Social Security Advisory Committee
Minutes of the meeting held on 10 June 2020

Chair:	Liz Sayce
Members:	Bruce Calderwood Carl Emmerson Philip Jones Grainne McKeever Dominic Morris Seyi Obakin Charlotte Pickles Chris Goulden Kayley Hignell
Apologies:	David Chrimes Jim McCormick Victoria Todd

1. Private session

[PARTIALLY RESERVED]

Postal Regulations

1.4 The Chair of the Postal Regulations sub-group recommended that the following regulations be cleared by correspondence:

- *The Childcare Payments (Coronavirus, Miscellaneous) (Amendments) Regulations*
- *The Social Fund and Miscellaneous (Amendment) Regulations 2020*[1]
- *The Loans for Mortgage Interest (Transaction Fee) Regulations 2020*
- *The Maternity Allowance, Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay, Statutory Shared Parental Pay and Statutory Parental Bereavement Pay (Normal Weekly Earnings etc.) (Coronavirus) (Amendment) (No. 2) Regulations*

1.5 It was noted that the regulations were beneficial, non-controversial and that the sub-group had no significant concerns, although members had asked for further information from Departmental officials on *The Childcare Payments (Coronavirus,*

[1] The title for this regulation is now changed to *The Social Fund and Social Security (Claims and Payment) (Amendment) Regulations 2020*.

Miscellaneous) (Amendments) Regulations; and *The Loans for Mortgage Interest (Transaction Fee) Regulations 2020*.[2]

1.6 Having considered the papers, and the additional material provided by the Postal Regulations sub-group, the Committee agreed that the regulations could proceed without a requirement for formal reference.

2. (i) The Social Security (Persons of Northern Ireland) – Family Members (Amendment) Regulations 2020; and (ii) The Child Benefit and Child Tax Credit (Persons of Northern Ireland) (Amendment) Regulations 2020

2.1 The Chair welcomed the following officials to the meeting: Nasra Jama (G7, International Strategy Division), Samuel Tyler (International Strategy Division), Richard Ward (G7, Economic Adviser), Marie-Louise Murray (Legal Adviser); Sandra Banda (Legal Adviser) and Saddique Saleem (International Social Security Policy, HMRC). The presentation was being delivered jointly with HMRC who would also be laying a set of regulations that mirrored DWP's, although from different perspectives.

2.2 Introducing the proposals, DWP officials noted that the policy intent was in response to the *New Decade, New Approach: priorities of the new Executive* and the UK Government's commitment that the family members of people of Northern Ireland can enter the UK and access benefits. Non-UK family members of the people of Northern Ireland can apply to EU settlement scheme just like EEA nationals. The regulations would allow a family member to have access to income-related benefits, with direct reference to the definition in the appendix of the EU Immigration rules.

2.3 The Department explained that the impact of the regulations was essentially to define the access to benefits for someone who was granted Limited Leave to Remain as a family member of Northern Ireland. It was designed to align with the rights of the family members of Republic of Ireland citizens. The HMRC Regulations mirrored those of DWP.

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

(a) The addition was welcome, but would the Home Office changes to the immigration rules be translated into Social Security regulations?

These rules were designed to implement what was set out in the *New Decade, New Approach*. The judgment on the *De Souza* case stands, and the changes introduced would mean that Republic of Ireland citizens would be able to access the EU settlement scheme.

[2] The questions, and responses received to them, are held at annex B.

(b) There was a potential gap. What would happen when the scheme ends, would the benefit entitlement end?

The Department was focussing on the approach outlined in *New Decade, New Approach*. The Government had made a commitment and that was what DWP were implementing, but it was dependent on the Home Office's approach. A grace period had been established, those who wanted to apply to the EU settlement scheme had up to 30 June 2021 to do so. That was designed to put the people of Northern Ireland on the same footing as Republic of Ireland nationals. There would be no entitlement at the point at which EU treaty rights end in UK. Anyone joining after that date would be treated under future schemes and would be a matter for the Home Office to determine.

(c) What were DWP and HMRC doing to raise awareness about the EU Settlement Scheme?

DWP, alongside other departments, were considering what communications could be undertaken to engage with all eligible people. HMRC was also planning to undertake a communications campaign, alongside other departments, to promote the Scheme.

(d) When would Northern Ireland equivalent regulations be brought forward?

Policy officials were working closely with colleagues in the devolution team and the Department for Communities to put arrangements in place to replicate the regulations that would work in parallel for Northern Ireland.

(e) Did EEA national have better and greater access to benefits compared to UK citizens?

There were differences between individuals and family members' access. EU access was derived from EU law, and a key discrepancy was that an EU citizen could exercise free movement for themselves and their family members, but a GB national could not unless they had moved to and from the EU, like in the *Surinder Singh* case. Once EU law was revoked post-Brexit, that discrepancy would no longer exist.

(f) What rights or entitlement access would be granted?

The regulations would ensure that an eligible family member of a person of Northern Ireland could access broadly the same income-related benefits as a

family member of an Irish national from the Republic of Ireland or other EEA citizens, if they applied to and were granted leave under the EU Settlement Scheme.

2.5 The Chair thanked officials for attending, and informed officials that the presentation was fundamentally beneficial, and the Committee will not take the regulations on formal reference. The Chair informed officials that the Committee were pleased to hear about the communications, and would be interested in what happens next after June 2021 and the parallel Northern Ireland regulations that are due to be laid.

3. The Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020

3.1 The Chair welcomed the following officials from HM Revenue and Customs (HMRC) to the meeting: Michelle Mathieson (Tax Credits and Child Benefit Policy), Mick Ney (Tax Credits and Child Benefit Policy) and Saheed Dawood (Tax Credits and Child Benefit Policy).

3.2 Introducing the item, Michelle Mathieson noted that the proposals provided temporary support to Working Tax Credit (WTC) claimants who were:

- furloughed under the Coronavirus Job Retention Scheme (CJRS);
- accessing the Self-Employed Income Support Scheme (SEISS); and
- in similar circumstances but had not been able to take advantage of support provided by those support schemes.

The regulations would ensure they remained entitled to Tax Credits.

3.3 HMRC had suspended the normal requirements for those claimants who had had their work temporarily interrupted due to the coronavirus pandemic so that the claimant could be treated as continuing to work their normal hours for the duration of the CJRS. When the CJRS ends, impacted claimants would have up to a further eight weeks to re-establish their normal working hours after which a 4-week run-on would apply if they no longer met the qualifying remunerative work rules. However, should there be a permanent change before the expiry of the eight-week period, for example if they lost their job or ceased trading, then the normal rules would apply and they would be immediately eligible for the four week-run on. Specific provision was made for claimants who were shielding to allow them to continue to be treated as continuing to work their normal hours until they were no longer required to shield.

3.4 The regulations prevented claimants from combining furloughed hours or pre-Covid ‘normal’ hours with further hours worked in additional jobs during the period in which CJRS exists in order to qualify for the 30-hour element. There would be no

bar to payment of that element. Also, the regulations disregard free school meal payments and lump sum payments under the NHS death-in-service scheme. However, any interest derived from the lump sum payments would be taken into account in the tax credits income calculation in line with normal rules. The regulations also took into account taxable grants made under various self-employed support schemes in the tax credits income calculation. In addition, they extended the length of time for backdating from one to three months for critical workers within the dates for the CJRS.

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

(a) What was the distinction between the 8 and 4 weeks? If at the end of the 8 weeks a claimant did not find work but did so within the 4-week run-on period, what would happen?

A claimant could re-establish Working Tax Credits entitlement during the 4-week run on as long as they had not already made a claim to Universal Credit.

(b) Why not use the entire 12-week period?

The 8-week period allowed sufficient time for the employer and the employee to make a decision on whether the employee claimant would return to work. A longer timeframe might not allow for optimal support and the already complicated legislative changes would be further complicated if those timeframes were different.

(c) How would claimants know what they had to do to make a decision?

Any permanent changes must be reported to HMRC. Claimants were not obligated to report temporary changes as a result of coronavirus impacts during the period of the pandemic.

(d) Was there anything additional that HMRC was considering doing to help claimants understand the changes?

Changes were mentioned on Gov.uk, and staff guidance was in place to inform people of the changes. There were also intelligent messages on HMRC phone lines and links to further information on the coronavirus support pages on Gov.uk.

(e) Would Tax Credits administration recognise whether someone was furloughed or not?

To a certain extent HMRC were relying on individuals to inform them of the changes. In terms of interface, there would be some reconciliation in Real Time Information (RTI), so people who were furloughed could be picked up through RTI. But HMRC were relying on claimants informing them of changes to hours or redundancy. It was business as usual and, whether a claimant was on WTC or UC, they would be encouraged to keep in touch and check HMRC's website. Eight weeks was a reasonable period for claimants to report their change in circumstances.

(f) Was there not a challenge at a later point regarding overpayments?

HMRC would take a reasonable approach to overpayments but would depend on what and how claimants informed HMRC of changes. Claimants were obliged to inform HMRC of certain changes, and it was sympathetic during this current crisis, and would encourage claimants to contact us. Each case would be considered on its merits.

(g) Was there a trigger for the eight-week eligibility?

Normal working hours for claimants was important. If someone was normally working zero hours over the eight weeks, then zero hours in the four-week run-on, it would be difficult to argue such a claimant should continue to receive WTC. 'Normal' had the same meaning it had always had in WTC.

(h) What would happen if someone has two jobs in any one of the following scenarios:

1. **two 16 hour per week jobs pre Covid-19, with one being furloughed;**
2. **one job of 16 hours per week, a second job of 8 hours per week pre-Covid-19, with the second job being furloughed; or**
3. **one job of 16 hours per week pre-Covid-19 being furloughed, which leads to a second job being taken on for 16 hours per week.**

The first scenario would qualify for the 30 hours as they had worked for more than 30 hours in total. The temporary rules permitted HMRC to continue to pay the 30 hours element if they already had it.

In the second case, the individual would not qualify as they did not already have the 30 hours element. They could achieve it by adding their non-furloughed/still working hours to an additional job and, if those total 30 hours, they could claim the 30 hours element.

In the final scenario, the individual would only get credited for working 16 hours per week for Tax Credit purposes, even if the claimant actually worked

more than the combined 30 hours per week necessary to get the additional 30 hours/week Tax Credit element.

(i) The regulations enabled someone who took on a new job for 30 hours to be eligible to receive WTC. Would that apply to couples in a household with children?

As normal, the WTC 30-hour element would apply where the eligibility criteria was met through the combined working hours of a couple, provided one member worked for at least 16 hours a week, as a single person.

(j) Many self-employed people were likely to have work costs. How were these work costs taken into account over the course of the year? Were work costs excluded?

Any income coming in and is taxable on the balance sheet will be taken into account for Tax Credit purposes.

(k) What guidance existed to define critical workers and the extension of deadlines to report changes?

HMRC trusted claimants to provide accurate information, claimants were responsible for informing HMRC of any changes in a timely manner. Claimants should have proof of evidence of wages and/or income, although there was evidence on RTI. There was an expectation that self-employed claimants would declare their hours and that information would be accepted unless HMRC believed the award was incorrect, in which case it could request claimants to provide evidence further down the line. It was business as usual. There was no expectation to further extend the deadline.

(l) How would HMRC know whether or not individuals were shielding, for example carers on unpaid leave? Was there a difference between being on paid or unpaid leave for tax credit purposes?

If someone needed to shield or a family member was shielding, then that would be taken on a trust basis. HMRC would only ask for documentation if there was a doubt. This could be provided by a health professional, and would allow them to remain on WTC if they were unpaid by their employer. Claimants could be in a position that if someone was on Statutory Sick Pay (SSP), they might be better off on Universal Credit and would need to satisfy one or the other conditions of entitlement.

3.6 The Chair thanked HMRC officials for answering the Committee's questions and acknowledged the technical complexities of the issues raised. The Chair

informed officials that upon further discussion with members, the Committee would write to HMRC with any follow-up questions it might have.

4 & 5 Private sessions

[RESERVED ITEM]

Date of next meeting

The Committee's next meeting was scheduled to take place on 22 July. The arrangements would be confirmed as soon as possible.

Annex A

Attendees

Guests and Officials

Item 2: Nasra Jama (G7, International Strategy Division)
Samuel Tyler (International Policy and Legislation)
Richard Ward (G7, Economic Adviser)
Sandra Banda (Legal adviser)
Marie-Louise Murray (Legal adviser)

Item 3: Michelle Mathieson (Tax Credits and Child Benefit Policy)
Mick Ney (Tax Credits and Child Benefit Policy)
Saheed Dawood (Tax Credits and Child Benefit Policy)

Secretariat: Denise Whitehead (Committee Secretary
Nishan Jeyasingam (Business Support)
Jaishree Patel (Assistant Secretary)
George Watley (Assistant Secretary)

Annex A

The Childcare Payments (Coronavirus, Miscellaneous) (Amendments) Regulations 2020

1. ***Why a threshold of £150,000? It would be useful to understand how this figure was arrived at***

   We needed to have a new number as this is required by section 10 of CPA 14. We chose £150,000 as that number for the following reasons;

   - This is both the next natural break point in taxation (the point at which the Additional Tax Rate kicks in) and going back to the pre-2016 figure and as such is an obvious number to use
   - It also ensures, through being well above the existing £100,000 limit, that no unintended exclusions for key workers arise when they are simply working very hard in the country's hour of need
   - In doing so it does not allow abuse as the main driver for the income in excess of £100,000 still needs to be Covid-19 led extra work

2. **The definition of 'key worker' as someone who works in 'critical services' seems vague, the concern is that this will be narrowly interpreted to include NHS staff but not care workers, or supermarket staff but not delivery drivers. Can the team offer some explanation or reassurance on what the policy intent is and if there is a common understanding or definition of 'key worker' and 'critical service' that is intended to be followed?**

   We continue to work closely with colleagues in the Department for Education to ensure alignment between the updates to the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 and our regulations. This may result in further minor tweaks and we will continue to keep you advised of them as they come up. We attach the latest draft. But we can reassure that there is no intention to draw or apply the test narrowly and that we will apply it in a common sense way to allow all affected critical workers to stay eligible. The very first draft referred to key worker but was subsequently altered to critical worker to reflect the wording used elsewhere. The definition is now more specific by referring to the government's guidance which does now refer to delivery drivers amongst many others. We think that the current draft deals with the queries that you have raised on this issue.

3. **The new reg 16(a), the notion of what a 'reasonable' fee is, is worth understanding better. Is there an explanation on what the anticipated fee level will be that could come within a reasonable threshold? If so, is this based on an average fee rate (with geographical variations)? If not, can we get some reassurance on how this will be determined, by whom and whether a parent could raise a potential challenge if the decision on reasonableness will be down to case by case discretion?**

We are not aware of any current players in the market place that charge a fee to parents direct, although intermediaries need to draw income from somewhere and their charges will inevitably be reflected in the cost of childcare. But business models may change over time and we were conscious of the need to future proof this new regulation. The idea is to provide certainty that HMRC will not seek to impose apportionments, or challenge fee levels, in any future business models that may arise through normal commercial pressures. But at the same time protect parents and government funds from scammers or those seeking to abuse the scheme. To this end we find it better not to set up targets to be aimed at but to let 'reasonable' take its everyday meaning. But you may be assured that we would not seek to impose apportionments lightly or in borderline cases but only in cases we thought clearly abusive.

The Loans for Mortgage Interest (Transaction Fee) Regulations 2020

1. **Was increasing the charge considered as an option to make it cost effective? or was making the process more efficient to reduce the cost of the charge considered?**

Yes. The decision to stop the charge was negotiated and agreed with HM Treasury in October 2019. On SMI numbers at that time we calculated that increasing the levy to a cost neutral level would see a 100% increase in the charge from £0.39 to £0.79 to lenders. SMI does not meet the whole of a person's mortgage liability and the success of the scheme is reliant on us maintaining a relationship with lenders which ensures they continue to exercise forbearance. A large increase in the transaction fee would not be helpful in maintaining that relationship. The amounts recovered are fractional compared to wider policy benefits.

The efficiency savings achieved by abolishing the charge were calculated on the basis of the staff and non-staff costs dedicated to the process of costing and administrating the charge.
A financial review of the scheme's costs identified that 60% of the costs recovered by the TC are required to administer the TC. The costs associated with administering the scheme were broken down as follows:

Name	Costs with transaction Charge (£)	Costs without TC (£)
Operational Costs	£124,450	£62,225
Estates	£30,483	£15,242
Payment Resolution Service	£37,686	£0
BACS	£10,100	£10,100
Shared Services Connected Ltd	£12,481	£0
Finance	£5,654	£0
Total Cost	£220,854	£87,567

The process is inherently inefficient due to the small value of the charge, the frequent number of changes to circumstances and the large number of mortgage providers. From the table above 60% of the costs are purely administrative to operate the charging system (and out finance team estimate this is conservative). This is significantly below the industry norm for transactions (typically less than 2%). This is not seen as an efficient use of tax payers money by lenders or DWP staff.

2. **Was the decision in part based on a falling number of claimants, and if so, wouldn't we expect that number to increase in response to the virus/lockdown? does that mean in future it might become cost effective again?**

   The decision was made because the charge does not represent value for money on a comparative basis. This was agreed by HMT in October 2019 and agreed with Ministers in January 2020, before the crisis was foreseen. At that time there was a clear downward trend in the numbers of SMI claimants. Only around 20% of claimants offered the loan choose to take it up. We may see a rise in the number of SMI claimants as a result of the current crisis. The impact of Covid-19 is uncertain at this time but if there were a 30% rise in the number of owner occupiers who may become eligible for an SMI loan, our finance team estimate the only variable cost in the Table above is BAC's charges which would increase by circa £3k.

3. **Will it be possible to reinstate a charge in future?**

   Yes, there's a primary power to charge lenders a fee so this could be re-instated by regulations at a later date. We will continue to monitor the cost of administering the scheme and our initial impacting is that the decision remains valid even if volumes increase significantly. If costs begin to rise significantly we will consider how those costs can be met.

4. **If the industry are not now paying for this, who is bearing the cost - the taxpayer or the claimants?**

   At present the costs are absorbed into DEL funding. HMT agreed these costs were fairly trivial and significant DEL savings from operational processes accrued both from the changes to the scheme in 2018 from a benefit to an interest bearing loan and reduction of claimants which followed. This far outweighs the 87k cost here outlined the table above. It's worth bearing in mind that the Department is estimated to save around £140m in AME costs through the transition from a benefit to a loan. Total expenditure on SMI, prior to the conversion into a loan, was £149 million in 2017/18. The number of claimants receiving Support for Mortgage Interest (2017/18) was 111,000. There are now only around 20,000 SMI loan recipients. Looking at the programme as a whole the taxpayer gains (less AME) DWP gains (less DEL), the industry gains (less mortgage repossessions). The claimant has a choice as a safety net to opt into the scheme if they wish and in many instances are choosing not to.