and de-risked the next phase of the roll-out process.

(m) The Department was looking to engage the help of advice agencies and third party bodies to facilitate a successful migration process. How confident was the Department that such agencies might be willing to engage with the Department.

It was acknowledged that stakeholders had a good understanding of the needs of their customer. However, it was also agreed that this was not equivalent to working with actual claimants. The Department was developing an understanding of user requirements which would help in the process and was already engaging in user research and looked to change things based on empirical evidence of users. In its communications the Department was striving to hit the difficult balance of being clear and direct enough to generate actions but without creating fear at the same time. It was similarly important not to inundate claimants with too much information in a single means of communication but give enough to prompt what was needed. In developing this approach, it was necessary to work with actual users. The Department had been working closely with stakeholders and agencies to consider ways of making the move to Universal Credit a safe process for claimants. Engagement between agencies and the Department was very positive.

It was recognised that, while at a local level, working with local partners can create a helpful environment, the national narrative remained a challenge and the damaging reputation of UC was actually putting claimants in fear and at risk.

2.4.2 Pre-population of Digital UC Claims

Lara Sampson explained that the Department had approached the issue of whether electronic claims for UC could be pre-populated with information already held with genuinely open minds. However, there were three particular concerns –

(i) there were people in the legacy system who, because the data was outdated or incorrect, do not get their full entitlement. Such errors should not be imported into UC. The Department estimated that when UC was fully rolled out, 700,000 more people would receive their full entitlement;

(ii) the Department had had previous catastrophic experience of importing old data into a new system; and

(iii) UC represented a new benefit world, and claimants needed an introduction to it – an introduction which relied on a claim being made.

Ian Wright said that the attraction of pre-population was perfectly understandable, but that there were serious factors weighing against it. Some of the legacy benefits were individual benefits whereas UC was a household benefit. Also the way in which data is held in connection with legacy benefits was not the way that it was held in connection with UC. With tax credits, capital was not taken into account, in contrast to the treatment of capital in UC. Past experience in both the private and public sector told him that data held on one platform cannot always be transferred easily to a new platform. It would be incredibly complicated to transfer data over from the legacy benefit platform to the UC platform. The UC platform was also based on the individual feeding in information on the system – it was not designed to have different data on a different system imported to it. A new system would need to be designed in order to convert data. Legacy data was often out of date and could be contradictory - something which would require contact with claimants to resolve.

(a) **The presentation so far had been an impressive articulation of how the Department would be testing the process and working to make it a success. At this point however it was a simple statement that pre-population could not be done because the Department knew that it would not work.**

In general, yes. All the analysis had said that it would not work and, as a result, the Department would not be attempting it. That said there would be some aspects of the legacy system which would be brought across. Work capability assessments were an example here; claimants would not be required to go through another assessment but would fit into the previous cycle. The process of providing identification was another possible example for those with an existing digital account with HMRC, along with the possibility of digital claimant commitments. The Department's starting point was therefore that UC claims would not be pre-populated but that the testing phase would find those needing help with completing the on-line claim form and then the Department could provide the necessary assistance.

(b) **It was one thing to accept that such an approach would be possible in the first phase of roll-out. Once the Department had scaled up the roll-out process it could be envisaged that some would be missed insofar as they started to fill in the claim but were unable to complete the process. Potentially people would fail to get benefit.**

The Department needed to understand the barriers that prevented the successful completion of the claim form during the testing phase so that they could then be addressed before scaling up the process. If there were large numbers of people needing help the Department would look to find an answer, but it would not be pre-populating the claim form.

(c) **We would nevertheless invite the Department to think about segmenting legacy benefit claimants with recent data and in stable circumstances and go into that territory as much as possible. It would be difficult trying to persuade stakeholders to spend limited time and resources in helping customers input data that the Department already held. The Committee made the important point in its report on managed migration**

that a measure of pre-population of forms goes some way to acknowledging that the risk and responsibility of ensuring the safe migration of claimants to UC ought to be more with the Department and less with claimants. Insisting that pre-population has been ruled out from the outset was unlikely to land well with parties expected to help people.

If the Department genuinely believed that pre-population would work it would be done. DWP would be finding out the different types of claimants and exploring the best ways of getting them across. If necessary, there may be some cases where staff might need to sit down with the claimant and input the information with them.

(d) **Of the 2.5m claimants on the Employment Support Allowance, around 1.56m were in the support group. They might be taken to be those most in need of help in making the claim. If staff had to be set aside to type in the figures and check with the claimant that they were correct, that could be a very large sum for the Department to find. Looking at pre-population possibilities might be more cost effective.**

Within the 1.56m in the support group there would be a proportion who would be capable of making an on-line claim. Organisations such as Mind and other advice agencies such as Citizens Advice would also be working with claimants to help them make the claim. If at the end of the piloting period there remained a serious unanswered question about completing on-line claims the Department would consider how best to move forward with this group of claimants in the phases of migration.

2.4.3. <u>Explicit Consent</u>

In response to the Committee's earlier advice[1] on this issue, the Department wanted to understand the issue around consent and how it worked. The approach in UC had been different and people found the requirements around explicit consent challenging. On the other hand, there was a different question about the kind of consent that was needed for the migration exercise. The subject had generated concern about challenges inhibiting the ability of welfare rights workers, family members and other advocates to support claimants. The design of consent in migration was regularly raised as one of the top three issues in discussions with stakeholders on managed migration.

The Department has given a commitment to work with the Committee to explore options in order to consider how current practices could be enhanced and to publish a joint conclusion. It was agreed that a sub-set of Committee members would meet

---

[1] "*We recommend that the concept of 'implicit consent' which applies in legacy benefits should be extended to Universal Credit, but with appropriate safeguards in place to ensure that personal data held by the Department are not compromised. This Committee would be willing to work with the Department and other interested parties to identify what those safeguards should be. This work should be completed, and conclusions published, by the end of March 2019.*"

the Department separately to discuss how best this work might be taken forward, with a view to presenting an update on emerging conclusions at SSAC's meeting on 22 May.

The Universal Credit (Restriction on Amounts for Children and Qualifying Young Persons (Transitional Provisions) Amendment Regulations 2019 (2019 No 27)

2.5 James Bolton introduced these regulations which were laid under the urgency provisions in the Social Security Administration Act 1992. He explained that, on her recent appointment, the new Secretary of State had picked up very quickly on the fact that families with three or more children making new claims to Universal Credit would shortly be brought within the scope of the Department's policy to provide support for a maximum of two children, irrespective of the dates of births of their children. She felt that it was difficult to justify applying the policy in respect of children born before the implementation of the policy and asked officials to adjust the rules accordingly. James advised that in other respects, the policy was being left as it was.

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

(a) Would the two-child policy be evaluated?

Yes. Statistics were published after the first year of operation (in June 2018) and this would continue annually.

(b) Would there be any details on the numbers affected?

The Department was not looking to do any further analysis on the two-child policy beyond looking at numbers with a break-down by geographical area and family type.

2.7 The Chair thanked the officials for attending the meeting and answering the questions that had been put to them. He advised them that the Committee were content that the Universal Credit (Restriction on Amounts for Children and Qualifying Young Persons (Transitional Provisions) Amendment Regulations 2019 (2019 No 27) did not need to be referred to the Committee. A formal notice would be sent confirming the decision.

3. Carer's Allowance Earnings Limit

3.1 The Chair welcomed Mark Knight (G7, DWP Carer's Allowance policy lead) to the meeting. In the past, increases in the Carer's Allowance (CA) earnings limit had typically been facilitated by a discrete statutory instrument. Because of the pressure on the Parliamentary time-table because of the on-going Brexit negotiations, the Department had taken the decision to incorporate this particular change within the general DWP up-rating package due to take effect from 8 April 2019. Since the up-rating of benefit rates was exempt from statutory SSAC scrutiny, the inclusion of a provision which required SSAC scrutiny carried the slight risk of delaying the entire package of changes. For that reason the Committee had

proposed that there would be merit in inviting Mark to present the proposals to SSAC for consideration ahead of time thereby minimising such a risk.

3.2 The increase of £120 to £123 a week in the earnings limit was announced in the 2018 Written Statement of November 2018 in relation to uprating.[2] This would be the fifth increase in the earnings limit in the past six years. Government Ministers were not yet convinced by arguments to link the limit to the National Living Wage despite some pressure to do so. The same applied to replacing the weekly earnings limit with a taper.

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

(a) What was the reason for not linking the earnings allowance to the National Living Wage X 16 hours?

It was certainly the case that some strong arguments had been put forward in support making such a link. It was also fair to say that Ministers were not wholly unsympathetic to those arguments. There was however insufficient data and no definite conclusion could be reached on any cost/benefit analysis. This was made more complicated by the fact that having a more generous earnings limit could operate as a potential work disincentive. There were also a number of other issues confronting CA which were absorbing time and energy at the present time. Considerable media coverage had been given, for example, to the issue of overpayments and their recovery from recipients of CA. There was also the issue as to whether the rate of CA should be aligned with that of Jobseeker's Allowance – something which the Scottish have implicitly accepted through the creation of the Carers Allowance Supplement. And then there was the question as to whether the test of caring itself should be re-visited.

(b) Was there a mechanism for representing SSAC's views?

In advance of policy being agreed and enshrined in draft legislation it was more a question of contributing to the public debate through consultations and other means. The forthcoming Social Care Green Paper would be an example of an opportunity, although this was still in the pipeline. The Work and Pensions Select Committee was about to publish a report on the CA earnings overpayments and it was likely that they would make a specific recommendation (again) that the earnings limit should be linked to the National Living Wage. If the Department were inventing CA afresh it would possibly set a simple hours rule as a test of employment rather than an earnings limit where the scope for widely fluctuating rates of earnings can produce some arbitrary results, particularly in the context of the earnings limit serving as a cliff-edge where anything over the limit deprives the carer of the totality of their benefit.

---

[2] Written Statement: Benefit and Pension Uprating, 23 November 2018

(c) How has the issue of overpayments in CA arisen?

It was a combination of factors. In the first place it was the Department's practice not to ask for wage slips unless reported wages exceeded £100 a week and, although there remained a requirement on claimants to notify significant changes of circumstances including wage increases, a number of claimants earnings increased to a figure in excess of the earnings limit. This meant that there was no entitlement. Averaging fluctuating earnings had also resulted in some claimants losing entitlement and overpayments being raised. The Department was aware that the issue of averaging earnings was problematical and intended to clarify the guidance and make the process easier to understand and implement. In addition the Department received information in the form of RD23s from HMRC centres based on National Insurance numbers. There had been a backlog in the checking of these records which meant that some overpayments extended longer than they otherwise would have done.

With the introduction of real-time information (RTI) in Universal Credit (UC) the issue of reconciling RD23 records with data held by DWP had been lessened to some extent although small employers and the self-employed were not included in RTI data. There was also a problem insofar as the definitions of net earnings differed in tax legislation and for the purposes of CA.

(d) Had any thought been given to incorporating CA within UC?

The fact that UC was an income-related benefit whereas CA was not means-tested ruled out that idea from the outset. Although there was an earnings limit in CA, its purpose was to act to act as a simple work test rather than anything to do with determining income or specifically encourage work. A partner's income was not taken into account in CA, for instance. If UC were to absorb CA, hundreds of thousands of carers could lose entitlement. UC took CA into account as income but a carers' element meant carers on UC could get more than some other claimants. The added responsibilities of anyone entitled to CA as well as UC was reflected in the way conditionality was applied.

(e) There was presumably an argument to be made for aligning the different definitions of earnings?

Yes – this was something the Department wanted to look at in the long term although there would be losers amongst claimants if the definition used for the purposes for determining entitlement to CA were to be aligned to that used for tax purposes.

(f) How did averaging earnings for CA fit in with assessment periods in UC? For seasonal workers, the results might vary according to the time of the year in which the average was set.

There was no direct correlation between a UC assessment period and a cycle of earnings in CA. When a carer has fluctuating earnings the Department looked to identify a cycle of work and use that as the yardstick for averaging. Where no other cycle could be identified, a period of five weeks was normally taken and used. Claimants were then given a tolerance figure and told to report changes which took earnings above this figure. Seasonal workers created a different kind of problem and the Department was looking at establishing a better and more representative way of determining earnings. Mark agreed to check on how seasonal earnings were currently calculated and get back to the Committee.[3]

(g) In calculating earnings for the purposes of CA claimants were often unaware that deductions were possible. Was the Department making them aware?

The Department acknowledged that communications on what deductions were allowable needed to be better. This was being worked on with GOV.UK, although the extra information may be going on the Department's own website. There was also an initiative to provide more information in letters but there was a long lead-in time for changes.

(h) When claimants had been potentially overpaid did the Department review the calculation of earnings to make sure that all allowable deductions had been taken into account?

A response would be provided to the Committee outside of the meeting.[4]

(i) Would the Department ever end an award of CA based on RTI data alone?

It was difficult to see that that would ever be likely. Some information received through RTI might prompt further enquiries without disturbing the ongoing award. In cases where no earnings had been reported by the claimant to DWP and RTI data suggested the person was earning in excess of the weekly limit, one possible response would be to suspend payment under the award pending investigation which would then lead to a substantive decision on entitlement itself. Suspending payment of benefit would prevent an overpayment or a further overpayment from accruing.

(j) What sort of data did the Department hold on the relationship between the carer and the disabled person and the labour market.

---

[3] Further information provided: *If a seasonal employed worker earns over the limit during the Summer months but does not earn anything during the Winter, then they would be disallowed Carers Allowance for all Summer months but would be able to claim during the Winter.*

[4] Further information provided: *DWP always (including in overpayment cases) uses net earnings, calculated by deducting expenses for tax, NI and 50% pension as well as any care costs to pay someone to look after the disabled person or any children while the customer is at work. We could also consider any other expenses in relation to employment if they meet the criteria of being wholly, necessarily and exclusively incurred.*

The Department had some unpublished data which could be shared with the Committee in confidence showing who was caring for who in terms of age and benefits breakdown. Given the purpose of CA the numbers who were working and in receipt of CA were relatively low (it could be around 85,000). Caring was the main reason for those aged over 50 dropping out of the labour market and the Government was particularly keen to keep these people in employment if they could. Some jobs were more suited to those with caring responsibilities – particularly those which allowed for flexibility as well as home working. Carers UK and others were working with DWP on how carers could be helped take up some form of employment.

(k) Why was CA not available for anyone aged under 16 but who would otherwise fulfil the conditions of entitlement?

As a matter of social policy, the Government could not condone a situation where a child was caring for a disabled person for a minimum of 35 hours a week. Where this was happening the child and the family concerned should be known to the local Social Services Department.

(l) There was an ongoing debate as to who should get the money – the disabled person or the carer. What were the current trends in CA?

CA expenditure was increasing in real terms. It was expected to be £3.4bn by 2023/24. There were other factors which helped explain this trend. The fact that State Pension age was being put back meant that more people were claiming CA and receiving full payment. The increased emphasis on care in the home as a matter of social policy also meant that there was greater recourse to CA. Women continued to be the main recipients of CA (two thirds of awards being made to women). Caring was likely to receive some focus in the Social Care Green Paper.

3.4 The Chair thanked Mark for presenting the proposals and answering the Committee's questions. The Committee looked forward to receiving the Department's up-rating package in due course.

4. The Social Fund and Income-related Benefits (Miscellaneous Amendments and Savings) Regulations (Northern Ireland) 2018 SR 2018 No 192, the Social Security (Income-related Benefits) (Amendment) Regulations (Northern Ireland) 2019 and Funeral Expenses.

4.1 The Chair welcomed Dave Annison (HEO Devolution Division) and Gail Turton (SEO, Policy Advisor) to the meeting. Three separate issues arose for consideration:

(i) *The Social Fund and Income-related Benefits (Miscellaneous Amendments and Savings) Regulations (Northern Ireland) 2018* **(***"the Social Fund etc Regulations")*.

These had been laid on 19 November 2018 under the urgency provisions in the Social Security Administration (Northern Ireland) Act 1992. The Regulations came into force on 10 December 2018. They were designed to parallel the Social Security (Scotland) Act 2018 (Best Start Grants) (Consequential Modifications and Saving) Order 2018 (SI 2018 No 1138) which applied to England and Wales and which, because it was an Order, was exempt from the Committee's scrutiny. That Order made consequential amendments to ensure that anyone receiving the new Scottish Best Start Grant did not receive a Sure Start Maternity Grant in respect of the same child or same pregnancy should they move from Scotland to England or Wales. The Order also ensured that the Best Start Grant was not taken into account as income for the purposes of assessing entitlement to Income Support, income-based Jobseeker's Allowance, State Pension Credit, Housing Benefit or an income-related Employment and Support Allowance. The Social Fund etc Regulations did the same in relation to Northern Ireland.

(ii) *The Social Security (Income-related Benefits) (Amendment) Regulations (Northern Ireland) 2019.*

These regulations were similarly consequential upon the Scottish Government introducing new legislation in respect of benefits for which responsibility has been devolved. In this case it was to accommodate the payment of Carers Allowance Supplement in Scotland and ensure that it was not taken into account for the purposes of income-related benefits payable in Northern Ireland. The Social Security (Scotland) Act 2018 (Consequential Modifications) Order 2018 (SI 2018 No 872) achieved this result in England and Wales and came into force on 3 September 2018. These regulations would have the same effect for Northern Ireland.

(iii) *Funeral Payments.*

Regulations had yet to be prepared, but officials in DWP wanted to give advance notice to the Committee that the Scottish Government were planning to introduce some additional provisions in respect of funeral payments and, as a result, further consequential amendments would be due. This would again be in the form of an Order made under section 104 which would include Northern Ireland.

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

(a) In the Social Fund etc Regulations the requirement was that the "claimant lives in Northern Ireland". Did that raise a possible difficulty over interpretation, bearing in mind that issues to do with definitions of residence had a long-standing history in social security legislation?

The Parliamentary Joint Committee on Statutory Instruments had raised this as a drafting point when they scrutinised the Order in relation to England and Wales. In response the Department had said that the expression "lives in England and Wales" had a natural meaning which it considered to be clear. It

continued: “*the condition will be satisfied if the claimant lives at an address in England or Wales. This will be ascertained by the Department checking the claimant’s address and postcode at the time they make their claim for a Sure Start Maternity Grant*.” In order to gain entitlement to the qualifying benefit the individual had to satisfy a residence test for Scotland, and the consequential legislation would only take effect if the claimant left that address in order to live in another UK nation.

(b) Would there be issues for those who live and work or perform caring duties on different sides of the Scottish/English border? Or for those who live in Scotland but have an English post-code.

Eligibility for the Scottish Carer’s Supplement would be dependent on whether the carer lived in Scotland, not the person for whom care was being provided. Similarly eligibility for Best Start Grant and Funeral Expense Assistance would be based on the claimant living at a Scottish postcode. The Scottish Government supply DWP with the list of Scottish postcodes it needs. There were about 80 houses sited in Scotland but with an English post-code. Anyone living temporarily in Scotland but with an address in England or Wales would be able to claim from DWP.

(c) The Committee would prefer to see the main legislative provisions at the outset. Would that be possible?

The Scottish legislation itself was outside SSAC’s remit, although DWP officials would always be happy to come along and explain them informally. That said, ownership of the substantive legislation was with Scotland and DWP’s task was to bring forward any necessary consequential legislation. There was to be Scottish legislation making provision for job grants, and in that instance Scotland would be making the consequentials themselves. As far as new legislation on winter fuel was concerned, the DWP and the Scottish Government were still discussing the process to be followed. On the new legislation on funeral payments the consequential legislation would cover England, Wales and Northern Ireland in a single statutory Order.

(d) What would happen if a claimant had claimed the Sure Start Maternity Grant in England, Wales or Northern Ireland and then moved to Scotland? Was there legislation in place to prevent a payment of the Best Start Grant being made?

Scottish legislation prevented anyone who had received a Sure Start Maternity Grant and then moved permanently to Scotland from receiving the Scottish Government’s Best Start (Pregnancy and Baby Payment) for the same child. Social Security Scotland had limited access to DWP systems which was used to enable them to check if a Sure Start Maternity Grant had been awarded. Someone moving temporarily to Scotland would not be able to claim the Scottish Best Start Grant but could still claim the Sure Start Maternity Grant from DWP on the basis of their main address in England or Wales in respect of which they claim the qualifying benefit.

(e) Was it possible that a claimant could have a decision from both jurisdictions that they were not living in either of their territories?

The individual would still need to have a qualifying benefit in order to get either a Best Start Grant or a Sure Start Maternity Grant and in order to do that they would need an address which would, in turn, determine the appropriate grant. The Department worked with the Scottish Government through the various scenarios on residence and satisfied themselves that there was no problem in practice.

(f) Would DWP be sharing with SSAC the provisions on funeral payments when they become available?

The funeral consequential regulations would all be made in an Order but the Department was happy to send a copy to the Committee for information. The legislation was expected to come into force around June 2019 and so draft legislation might possibly be available in April. The Department would let the Committee know of any further announcements the Scottish Government make with regard to other benefit changes.

4.3 The acting Chair[5] thanked the officials for attending the meeting and answering the questions that were put to them. He advised them that the Committee was content that the regulations relating to the Carers Allowance Supplement could proceed without the need for their formal reference and that the legislation already in relating to Best Start Grants did not require retrospective formal reference. A letter would be sent to Northern Ireland officials advising them accordingly. In addition the Committee Secretary would write to DWP officials expressing the Committee's concerns about residence and the process for scrutinising consequential legislation belatedly.

5. Private session

[Reserved item – not for publication]

6. Current issues and AOB

Postal Regulations

6.1 The Committee agreed that the draft Tax Credits, Child Benefit and Childcare Payments (Miscellaneous Amendments) Regulations 2019 could be cleared under the Memorandum of Understanding with HMT and HMRC. The Chair asked the Committee Secretary to notify HMRC officials accordingly.

[5] The Chair temporarily stepped out of the meeting during this session (between 14.30hrs-15.00hrs). Jim McCormick assumed the Chair during this period.

Annex A

Attendees

Guests and Officials

Item 2: Dr James Bolton (DWP UC Policy Deputy Director)
Ian Wright (UC Programme Director)
Lara Sampson (Digital Product Design_
Nina Young (G6, UC Policy)
Rosie Grigalis (Policy Officer, UC Policy Design)

Item 3: Mark Knight (G6 Carers Allowance lead)

Item 4: Dave Annison (HEO Devolution Division)
Gail Turton (SEO, Policy Advisor)

Observers:

Item 2: Joe Cook (EO, UC Transition, Legislation, Planning, Entitlement and Assessment)
Beatrice Fannon (G7, UC Transition, Legislation, Planning, Entitlement and Assessment)
Yasir Naim (SEO, UC Transition, Legislation, Planning, Entitlement and Assessment)
Emma Walsh (G7, UC Transition, Legislation, Planning, Entitlement and Assessment)

Item 3: Judith Darcy (HEO Policy Adviser, Carers Allowance)

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