

**Social Security Advisory Committee**  
**Minutes of the meeting held on 13 October 2021**  
**(By Microsoft Teams)**

Chair: Dr Stephen Brien

Members: Bruce Calderwood  
Carl Emmerson  
Kayley Hignell  
Phil Jones  
Grainne McKeever  
Seyi Obakin  
Liz Sayce

Apologies: Matthew Doyle  
Chris Goulden  
Charlotte Pickles

## **1. Private session**

*[RESERVED IN PART]*

### ***Postal Regulations***

1.4 The Committee agreed that the following regulations could be cleared by correspondence, as recommended by the postal regulations sub-group, and asked the Committee Secretary to confirm that decision to DWP officials:

- *The Employment and Support Allowance (Coronavirus Disease) (Amendment) Regulations 2021*
- *The Universal Credit (Exceptions to the requirement not to be receiving education) (Amendment) Regulations 2021*

1.5 Regarding *The Universal Credit (Exceptions to the requirement not to be receiving education) (Amendment) Regulations 2021*, the Committee requested that officials attend a future meeting to cover certain issues.<sup>1</sup>

## **2-4 Private discussion**

*[RESERVED ITEMS]*

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<sup>1</sup> An exchange of correspondence between the SSAC secretariat and DWP officials is provided at annexes B and C.

## **5 Date of next meeting**

5.1 The next meeting is scheduled to take place on 3 November.

**Attendees**

Guests and Officials

Item 2: Matt Shortman (G6, Universal Credit Policy)  
Zoe Garrett (G6, Universal Credit Policy)  
Ian Biggar (SEO, Universal Credit Policy)

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



Mark Vidic  
Universal Credit Policy  
Caxton House  
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14 October 2021

Dear Mark,

**The Universal Credit (Exceptions to the requirement not to be receiving education) (Amendment) Regulations 2021**

Thank you for submitting the above draft regulations, and supporting paperwork, for statutory scrutiny at the Social Security Advisory Committee's meeting on 13 October 2021.

This letter confirms that the Committee has decided that, under the powers conferred by Section 173(1)(b) of the Social Security Administration Act 1992, it does not wish to take these regulations on formal reference and that they may proceed accordingly.

However, in reaching its decision, the Committee did raise concerns about some aspects of the regulations, and has asked that you attend its meeting on 8 December 2021 in order that they can be further examined. In particular, they would want to cover the following points with you:

- **The Committee is keen to have a greater understanding of the rationale for this aspect of Universal Credit, and how the various strands cohere together.** Specifically, how does the exemption of regulation 14(1)(b) of the Universal Credit Regulations 2013 fit into the wider framework of the Universal Credit education policy, the exemptions to the policy, and the thinking around why sometimes entering education is seen as something that should be supported by social security and sometimes it is not?
- **The Committee also seeks reassurance that this change to regulation 14(1)(b) does everything reasonable to close off the 'work around' problem.** How did you decide that there were not more potential routes by which a claimant could find another 'work around'? In its scrutiny last year, the Committee was keen to see flowcharts covering the different possible routes by which someone could previously take advantage of the Limited Capability to Work disabled student exemption. It would be really helpful to use such a mechanism (or equivalent) to determine whether all routes are now sealed off by the change within these regulations.

- **The Committee would also like to understand if there any issues with how this change, and the wider policy, works in Scotland.** Are there any different impacts or issues to consider given the differing education framework that is in place in Scotland?

Finally, the Committee commends you for the high quality Equality Analysis presented alongside the regulations. Members thought it was very good and has asked me to convey their thanks.

Please do not hesitate to contact me should you require further information. I would be very happy to discuss if that would be helpful.

*Yours,  
Denise Whitehead.*

Denise Whitehead  
Committee Secretary



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Denise Whitehead  
Secretary  
Social Security Advisory Committee  
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29 November 2021

Dear Denise,

**Universal Credit (Exceptions to the requirement not to be receiving education) (Amendment) Regulations 2021**

In giving the go-ahead for the above regulations on 14<sup>th</sup> October, the Committee raised three further questions which they wish to explore with Universal Credit (UC) policy officials in a meeting on 8<sup>th</sup> December.

The following is a written response to the Committee's three further questions (replicated in bold italics) in advance of the scheduled meeting.

***The Committee is keen to have a greater understanding of the rationale for this aspect of Universal Credit, and how the various strands cohere together. Specifically, how does the exemption of regulation 14(1)(b) of the Universal Credit Regulations 2013 fit into the wider framework of the Universal Credit education policy, the exemptions to the policy, and the thinking around why sometimes entering education is seen as something that should be supported by social security and sometimes it is not?***

Financial support for students comes from the system of student loans and grants designed for their needs. A condition of entitlement for UC is that the claimant must not be in education, which excludes most students. Exceptions are generally made where students have additional needs that are not met through the student support system. Regulation 14 of the UC Regulations 2013 provides the following exceptions.

- Under age 21 in full-time non-advanced education without parental support  
This recognises that whilst these students might receive a limited award from schemes such as the 16 to 19 Bursary or Educational Maintenance Allowance, student maintenance loans are not available for non-advanced courses.

Therefore, UC provides maintenance support for these students without parental support.

- Responsible for a child  
Whilst Student Finance does provide grants for childcare costs and the Parents Learning Allowance (which helps covers costs of study for students with dependent children - a set amount, regardless of number of children) it does not provide maintenance support for a child/children. Therefore, UC provides this maintenance support by way of the Child Element to these students and we take into account the maximum maintenance loan available after applying the relevant disregards.
- Student who has reached state pension age (SPA) is a member of a couple and the other member is under SPA.  
For courses which had started before 1<sup>st</sup> August 2016, students in advanced education could not obtain a maintenance loan if they had reached the age of 60 before starting their course. For courses which started after 1<sup>st</sup> August 2016, only a very reduced amount of maintenance loan is available. Therefore, UC provides maintenance support for the couple and we take into account the maximum maintenance loan available after applying the relevant disregards.
- Disabled with PIP/DLA and assessed as having LCW before starting a course of education  
The rationale is different to the exceptions already mentioned above because the student *does* have their need met through the student support system (which includes support specifically which recognises disability), the level of which is for DfE and the Devolved Administrations to determine. The rationale for this exception is to enable existing UC claimants with PIP/DLA and who already have an LCW determination to go into education and better their prospects of obtaining work and reduce/end reliance on UC, and also maintain support for disabled students transitioning from old-style IR ESA. UC provides maintenance support but we offset this (to avoid duplication of provision) by taking into account the maximum maintenance loan available after applying the relevant disregards.

In addition to the above exceptions under regulation 14, a member of a couple can have entitlement to UC by virtue of regulation 3(2)(b) of the UC Regulations 2013.

- Member of a couple  
A couple may be entitled to UC as joint claimants where one member of the couple is receiving education and does not meet an exception under regulation 14 but the other member of the couple is not receiving education, or is but meets an exception under regulation 14. The rationale for this exception is that although Student Finance can award an Adult Dependant Grant to the member of the couple who is in education, if that student is under age 25 they can only receive this grant if they are married to, or in a civil partnership with, the other member of the couple. Therefore UC provides maintenance support for the couple who, for UC purposes, do not need to be married or in a civil partnership, but we offset this (to avoid duplication of provision) by taking into account the maximum maintenance loan after applying the relevant disregard and the Adult Dependant Grant amount.

***The Committee would also like to understand if there any issues with how this change, and the wider policy, works in Scotland. Are there any different impacts or issues to consider given the differing education framework that is***

***in place in Scotland?***

Whilst we are aware that the maximum maintenance loan available in Scotland is less than that available in England and Wales and it does not include an equivalent to the Special Support Element available in England or the Special Support Grant available in Wales and Northern Ireland, the level of maintenance provision is ultimately a matter for the Scottish Government and Student Award Agency Scotland, as it is for DfE and the other devolved administrations and their own student finance bodies. Maintenance loans for higher education are available across the whole of UK at funding levels which are ultimately determined by DfE and the devolved administrations. Universal Credit must not duplicate this maintenance support.

***The Committee also seeks reassurance that this change to regulation 14(1)(b) does everything reasonable to close off the ‘work around’ problem. How did you decide that there were not potential routes by which a claimant could find another ‘work around’? In its scrutiny last year, the Committee was keen to see flowcharts covering the different possible routes by which someone could previously take advantage of the Limited Capability to Work disabled student exemption. It would be really helpful to use such a mechanism (or equivalent) to determine whether all routes are now sealed off by the change within these regulations***

There are only three routes by which a person can have been determined to have LCW for the purposes of satisfying regulation 14(1)(b) of the UC Regs 2013 – **as illustrated in the table annexed below**. Namely, (1) during an award of UC (LCW must be determined before the disabled person started the course of education), (2) transitioning to UC from new-style Employment and Support Allowance (LCW must be determined before the disabled person started the course of education), (3) transitioning to UC from old-style Employment and Support Allowance (if the disabled person was already in education before claiming OS ESA and they are still a disabled student when they transition to UC, they will be treated as satisfying regulation 14(1)(b) of the UC Regs 2013).

The amended regulation 14(1)(b) reflects these three routes and we are satisfied that we can give the Committee the assurance it is seeking that we have done everything reasonable to close off the ‘work around’.

I hope that this letter will be helpful to the Committee. Officials will attend the Committee’s meeting on 8<sup>th</sup> December to answer any further queries members may have and we will be happy to provide any further information they may require.

Kind Regards

Mark Vidic



Type of benefit claim	Circumstances by which Limited Capability for Work (LCW) can be established
<b>1. Universal Credit (UC)</b>	<p>A claim for UC is made because of either a declared health condition or a disability which prevents, or limits, the person's ability to work and medical evidence of this is provided. The person will be referred for Work Capability Assessment (WCA) on the 29<sup>th</sup> day of their claim if they remain unable to work, or day 1 of their claim under certain circumstances. After the WCA has been completed, a DWP decision maker will decide whether the person has scored enough points to be considered to have LCW. A UC claimant may also be treated as having LCW where they are identified as having a health condition or disability as detailed in Schedules 8 and 9 to the UC Regulations 2013.</p> <p>If the person is entitled to a qualifying disability benefit, e.g. Personal Independence Payment (PIP), and the determination that they have LCW was made <u>before</u> the person started a course of education, they will satisfy the exception under regulation 14(1)(b) of the UC Regulations 2013 and will retain entitlement to UC.</p>
<b>2. New-style (NI Contributions based) Employment and Support Allowance (NS ESA)</b>	<p>A claim for NS ESA is made because of either a declared health condition or a disability which prevents, or limits, the person's ability to work and medical evidence of this is provided. The person will be referred for WCA and after the WCA has been completed, a DWP decision maker will decide whether the person has scored enough points to be placed in the work-related activity group (i.e. has LCW).</p> <p>If the person is entitled to a qualifying disability benefit, e.g. PIP, and the determination that they have LCW was made <u>before</u> the person started a course of education, they satisfy the exception under regulation 14(1)(b) of the UC Regulations 2013 if they transition to UC as a disabled student.</p>
<b>3. Old-style (Income Related) Employment and Support Allowance (OS ESA) – no longer possible for new claims</b>	<p>A claim for OS ESA was made because of either a declared health condition or a disability which prevents, or limits, the person's ability to work and medical evidence of this is provided. If the person was receiving education and was entitled to a qualifying disability benefit, e.g. PIP, they were treated as having LCW for the purposes of their OS ESA claim but were still referred for a WCA to determine if they should be placed in the support group (i.e. is determined to have limited capability for work and work related activity - LCWRA).</p> <p>If the person transitions to UC as a disabled student, they satisfy the exception under regulation 14(1)(b) of the UC Regulations 2013 by virtue of amendments to regulation 19(2) and (4) of the UC (Transitional Provisions) Regulations 2014</p>