Social Security Advisory Committee
Minutes of the meeting held on 7 October 2020
Caxton House, Tothill Street, London, SW1H 9NA

Chair:	Dr Stephen Brien
Members:	Bruce Calderwood Carl Emmerson Chris Goulden Phil Jones Jim McCormick Grainne McKeever Dominic Morris Seyi Obakin Charlotte Pickles Liz Sayce
Apologies:	Kayley Hignell[1]

1. Private session

[PARTIALLY RESERVED ITEM]

Postal Regulations

1.4 The Chair of the Postal Regulations sub-group recommended that the following regulations be cleared by correspondence. In reaching that view, the sub-group had sought further clarification and/or information from the Department on some aspects of the proposals. The responses received from the Department, are attached as an annex to the minutes for transparency.

- *The Employment Support Allowance and Universal Credit (Coronavirus Disease) (Amendment) Regulations 2020*

- *The Social Security (Personal Independence Payment) (Amendment) Regulations 2020*

1.5 The Committee agreed that the regulations could be cleared 'postally' without the need for officials to present them at the meeting.

[1] On maternity leave

2. The Universal Credit (Earned Income) Amendment Regulations 2020

2.1 The Chair welcomed Trevor Pendergast, (G7, Universal Credit and Employment Policy) and Sue Bonner (SEO, Universal Credit and Employment Policy) to the meeting.

2.2 Introducing the regulations, officials informed members that the Department had appealed a High Court decision made in January 2019 about DWP's interpretation of the earnings to be taken into account when assessing entitlement to Universal Credit. The policy required that earnings be taken into account when they were received, not attributed to a past period. The Department's appeal against the decision of the High Court found that the Department's interpretation of Regulation 54 of *The Universal Credit Regulations 2013* was correct, but that the effects of the regulations on a very specific group, those paid calendar monthly who are also affected by a 'non-banking day salary shift', were irrational on the assessment of the earnings when two calendar monthly salaried earnings were taken into account in one assessment period (AP). The claimants affected in such cases may be denied the benefit of a work allowance and the changes to their Universal Credit amount may cause difficulties for their budgeting. Although the Court of Appeal recognised that the regulations were complex, it found that it was irrational that no solution had been put in place for this very specific problem. The regulations are needed to ensure that only one set of monthly earnings is taken into account in an AP rather than two. This should ensure less fluctuation in UC awards.

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

(a) Did the issue come to light when the proposals were developed originally? What were the effects and issues, and what was it going to mean in practice? The regulations give the Secretary of State the power to reallocate, or reallocate if the claimant disputes, but does this mean it is the claimant's responsibility to raise the issue? Were disputes expected? Or would the reallocation be done routinely?

The Department cannot provide much background, but Universal Credit was originally designed to be a dynamic system. Unlike on Tax Credits or legacy benefits, the system is able to deal with claimants who are paid monthly and adjust to circumstances every month. The majority of claimants are paid monthly, and the system was designed to deal with weekly, fortnightly, and four-weekly payments of earnings too. All of these can be accommodated in the assessment period. This design would also reduce the error from the old system by using Real Time Information (RTI) which would adjust the earnings.

In terms of going forward, the Department is not trying to rely solely on disputes raised by claimants. If there are fluctuations in earnings, claimants would normally raise a query, and DWP would review their award. This is not the solution. Now, at the beginning of their claim, DWP will request details of the frequency of a claimant's earnings so that we can get this information earlier than waiting for it via the RTI system, which may not be available until the end of the AP. It is envisaged that the agent would be sent a report alerting them to the possibility that double earnings may arise in a future AP and enable them to take action to reallocate earnings to another assessment period.

(b) How would DWP colleagues do that? Will the process be built into the system?

The system of adjustment would be a manual system initially and there will be a method of alerting agents to the need for action, but we do not have details of how the online system would work precisely. Updated guidance setting out how to deal with the new arrangements would be provided for operational colleagues.

(c) The Regulations enable the Secretary of State to move payments back, were there any circumstances to be considered between the payment and the assessment period to bring this forward?

DWP is going to adjust these calendar monthly payments to smooth them out and maintain a regular payment cycle by adjusting them either way dependent on the circumstances of the particular case. As was recognised by the Court of Appeal, these cases can get complex, and we may need to use manual intervention where this is in the best interests of the particular case. So, for example, we expect that there could be scenarios where a claimant could have:

- two earnings in a period followed by none in the next AP;
- two earnings now, and none in the previous AP;
- or more complex cases for example - two earnings now, one set of earnings in the following AP, one set of earnings in the one after that and, then none, followed by one set of earnings in the next AP.

The regulations would allow the Department to move one set of earnings to whichever assessment period maintained a regular payment cycle and allowed for one set of monthly earnings to be taken into account in one AP.

(d) The Department has looked at the issues for people who are paid four weekly, and who also face significant UC fluctuations when they get two pay cheques in the same month. Why was not this opportunity used to smooth out UC for people who are paid on a 4-weekly basis?

Work Allowances were available to certain claimants every assessment period where earnings are received. For the monthly paid, that means that ordinarily a work allowance is available in every assessment period. For those paid four-weekly, there were thirteen payments of earnings a year, but where applicable, they would benefit from a work allowance for each of the twelve assessment periods in a year. However, in one AP they would have two sets of earnings taken into account because of the frequency of their earnings. The Court of Appeal Judgment did not affect those cases. Calendar monthly paid individuals could also benefit from a work allowance if they met the criteria (i.e. had dependent children or had limited capability for work). If there were two sets of earnings in an assessment period, claimants would only benefit from the work allowance in eleven APs and lose out on the value of the work allowance (£292 or £512) in the other AP in the year. Those paid four-weekly did not lose out on the benefit of a work allowance in an AP.

(e) What about in February, could those who are paid four weekly lose out?

Officials were unsure if that had happened, but agreed to look at the information available and respond to the Committee outside of the meeting.

(f) Did the Secretary of State have to wait for two assessment periods to pass before using the power to trigger the exercise to smooth the payments (sub section 6)?

Officials were unsure of the answer, and committed to respond outside of the meeting.

(g) If there were no payments in one assessment period, there was no payment to trigger?

The regulations provided that earnings could be reallocated to a different assessment period to maintain the regularity of the payment cycle which could include an AP where no earnings appeared to be attributed to that AP.

(h) That could be the power for a late RTI?

There were already arrangements where earnings were reported late for earnings to be reallocated.

(i) Claimants might lose out on the work allowance due to the variability of UC. In one month they could get two payments and that could significantly reduce the amount of UC for that week. The mechanisms would not solve the problem, you could have a broader system that would apply to both sets.

The system was based on monthly earnings and designed to reflect the circumstances of the household during the assessment period, in particular what income they were receiving. It had the ability to deal with all sorts of different payments. During the pandemic, HMRC made payments to self-employed people through the Self Employed Income Support Scheme (SEISS). The first payment was for three months for most people. Universal Credit did not take those payments into account until they had been paid. If UC had a rule about past attribution the monthly payment of UC could have been reduced or even extinguished. Instead payments were taken into account in the AP in which they were received. The same principle has applied to the Coronavirus Job Retention Scheme (CJRS) payments, which employers used to fund payments of earnings. UC therefore treated payments as earnings in the normal way.

(j) The notion that earnings should be taken into account when received could be problematic. Could that be adapted?

Decisions were made at the outset that the design of Universal Credit was for assessment on a monthly basis and there were no plans to change the frequency of assessment.

(k) Was there any interaction with self-employed/surplus earnings?

The regulations should reduce the chance of surplus earnings provisions being triggered because they should reduce the incidence of two sets of earnings arising in an AP.

(l) There were a number of different scenarios to consider: individuals with one monthly paid job; individuals with more than one job with different payment periods; couples with different payment cycles and so on. Is it possible that the number of people affected might be greater?

The system would adjust the payment for both members of a couple, where the regulations applied to each member of the household. Where the regulations only applied to one member, the Department would only be able to adjust the allocation for one member. That would not necessarily solve all the fluctuation issues for the household, as complexities could still arise because of other fluctuations of receipt of earnings which could affect the Universal Credit award.

(m) Did the Department hold any analysis of how many couples might have been affected by this in the past year?

There was no specific analysis about couples, but less than 1 percent of households in work could be affected by the measure because of the closeness of their salary payments to the end of the AP.

(n) There may be fluctuations in income, and claimants may not benefit from a work allowance. They may be at the end of the taper and over the year reduce the UC allowance and get less UC?

It is possible that some people with two sets of earnings in a calendar month period may receive more UC than if each set of earnings were taken separately into account. However, Universal Credit was designed to take one set of regularly paid monthly earnings into account in each AP as reflected in the Court of Appeal Judgment.

(o) Could you provide the characteristics of those who would lose as a consequence of this change?

It was possible that there would be some people who would have a lower Universal Credit award if two sets of earnings were allocated to separate APs. The Department would respond to the Committee's question outside of the meeting.

(p) The original practice of the nature of these regulations had generated a policy change. Was this retrospective, corrective or anticipative?

The policy change was corrective in the light of the Court of Appeal Judgment. The Court of Appeal said that the original regulations were being interpreted correctly by the Department but the outcome was irrational for a specific group of monthly paid claimants. In some circumstances the Department would rely on claimants advising it that they had two sets of earnings. The Department was also trying to develop a system to alert colleagues to instigate action in these cases and not have to wait until the claimant alerted DWP to instigate action.

(q) Work Coaches would be given guidance and would ask claimants about payment frequency. Would the Work Coach have conversations with new claimants or with existing claimants?

The Department had begun to gather evidence from new claimants about the frequency of payment. Once a claimant raised a dispute, the Department would set an alert that this might occur again in the future. Such cases would be flagged so that interventions could happen for them proactively without the need to raise a dispute. The Department would do that for both new and existing claimants.

(r) How are you going to communicate this to existing claimants?

Claimants are informed about awards on their journals. That would give them the opportunity to ask for their award to be reviewed if they were concerned about it. Existing guidance would be updated to reflect the new arrangements. DWP's programme officials were developing a strategy for that.

(s) Would that be retrospective?

No, the regulations were not retrospective, they would apply from 16 November.

(t) So, someone could come forward and raise a dispute in the current month and it will not be looked at but, if they raise it next month, it would be looked at as the legislation would have come into force at that point?

The new legislation can only be applied once it has come into force. The Court of Appeal did not set a deadline. The Department was introducing the change within five months of the judgment.

(u) How confident was the Department that only a small number of people would be affected?

The department was of the view that the change applied to a small cohort of people who were paid calendar monthly and who represented less than 1 percent of the people on Universal Credit who were paid monthly.

(v) Could some of the issues be addressed with better communication between HMRC and employers?

Where employers had been paying earlier, and inputting wrong dates causing difficulties, the Department had worked with HMRC on guidance on the dates that employers should input. DWP continued to work closely with HMRC and they had issued guidance which had improved the accuracy of data provided for people who had been paid early because of Bank Holidays.

(w) Had the Department worked with HMRC to find out how claimants were paid by their employers, e.g. whether they were paid four weekly or monthly?

Claimants would be asked at the beginning of their claim about the frequency of their earnings. That would initially provide earlier information than waiting for the RTI system.

2.5 The Chair thanked DWP officials for attending the meeting and answering the Committee's questions. He noted that the Committee had raised a number of questions that the Department had been unable to answer, and asked for an early written response to these points. The Committee would consider whether or not it wanted to take the regulations on formal reference and notify the Department outside of the meeting.[2]

3. The Social Security Coordination (Revocation of Retained Direct EU Legislation and Consequential Amendments) (EU Exit) Regulations 2020

3.1 The Chair welcomed Jonathan Harris, (G6, Head of EU Transition Policy (DWP), Sophia Harrington, (Policy Team Leader, Social Security Coordination), Alexander Mitchell (Lawyer) and Owen Davies (Deputy Director, International Team). The Chair noted although the members were familiar with the background, it would be helpful to have a brief introduction of the regulations, clearly outlining the policy

[2] The Committee decided that it would not take the regulations on formal reference, but would write to the Minister for Welfare Delivery seeking a commitment to monitor the impact of the change and publish data on a bi-annual basis. A copy of that letter, along with DWP's response to the outstanding questions above, can be found at annex B.

intent, including the potential implications now that the UK had left the EU with a Withdrawal Agreement.

3.2 Introducing the regulations, officials noted that the regulations shared in draft are those which would apply in a negotiated outcome on social security coordination with the EU and that the regulations were technical regulations. Officials explained there was a difference between the Social Security Coordination and policy for access to in-country benefits. The EU Social Security Regulations provided for:

- export of certain categories of benefits (UC was not included)
- aggregation of contributions made across the EU, EEA and Switzerland, so those could be counted for UK benefits and the UK state pension.
- Uprating of the UK state pension.
- HMRC policy also included ensuring workers and their employers only paid social security contributions in one scheme at a time, but that was not a focus for this discussion.

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

(a) What was the situation now that there was a Withdrawal Agreement? What was the scenario planning?

While the UK was in the EU, these regulations applied, since leaving we had been in a transition period which would last until 31 December during which the regulations continued to apply. In March 2019, DWP and HMRC made four statutory instruments under the EU Withdrawal Act 2018. Those SIs were made as a contingency in the absence of a Withdrawal Agreement to mitigate the impact on citizens already living in the EU in receipt of UK benefits and the state pension.

The Government secured a Withdrawal Agreement in January 2020. UK nationals living in the EU continued to have full Social Security Coordination rights until the Withdrawal Agreement, unless their circumstances changed in a way which meant they were no longer covered by the Withdrawal Agreement. EU citizens who had moved from the EU to the UK also had protected Social Security Coordination rights.

This Statutory Instrument would affect those who had not yet moved but move between the UK and the EU in future. The UK and EU have been negotiating a new reciprocal arrangement since the 'future relationship' negotiations began earlier in the year, and were ongoing. The documents we have submitted are for a negotiated outcome. The Government wants to continue with certain aspects of Social Security Coordination, as with key trading partners, including aggregation of contributions made to the State Pension, and the proposed reciprocal arrangement would include State Pension uprating for anyone who moved to EU.

(b) There is the potential administrative engagement, reciprocity between UK and EU, and the sharing information and other major issues as part of the negotiations.

These provisions form part of the future relationship negotiations text. That was how Social Security Coordination was managed, for example where we are determining entitlement to the State Pension, we would continue to liaise directly with EU member state Social Security Authorities. These operations would continue from our team based in Newcastle, and administration cooperation would be required.

(c) The Reciprocal agreement can be complex technically. Will the International Pensions Centre be impacted by changes, what kinds of operations will be put in place?

The Department was seeking continuity in Pensions provisions for both operations and for claimants. There were some areas where the UK was seeking change, for example, in the export of Personal Independence Payment (PIP) and Disability Living Allowance (DLA), as UK had not included disability benefits in the negotiations. The Department had put out publications that disability benefits may only be paid in the EU for a time-limited period in future. What that meant for operations was to triage claims to determine whether or not claimants would be affected if they moved to EU. If a UK national was in receipt of PIP after the transition, we would be triaging claims to see if they would be entitled to export it. Guidance will be provided. At least one of a range of documents would need to be provided that they were living in the EU, e.g. a residency permit, but the Department would work with the claimant. This is an area that is still subject to negotiations.

(d) What about the Northern Ireland Assembly? The Social Security regulations apply to UK, and may need to be amended, where is the rule for NI?

Around ten days ago, we secured the legislative consent motion from the Northern Ireland Assembly for the Immigration and Social Security Coordination Bill. Because of the negotiations with the EU, this falls under the International Relations reservation.

There are several parts to the regulations. There is the change within the Statutory Instrument, to Section 179 of the Social Security Administration Act 1992 and section 155 of the equivalent Northern Ireland legislation, that will allow for a reciprocal agreement on Social Security to be given effect in a negotiated outcome.

(e) The Explanatory Memorandum states that the regulations are UK-wide. Why is it not on the face of the regulations that this also covers Northern Ireland?

The Statutory Instrument is still undergoing final checks. The Department will ensure that Northern Ireland is included in the final version of the title.

(f) There will be interactions between people moving from UK to Ireland and vice versa. When drafting the regulations, this looks straightforward, but is there any concern?

UK and Ireland have a bilateral treaty which takes effect at the end of transition period. This is a wider agreement than the UK has agreed with any other country. The bilateral agreement between the UK and Ireland will provide the terms for the arrangements for UK and Irish nationals moving between the UK and Ireland after the end of the Transition Period.

(g) How is it possible to have a straightforward transfer of benefits with Ireland only, considering the complexity of Social Security Coordination?

There is an historic common travel area, and no desire to reduce the rights of UK and Irish nationals under these arrangements. Given the unique arrangements with Ireland we have put in place a bilateral agreement. New arrangements were needed to be put into place to ensure rights were not reduced. Now that we have left the EU we are negotiating new arrangements with the EU rather than continuing things that were only done due to EU membership.

(h) It has been very useful to have an opportunity to discuss the proposals, as the regulations are very technical. Officials have been very clear and

helpful in the responses provided in a very complex and detailed area. What are you looking for at this point in time from the Committee?

Royal Assent is still awaited and negotiations are ongoing. Once those two things are concluded, the Department plans to lay the regulations the following day. Once we have the final set of regulations, we will share this with the Committee together with the Explanatory Memorandum before laying, and if there are any final questions, could we please have this via correspondence. We would appreciate clarity on the extent to which this is part of the formal process, as the regulations will be made less than 6 months after the powers take place, hence there may be an exception to the formal process.[3]

3.4 The Chair thanked officials for attending, and noted that the Committee would like to see the final regulations before being laid, so that any further, final, questions can be addressed.

4. Private session: AOB/Current issues

[PARTIALLY RESERVED ITEM]

Date of next meeting

The Committee's next meeting was scheduled to take place on 4 November.

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[3] Social Security Administration Act 1992 Section 173(5) "*Except to the extent that this subsection is excluded by an enactment passed after 25th July 1986, nothing in any enactment shall require the reference to the Committee … of any regulations contained in either—*

(a)a statutory instrument made before the end of the period of 6 months beginning with the coming into force of the enactment under which those regulations are made."

Annex A

Attendees

Guests and Officials

Item 2:	Trevor Pendergast, (G7, Universal Credit & Employment Policy, Transition, Legislation, Planning, Entitlement and Assessment) Sue Bonner (SEO, Policy Adviser, Universal Credit & Employment Policy, Transition, Legislation, Planning, Entitlement and Assessment)
Item 3:	Jonathan Harris, (G6, International & Corporate, International Strategy Division (ISD), Future International Social Security Strategy (FISSS)) Sophia Harrington, (G7, International Strategy Division, (ISD), Future International Social Security Strategy (FISSS)) Owen Davies (DWP Legal Team) Alexander Mitchell (DWP Legal Team)
Secretariat:	Denise Whitehead (Committee Secretary) Nishan Jeyasingam (Assistant Secretary) Jaishree Patel (Assistant Secretary) George Watley (Assistant Secretary)

ANNEX B

The Social Security (Personal Independence Payment) (Amendment) Regulations 2020

1. **The EQIA provides info on the current profile of PIP claimants aged 65+ but what the committee are not seeing is any assessment of how many individuals might be affected by the change, in other words, how many are likely to have their award determined by Reg 26 compared to Reg 23? That might be difficult to quantify but is there any data on how many reg 23 v reg 26 decisions have been made? If there are a very small number of claimants who would be affected by the change (based on past decisions) then that is more persuasive that the change will have a detrimental effect on a small number of people - and presumably that is the case given that the gap was only recently picked up by the UT - but it would be good for the Committee to know this rather than assume it. And if the presumption is incorrect, does the Department want to consider any mitigations for those who will lose out?**

   In terms of the change the department just want to clarify that whilst the amendment is a change it isn’t a policy change rather the department want to address a deficiency in the regulations.

   The department has a long standing policy that means that, when the department review/supersede an individual’s claim for PIP and they are SPa the department don’t give them first time access to the mobility component or an increase in their existing award even where their mobility has deteriorated.

   On the data, I don’t think the department would have accurate information to inform us about the proportion of decisions made using regulation 26 or 23. However I think it is fair to say that, given the PIP process includes seeking medical evidence including that provided by a health professionals report, then in the absence of a clear change of circumstances (reg 23) then reg 26 would be used. The department has also consulted analysts on the data issue and the department concluded that, without interrogating each claim, the department wouldn’t be able to assess what mobility component a claimant might have received had their mobility component not been restricted.

   It is worth saying that, where the original award includes an award of the mobility component and is reviewed and changed (superseded) after C has reached the relevant age they can retain the applicable rate (i.e. standard or enhanced) if it is for substantially the same condition. What the policy does not allow for at SPa is access to the mobility component of PIP either for the first time or for a move from the standard to the enhanced rate on the basis that mobility has deteriorated at SPa. The exception to this is where the original award being superseded does not have a mobility component but the previous award did and entitlement under the previous award ended less than 1 year prior to the date on which the supersession is made if it is substantially for the same condition.

This approach aligns with PIP policy intent that funding is focused on those with mobility issues earlier in life who as a result of such a limitation may have less opportunity to work, earn, save and live an independent life.

In terms of mitigations, it has always been the policy that if the deterioration happens prior to SPa but the supersession decision is made after SPa then the restrictions to mobility entitlement don't apply. The department will also be considering the scope of any legal entitlement administrative exercise (sometimes known as LEAP) for those that will have been impacted by these restrictions before the amending regulations come into force.

2. **Has there been any consultation on the proposed change. Is there a basis to say the differential treatment is justified? It would seem reasonable to argue for consistency but has the alternative argument been considered that the change is not beneficial for those who would have benefited from the lacuna? Has the Department considered consulting its stakeholders on this question - if not formally, at least informally?**

There hasn't been any recent consultation on amending the regs because this is technical rather than a policy change. The department did consult extensively on all aspects of the PIP policy in 2012 and the mobility separately in 2013 . Officials that were working on PIP at the time have told me that one of the suggestions from SSAC was around aligning our policy to restrict mobility to state pension age which of course we already do. The relevant SSAC response is attached for your information.

The department doesn't think they can reasonably argue that differential treatment is justified where that is based on an artificial distinction which says that depending on how a decision is made (reg 23 or 26) a claimant may or may not benefit financially rather than on a clear policy rationale that we generally don't make new awards or <u>increase</u> existing mobility awards for claimant's where their mobility deteriorates in later life. Reg 23 and 26 are meant to work in tandem and the CMs will consider the evidence in the round before determining which reg is the appropriate one to use for the supersession. The CM may use the most beneficial grounds to supersede the award and reg 23 will be used first only if there is identifiable change of circumstance instead of using reg 26. If the department have referred the claimant for an assessment, the resulting HP report (new medical evidence) just forms part of making that decision. The CM may still end up using reg 23 (change of circs) so a claimant could easily fall into either category.

The department have always been absolutely clear that the initial premise for this policy was to adopt the rules which had existed (and still exist) in Disability Living Allowance (DLA), but with some <u>beneficial</u> modifications to reflect the slightly changed approach to mobility and to better reflect fluctuating conditions i.e. an improvement on DLA. Technically, by addressing this deficiency in the regulations we are restoring; we're also not creating losers certainly compared to the position that should have been and which still exists in DLA.

3. **Is there any risk of overpayment/lower awards being identified in the LEAP exercise and if so how would this be handled.**

   No. The department will only be identifying and reviewing cases where the mobility award has been maintained at the same level (restricted) on the grounds of new medical evidence. The department will not be identifying or reviewing cases where the mobility award has been awarded, increased or decreased. The LEAP exercise is currently being scoped and the approach will be subject to a Ministerial decision.

4. **On the disproportionate impact on protected groups and the statement that there is no evidence that there will be any – are officials confident that is consistent with the legal position on age discrimination more generally, so that the change wouldn't be vulnerable to further litigation of this nature?**

   Yes. This is not a change to policy; the department has been delivering this policy since PIP was introduced and it follows the longstanding policy principles from Disability Living Allowance (DLA) (PIP's predecessor) and the earlier Mobility Allowance. The department is amending the regulations to ensure we can continue to lawfully deliver this policy. The recent Upper Tribunal decision focussed purely on the gap in the regulations and the fact that we can only restrict the mobility component on the grounds of a change of circumstances, and not new medical evidence. The underlying policy was not challenged and it has previously been deemed lawful by the courts. The policy itself makes a distinction between working age claimants and State Pension age claimants. PIP, DLA and Attendance Allowance are raising their age limits in line with increases to State Pension age, ensuring that distinction is maintained.

5. **Seeing as take up of PIP is generally considered low and that this change makes take up pre SPa even more critical does the department have any plans to increase awareness and take up of the mobility component pre SPa to ensure the policy intent is delivered?**

   No. This is not a change to policy; the department has been delivering this policy since PIP was introduced. The department is amending the regulations to ensure we can continue to lawfully deliver this policy. The overall caseload on DLA/PIP has continued to rise, and in fact has risen way beyond the pre-PIP estimates. As of July 2020, 288,000 out of 348,000 SPa claimants (83%) were entitled to the mobility component of PIP. People do not specifically 'claim' the mobility component; they claim PIP and both the daily living and mobility elements are considered in tandem and at every review point. PIP claimants can ask for a review of their award at any point if they tell us that their needs have changed. The policy intent of allowing access to the mobility component pre-SPa is in no way affected by this technical amendment to regulations.

ANNEX C

<u>The Universal Credit (Earned Income) Amendment Regulations 2020</u>

1. **There will be some people who will still be at a disadvantage. Their payments will fluctuate, and may no benefit from the Work Allowance. People who are paid four weekly will not lose out on the WA, whereas those that are paid monthly could lose out in one month and win in another, in some cases they may be at the end of their taper, and over the year reduce their UC allowance and get less UC. There will be some winners and losers. Could we please have the characteristics of the losers?**

2. **What about in February, those who are paid four weekly could lose out?**

Winners and Losers

The policy intent for those on Universal Credit (UC) who are in work and are paid regular monthly payments is that there should ordinarily be no more than one set of these regular payments from each employer taken into account in each UC assessment period. For the vast majority of UC claimants this is what happens already.

Losers

However, for some claimants this is not the case and is due to the impact of a 'non-banking day salary shift' or their particular calendar monthly pay pattern. Under the current regulations these are the losers. For those affected by the CoA judgment their losses are financial as in each case these claimants would normally benefit from a work allowance, the amount a household can earn before their UC award is reduced. For others, where there is no financial loss, the impact is on budgeting where their regular earnings amount remains unchanged but there is a large variation in their UC amount due to two sets of their regular earnings being taken into account in one AP. The proposed regulations will remedy this in line with the CoA judgment.

Winners

Under current regulations we acknowledge there is the possibility that some cases might 'gain' financially over two assessment periods by having their regular monthly payments assessed under the current arrangements. For example; where their two sets of regular monthly payments are sufficient to result in no entitlement to a UC award in one assessment period with entitlement to their maximum UC amount in an adjacent assessment period where there are no earnings to be taken into account. The consequence of the CoA judgment and the proposed regulations is to place all claimants paid on a calendar monthly basis on an equal footing.

Any gains a claimant might make in this way may then be impacted by a loss for example; of any childcare being claimed. This is because reimbursement for any childcare costs they have made is dependent on the claimant being entitled to UC. We are aware of a number of cases where this has resulted in claimants being unable to claim their childcare costs for particular assessment periods. The proposed regulations will provide a remedy for this.

The characteristics of the sorts of claimants who may have been winners under the current regulations where they are affected by double earnings in one assessment period and a maximum UC award in another are likely to be:

- A household with a regular monthly earner
- With earnings at a high enough level to nil their UC award
    - Households containing an individual aged between 30 – 50 years are more likely to have earnings within higher earning bands
    - Those with higher earning bands are more likely to have a male adult in the household.
- Not claiming for childcare costs
    - Households with children but where for example, one partner is not working and is able to look after their child/ren. (The childcare cost element is dependent on entitlement to a UC award).

Four-Weekly Paid and the potential for there to be nil earnings

The policy intent for those paid a regular salary on a four-weekly basis (13 payments in any 12-month period) is that they will get one payment of earnings for each UC assessment period for 11 assessment periods during the year. Consequently, we expect them to get two payments of earnings within a UC assessment period once a year. In this way they will always benefit in each assessment period from any applicable work allowance.

For the assessment period where they receive their two sets of four-weekly earnings it is possible that their UC entitlement will end and for that particular AP their UC award will be nil. However, for that assessment period they will still have the benefit of two lots of four weekly earnings. For the other eleven assessment periods with one thirteenth of their annual earnings they will have received a higher amount of UC in each of those assessment periods than they would have received if they had been paid one twelfth of their salary.

The department are not aware of any cases where a four-weekly cycle of payment would result in an AP without any earnings to take into account, followed or preceded by another unexpected set of two four-weekly payments in one assessment period. The suggestion was that this may occur during February, the shortest month in the calendar year.

Adjustments are made to the assessment periods where claimants have an AP start date at the end of the month (31st, 30th or 29th) to allow for longer and shorter months. Ordinarily for those APs starting on 31st of one month, the AP end date would be the 30th of the following month; likewise starting on the 30th and ending on the 29th; or starting on the 29th and ending on the 28th. For shorter months this is not possible so in February specifically the automatic adjustments to maintain regular monthly APs are:

Normal AP Start and End Date	Adjustment for February	Adjustment for February in a Leap Year
31st – 30th	31st Jan – 27th Feb (28 days) 28th Feb – 30th March	31st Jan – 28th Feb (29 days) 29th Feb – 30th Mar
30th – 29th	30th Jan – 26th Feb (28 days) 27th Feb – 29 Mar	30th Jan – 27th Feb (28 days) 28th Feb – 29th Mar
29th – 28th	29th Jan – 26th Feb (29 days) 27th Feb – 28th Mar	29th Jan – 27th Feb (30 days) 28th Feb – 28th Mar

For those paid four-weekly – every 28 days then if reported correctly there should still be at least one payment of earnings in each AP, including in this shorter month of February.

For any claimants where their earnings are incorrectly reported, including those paid four-weekly, they will continue to be able to dispute the amounts taken into account through the normal dispute procedure.

3. Work coaches will be issued with guidance on the frequency of payments, and you are also relying on the claimant to inform you of how they will be paid. Where does the responsibility lie in practice? What is the communication around this?

Communication

All the normal policy change communications will be undertaken. These include making sure that all appropriate staff, including Work Coaches, Case Managers and Decision Makers are aware of these changes via a variety of communications. Guidance on the process, decision making guidance and all training materials are all being changed to reflect how this amendment to regulations will impact on monthly paid claimants. The department is currently working on the best approaches to ensure that all our external stakeholders are also kept aware. As the monthly paid double earnings issue affects only a small minority of those claiming UC, less than 1% of all those who are working, we consider that any kind of communication to all claimants is unlikely to be helpful and may result in misunderstandings and confusion. Instead there will be general information made available via the normal communication routes for anyone claiming UC and on an individual basis, where households are identified that might be affected, Work Coaches and Case Managers will make sure they are aware and work with them to resolve any issues.

- **where does the responsibilities lie in relation to identifying claimants who will be affected - with DWP or the claimant?**

The Department is introducing the new arrangements at the earliest possible opportunity in order to provide a remedy in accordance with the Court of Appeal's judgment. This means that the system we are introducing will be a manual one, which will largely rely on claimants reporting that they have received two sets of earnings in an assessment period. It is not practicable, at present, for the Department to identify such claimants, but we are taking steps to identify the earnings patterns of new claimants so that we are in a better position to identify cases that may be affected by double earnings. This approach should reduce the need for claimants to notify the Department.

4. **There is the power for Secretary of State to trigger to exercise (sub section 6), generally trying to smooth the payments. If you get two payments in a month, do you have to wait for two assessment periods to smooth this out? How would this work**?

Legal Powers

Regulation 61(6) provides the power to reallocate earnings to a different assessment period to ensure that ordinarily no more than one set of calendar monthly earnings would be taken into account in an AP. We are hoping by taking the steps we mentioned during the meeting that we will be able to identify cases in advance where two set of earnings will occur in the future. The intention is that we will have anticipated the situations in advance and set up systems to recognise them. This means that if the right conditions are met, earnings will be reallocated, which should mean that claimants do not need to wait two months for an adjustment in their UC award.

As recognised by the Court of Appeal, cases where more than one set of earnings are taken into account can be complex. This amendment to our regulations will allow us to reallocate payments for monthly paid employees to a different assessment period to maintain a regular payment cycle. This amendment will make it possible to do this using either a manual or an automated decision, whichever is in the best interests of the particular case.

Will Quince MP
Minister for Welfare Delivery
Department for Work and Pensions
4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

23 October 2020

Dear Minister,

The Universal Credit (Earned Income) Amendment Regulations 2020

The Department presented the above regulations to the Social Security Advisory Committee for scrutiny at our meeting on 7 October. As you will be aware, these amend the Universal Credit Regulations 2013 to implement the Court of Appeal Judgment in the case of *Johnson & Others* which determined that the Department's lack of adjustment for those who have two calendar monthly salaried earnings taken into account in one assessment period due to a "non-banking day salary shift" was "irrational and unlawful".

Having considered carefully the information available to us, and following subsequent discussions with DWP officials, the Committee has concluded that formal reference of the regulations is not necessary. The proposals are an improvement on the current arrangements and will enable additional claimants to benefit from Universal Credit as intended.

We do, however, remain concerned that the new arrangements will be overly reliant on claimants to notify the department when they have received two monthly payments in a single assessment period and that as a result a significant number could still fail to benefit from a work allowance every month as they should. Therefore, we recommend that the Department monitors closely the impact of this change, and would welcome your reassurance that arrangements will be put in place to capture and publish regular (at least bi-annual) statistics on:

(a) the actual numbers for whom an adjustment should be made; and
(b) the percentage of that group where an adjustment is actually made.

These statistics could provide reassurance on whether these proposals are an adequate response to the Court of Appeal’s findings and, if not, to provide an early warning of the need for further action.

I would be very happy to discuss this in more detail with you if that would be helpful.

I am copying this note to the Secretary of State, Baroness Stedman-Scott, Jonathan Mills and Katie Farrington.

Yours,

Dr Stephen Brien
SSAC Chair

Department for Work & Pensions

Minister for Welfare Delivery
4th Floor
Caxton House
Tothill Street
LONDON
SW1H 9DA

www.dwp.gov.uk

Dr Stephen Brien
Chair
Social Security Advisory Committee
7th Floor
Caxton House
Tothill Street
London
SW1H 9NA

5 November 2020

Dear Stephen

The Universal Credit (Earned Income) Amendment Regulations 2020

Thank you for your consideration of the regulations to remedy the Court of Appeal's Judgment in the case of *Johnson and Others.* The regulations are due to come into force on the 16th November and, as you know, will provide that the Secretary of State may reallocate a second payment of calendar monthly earnings received through Real Time Information (RTI) in one assessment period to another assessment period to ensure a regular payment cycle.

I welcome the Committee's decision not to formally refer these regulations and agree that they will enable additional claimants to benefit from Universal Credit. These regulations will mean that a claimant who is paid calendar monthly should have no more than one set of earnings from the same employer taken into account and also ensure that they can benefit from any applicable work allowance during each assessment period.

In terms of the concerns you raise about the initial implementation of this change, you will be aware that the Court of Appeal in their Judgment recognised that this issue is complex and there is no easy solution for all cases. We agree, and have therefore taken the decision that in order to meet the Court of Appeal Judgment as soon as is practicable we are introducing a solution based on a streamlined dispute process currently in place. This response is only possible at this pace because it is a manual process, and that is only possible because numbers are expected to be small. We therefore believe that this process will enable those who are affected to benefit under this new regulation.

As with all UC changes we will be using a test and learn approach to continue to develop this process and this will include information gathering for more effective identification. Whilst we are currently able to generally identify the volume of cases which may fall within the parameters that mean they may be affected by double earnings, we do not have sufficient data that would provide the metrics you are requesting to show the actual numbers for whom an adjustment should be made and therefore the percentage of that group where an adjustment is actually made.

As we progress with changes to improve the process, and using the information gathered through these changes, we will be looking to see if there is a way that we can aim to identify cases likely to be affected. Our thinking is that, whilst for more complex cases we will want to continue to manually intervene to ensure that individuals are not disadvantaged, for others, if we are able to anticipate situations where this could happen in advance this may enable us to set up systems to recognise them. This would mean that if the right conditions are met, earnings could be reallocated, which should mean that claimants do not need to wait for an adjustment in their Universal Credit award. The monitoring of existing processes alongside any improvements we are able to make should provide reassurance that those who are affected by this issue are able to benefit under this new regulation.

I am copying this reply to the Secretary of State, Baroness Stedman-Scott, Jonathan Mills and Katie Farrington.

Yours sincerely,

Will Quince MP

Minister for Welfare Delivery