

**Social Security Advisory Committee  
Minutes of the meeting held on 3 November 2021  
(Microsoft Teams)**

Chair: Dr Stephen Brien

Members: Bruce Calderwood  
Matthew Doyle  
Chris Goulden  
Kayley Hignell  
Phil Jones  
Grainne McKeeever  
Charlotte Pickles  
Liz Sayce

Apologies: Carl Emmerson  
Seyi Obakin

**1. Private session**

*[PARTIALLY RESERVED]*

*Postal Regulations*

1.4 The Committee agreed the Postal Regulations sub-group's recommendation that the following regulations may be cleared by correspondence:

- *The Tax Credits and Child Benefit (Miscellaneous Amendments) Regulations 2021*

1.5 The Chair asked the Committee Secretary to notify the Department that the regulations may proceed.

**2. The Social Security (Habitual Residence and Past Presence (Amendment) Regulations 2021; and The Child Benefit (General) (Amendment) Regulations 2021**

2.1 The Chair welcomed Richard Jordan, (G7, International Access to Benefits), Helen Birch, (SEO, International Social Security Strategy), David Malcolm, (G6, International Social Security Policy HMRC), Constance Kanish (DWP Legal) and Sandra Banda (DWP Lawyer) to the meeting. It was noted that although these regulations are already in force, and the urgency provision has been invoked, that statutory scrutiny remains a requirement.

2.2. Committee Members raised the following main questions in discussion:

## MINUTES

- (a) **With regard to disability benefits it is noted that, for returning UK nationals, that the Past Presence Test (PPT) will apply to them, whereas it does not for Afghans arriving in the UK. Why are UK nationals treated differently?**

The intention with the regulations was largely to align the position of Afghans arriving in the UK under the three Home Office relocation and resettlement schemes with that of refugees. Returning UK nationals are not in the same position. UK nationals have been given access to income related benefits to meet their short-term need.

- (b) **The Department's approach to returning UK nationals is that they are meant to know the benefit rules and take account of that in the plans for their return, however this was an unexpected event occurring at very short notice, so they were unable to plan and suddenly were forced to change their jurisdiction. Should that not be taken into account?**

The PPT has not been exempted before. Many UK nationals return unexpectedly for a variety of reasons. It was considered but was not the chosen option in this case – they are not on the same footing as refugees.

- (c) **Was the Department's concern that if it made an exemption in this case that it would have been difficult to justify not applying it in all such circumstances?**

These regulations are to deal with the immediate issue of providing for those arriving under the Home Office relocation and resettlement schemes, and align the position with that of refugees, whilst also providing for the immediate income related needs of UK nationals.

- (d) **The PPT can last as long as two years. That is a very long wait for someone who relies on those benefits. Why make a distinction at all, and wait not waive it for this particular event?**

The disability benefits are important, but the UK nationals are not equivalent to refugees as they are returning to the UK, they have chosen to be outside the UK with the knowledge that there would be a PPT on their return. It was not in the remit of these regulations to reconsider the whole issue of the PPT - there are a multitude of urgent and unexpected reasons why people return to the UK.

- (e) **Does the Department have any figures for the number of returning UK nationals who need to access disability benefits?**

## MINUTES

There are figures for the Afghan groups – so far there has been about claims fifty from those in the relocation and resettlement schemes – but the Department does not have figures for the UK group.

- (f) **Is there an interaction between how asylum seekers are treated, being generally exempt from claiming benefits, and these regulations? Are you able to provide assurance that if an Afghan claimed asylum this would not create a problem?**

If the person applied for asylum status they would keep the status given to them while their application is considered, so their DWP entitlement would not stop at any point.

- (g) **There seems to be difference between the income related benefits and disability benefits when it comes to whether dependents are included?**

Yes, this is because there is already discretion for dependents in the income related benefits. These regulations added the same for the PPT in disability benefits.

- (h) **Is there any difference in treatment based on the route the person has travelled to the UK, such as if they have travelled through other countries?**

The exemption is not limited to those who travel directly from Afghanistan to the UK. If they are coming through a third country, they are also covered by the exemption. Also, it should be noted that if they left Afghanistan before change of administration occurred they are also covered, as long as they left in connection, so covers those who left pre-emptively.

- (i) **Are there any issues in relation to Scotland, Northern Ireland, or people moving in and out of Ireland? Does the PPT test include time spent in Ireland?**

These regulations have been discussed with the Scottish Government and the Northern Ireland Executive. Northern Ireland (NI) has introduced 'mirroring' legislation which came into force on 20 September. The Scottish legislation, which mirrors the DWP legislation for the disability and carer benefits (the income-related benefit legislation is reserved) came into force on 15 September. The only difference may be that there are no bridging hotels in NI, so there will be lower numbers of claims. We would need to confirm with the Department for Communities in NI on the whether the PPT for NI regulations cover residence in the Republic of Ireland.

2.3 The Chair thanked officials for presenting the regulations to the Committee and for answering members' questions. The Committee decided that the regulations could proceed without a requirement for formal reference, however it had concerns about the discrepancy between the treatment of UK nationals and Afghans in this scenario, and noted that it would write to the Minister for Welfare Delivery on this matter.<sup>1</sup>

### **3 The Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020 ; and The Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations (Northern Ireland) 2021**

3.1 The Chair welcomed to the meeting Jonathan Harris (G6, Head of Future International Social Security), Richard Jordan (G7, Policy Lead International Access to Benefits), Martin Blatchford (G7, International Strategy Division), Satish Parmar (G7, International Strategy Division), Marie-Louise Murray (G7 Lawyer), Joanna Hubbard (G7 Lawyer), Dionne West (SEO, International Access To Benefits), Helen Birch (SEO, International Social Security), Michelle Grills (Department for Communities), Karen Kempton (Department for Communities), Vanessa McKay (Her Majesty's Revenue and Customs). By way of introduction, he reminded those present that the Great Britain regulations were originally cleared by the Committee in December 2020, and that this meeting was an opportunity to look at them again alongside the Northern Ireland version of the regulations which came into force in October.

3.2 The Committee raised the following main questions in discussion:

- (a) **Could the Department explain (i) what is the impact on frontier workers, (ii) what was the interaction between the Department of Work and Pensions and Department for Communities in developing the regulations, particularly in view of the gap between the two sets of legislation coming into force, and (iii) what emergency assistance is available for people who fall outside the benefits?**

In terms of frontier workers, a claimant has to be a 'person subject to immigration control' (PSIC) to be affected. That wouldn't apply to EEA nationals who are frontier workers, as they are not PSIC. Indeed, frontier workers should not be affected at all. The only people affected are nationals from Turkey and North Macedonia with no recourse to public funds conditions on their leave accessing Universal Credit. Anyone who had made a claim before January 2021 would be protected. In terms of Northern Ireland the delay in the regulations might have had an impact but this was monitored and

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<sup>1</sup> A copy of that letter, and the Minister's response, can be found at [The Social Security \(Habitual Residence and Past Presence\) Amendment Regulations 2021](#)

there were no affected claimants in this period – so the delay had no material implications.

**(b) What if there had been a UC claimant from Turkey or Macedonia in the delayed period?**

Had that happened the Department would have had discussions on what to do on an ad hoc basis. The gap between the two sets of regulations was not intended to be quite so long. Fortunately, no issues arose.

**(c) There may be sensible parity here between the Northern Ireland and GB regulations, but how is confident is DWP about the NI regulations given they did not go through the scrutiny process that the GB regulations are subject to? How does DWP assure itself there are not going to be NI consequences?**

With the context of Covid-19 it was an unprecedented situation. It was not foreseen that the NI regulations would take so long. Usually the NI 'mirror' regulations come in shortly after the GB regulations. The numbers of people affected has been low (in fact there were no affected claimants during the delay), which has been mitigated by Covid-19. There were consultations between NI and GB officials, who have been in touch throughout this process.

**(d) The regulations say that UC does not aggregate for frontier workers. Is UC deemed to be a social insurance benefit or a social assistance benefit?**

These regulations do not apply to frontier workers they are not a PSIC. UC is not social insurance for social security coordination purposes. There are contributory benefits where you can aggregate contributions and export certain benefits and those are covered by the scope of the Withdrawal Agreement, based on Regulation (EC) No. 883/2004.

**(e) There is a reference to emergency assistance available through local authorities. What are the emergency assistance schemes in NI, and are you not eligible even if you do not have recourse to public funds?**

The GB position is that if you have no recourse to public funds, you cannot access benefits. However, contributory benefits are available if you have paid contributions, and you can also get emergency social assistance for those with no recourse to public funds. In NI contributory benefits are also available to those who have paid contributions. In addition, emergency assistance is available for those with no recourse to public funds. The Department for

## MINUTES

Communities has a 'make the call' team, which will direct those affected to sources of advice and support, such as charities.

- (f) Under what powers can Local Authorities (LAs) provide those emergency funds, and do they know that there is a reliance on them to do so in these circumstances? Also, is there not a risk of a form of retaliation from other countries to these changes – what reaction might there be from these other countries, and how might these impact UK nationals abroad?**

LAs have been informed of the changes as regards the change in UC for European Convention on Social and Medical Assistance (ECSMA) and European Social Charter (ESC). Each country which has ratified these agreements interprets these differently – for example, there is a waiting period in France. There has been no liaison on the reactions from other countries, but there are already different interpretations from each country. It is an important fact that in the ECSMA and ESC treaties UC was never listed for those lawfully present. There have been discussions over our obligations for a long time and the position in domestic legislation has been more generous than what was required under those treaties. In terms of the powers LAs use, some examples are section 1 of the Localism Act 2011 (subject to Schedule 3 of the Nationality, Immigration and Asylum Act 2002), and and section 17 of the Children Act 1989.

- (g) If the UK enters into a bilateral agreement with Algeria, will those Algerian nationals in the UK be covered without need for further regulations?**

Algeria is the exception. The UK was party to a European Union Association Agreement (EUAA) with third countries like Algeria. As a result of EU Exit those agreements were transitioned to bilateral agreements on the same terms, however no agreement was in place with Algeria by end of transition period, so the EUAA with Algeria no longer applied to UK. When there is such an agreement an Algerian national will be entitled to same benefits as under the previous EUAA, and that would happen automatically as legislation is in place for any EUAA which is transitioned into a bilateral agreement.

- (h) In terms of Algerian nationals, there is only a small number claiming benefits in the UK. Have any communications gone to those people to explain their new situation?**

Analysts have predicted that the numbers of claims from Algerians that might not succeed are likely to be less than five claims per year. Since the start of the year there has not been a single claim from an Algerian national.

**(h) From a GB perspective, since the beginning of the year how many people have taken advantage of these regulations?**

For access to UC, it is only recently that large numbers of people have started returning to the UK after Covid-19 restrictions. EEA and Swiss citizens resident before the end of the transition period would have access provided by the Withdrawal Agreement and by the Grace Period statutory instrument on the same terms for first six months of year until July. If a person had an existing claim as at December 2020 that would have carried over anyway, so this concerns only EEA citizens arriving towards the end of this year on work visas. It could be zero – there may be no material impact but everything is in place.

**(i) What is the distinction between social assistance and social insurance benefits? UC was accepted as a social assistance benefit by the EU, but now for these regulations it is defined as social insurance. Which it is, and how is it defined?**

Social assistance and social security are terms defined in EU directives and regulations. However, where those terms are used in the context of ECSMA and ESC they do not necessarily mean the same thing, so care should be taken not to conflate them. UC can fall into the definition of assistance to be provided to certain people in certain situations in ECSMA and ESC, but it depends on their personal circumstances and their immigration status / the nature of their presence in the country.

**(j) Has the definition been tested under ECSMA and ESC in the courts?**

There is not a court to oversee these agreements or deal with ECSMA and ESC, so no.

3.3 The Chair thanked officials for attending the meeting and answering the Committee's questions.

#### **4. Equality Analysis: *Jobseeker's Allowance and Employment and Support Allowance (Amendment) Regulations 2021***

4.1 The Chair welcomed Tom Younger and Aimee Vickers (both DWP analysts) for attending the meeting to discuss the equality analysis (EA) for *The Jobseeker's Allowance and Employment and Support Allowance (Amendment) Regulation 2021*.

## MINUTES

The analysts apologised that, due to illness, their colleagues most closely involved in this work were not able to attend.

4.2 Tom Younger explained that since this EA last came before the Committee it has been improved considerably, not least thanks to the helpful contributions made by the Committee. It is now more data driven, has more detail on the characteristics of working age people on a whole, on those who were sanctioned previously, and comparisons between the groups, thinking particularly about disability and ethnicity (although there is poor reporting of ethnicity in Universal Credit (UC)). It will be finalised shortly, then following Ministerial clearance, would be submitted to the Committee.

4.3 The Committee raised the following main questions in discussion:

**(a) How does the Department's work feed into evaluation? If there are issues with the robustness of data, can there be improved data gathering practices?**

There does need to be improved data gathering and there is a commitment to do that, particularly regarding UC and ethnicity where levels of reporting need to rise, and there are promising signs that this is being addressed.

**(b) On the balance between rigorous data you are comfortable with and less rigorous data, which nevertheless could still inform decisions and contain useful insights, can that latter data still be used, and also shared with the Committee, if only on a confidential basis?**

The Department wants to use widest range of data available. Where a policy like this one doesn't affect large numbers DWP is limited by what can be obtained. This shall be fed back to other analysts, whilst there should be a spirit of openness there is also a concern that less rigorous data may mislead.

**(c) Where the data is not sufficiently reliable, can the possible shortcomings be explained in the language of risk, such as with confidence intervals?**

There is the balance of relying on unreliable data too heavily which leads to a wrong decision, although commonly the data to be drawn on is either present and reliable, or simply not there at all.

**(d) The Committee wants confidence that a policy has been thought through, and that it will not cause unintended harm. The thought process of how to reasonably ensure this is more pertinent than the detail of the noisy data. Does the implementation of escalating sanctions on any protected characteristics mean a group will be sanctioned at a disproportionate rate? The data may be limited but are there some proxies to give an**



## MINUTES

indicative understanding, and although the proxies may be weak, with an application of Bayesian reasoning we can see that the Department has pushed as hard as it can and the Committee can be content that this is scrutinised to the fullest. Will the EA be ready for the December Committee meeting?

That is the aim.

4.4 The Chair thanked the analysts for their attendance and for answering the Committee's questions. SSAC would return to this issue at a later meeting when the completed EA was available.

### **5. Private Session**

*[RESERVED ITEM]*

### **6. Date of next meeting**

6.1 The Committee's next meeting was scheduled to take place on December 8 2021.

**Attendees**

Guests and Officials

Item 2: Richard Jordan (G7, Policy Lead International Access to Benefits)  
Helen Birch (SEO, Policy Advisor International Social Security Strategy)  
Sandra Banda (DWP Legal)  
Kanish Constance (DWP Legal)  
David Malcolm (G6, Head of International Social Security Policy HMRC)

Item 3: Jonathan Harris, (G6, Head of Future International Social Security)  
Richard Jordan, (G7, Policy Lead International Access to Benefits)  
Martin Blatchford (G7, International Strategy Division – Senior Policy Adviser)  
Satish Parmar (G7, International Strategy Division - Policy Adviser, Social Security Agreements)  
Marie-Louise Murray (G7, Lawyer)  
Joanna Hubbard (G7, Lawyer)  
Dionne West (SEO, Senior Policy Adviser, International Access to Benefits)  
Helen Birch (SEO, International Social Security Policy Advisor)  
Michelle Grills (Department for Communities)  
Karen Kempton (Department for Communities)  
Vanessa McKay (HMRC)

Item 4: Tom Younger (Deputy Director, Labour Market Analysis Division)  
Aimee Vickers (HEO, Labour Market Analysis Division)

Secretariat: Denise Whitehead (Committee Secretary)  
Jaishree Patel (Assistant Secretary)  
Richard Whitaker (Assistant Secretary)  
Gabriel Ferros (Assistant Secretary)