

Social Security Advisory Committee
Minutes of the meeting held on 22 March 2023

Chair: Dr Stephen Brien
Members: Bruce Calderwood
Carl Emmerson
Phil Jones
Prof Gráinne McKeever
Seyi Obakin OBE
Charlotte Pickles
Liz Sayce OBE

Apologies: Kayley Hignell

1. Private Session

[Partially reserved item]

Consideration of postal regulations

1.3 The Committee endorsed the Postal Regulations Sub-group's recommendation that the following regulations were a suitable candidate for clearance by correspondence:

- *The Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2023*

1.4 The Chair asked the Committee Secretary to notify the Department that the Committee was content for the above regulations to proceed as planned.

2. The Social Security and Universal Credit (Miscellaneous Amendments) Regulations 2023; and The Social Security Universal Credit and State Pension (Miscellaneous) Amendments Regulations (Northern Ireland) 2023

2.1. The Chair welcomed the following officials to the meeting, David Higlett, (G6, Working Age Policy, Universal Credit), Winston Alexander, (HEO, Working Age Policy, Universal Credit), Carol Krahe, (G7, Universal Credit and Employment Policy), Steve Lawrence, (SEO, Universal Credit and Employment Policy), Harvey James, (HEO, Working Age Benefits, Universal Credit), Rebecca Wignall, (SEO, Universal Credit and Employment Policy), Jackie Germain, (G7, Universal Credit and Employment Policy) and James Snelling, (G6, Policy Team Leader).

2.2 The Social Security Universal Credit (UC) (Miscellaneous Regulations) 2023 amend the regulations to include an updated address for the Compensation Recovery Unit. Also, an oversight in regulations, which relates to the three-month relevant period for the limited capability for work and work-related activity element, is corrected, and an amendment has been made to provide certainty in the application of the time for claiming (backdating) provisions. Further amendments provide clarity in respect of Housing Benefit awards and the UC transitional element; also, clarity for the finalisation of entitlement to Tax Credits where the award is terminated within the tax year following a claim for UC. The final amendment relates to the criteria for entitlement for couples to a higher transitional severe disability premium element.

2.3 The Social Security Universal Credit and State pension (Miscellaneous) Amendments Regulations (Northern Ireland) 2023 correspond with the proposed amendments set out in the Social Security and Universal Credit (Miscellaneous Amendments) Regulations 2023. There are two further amendments relating to termination of existing benefits if no claim for UC is made before the deadline and to rectify an omission by adding UC to the list of benefits which, if received during a period of deferral of State Pension, are not included in determining the period of deferral for incremental purposes.

2.4 The Committee raised the following main questions in discussion.

- (a) **Has there been a delay in bringing forward some of these regulatory changes and, if so, why? Some of the corrections appear to have been outstanding for a long period of time. What is the process for gathering and addressing these regulatory issues?**

Over the years these issues (that are neither urgent nor time-bound) are picked up, approval is required, and the regulations will be gathered and put together as a miscellaneous package. In recent years, the Department has had to prioritise other work, and therefore there is no particular science behind this process. The Department is taking the opportunity to make the amendments now.

- (b) **Could there be a science to doing this in a more systemic way to identify these issues earlier? Are there any patterns to identify going forward to improve processes?**

The miscellaneous regulations packages used to be brought forward twice a year. There would be a regular trawl and so there was a routine process for legacy benefits. However, the formulation of the UC regulations along with the transitional regulations deprioritised the process. The routine process was also impacted by other priorities arising as a result of the pandemic. However, this is a valid point and the Committee's feedback is invaluable. The

Department will be looking to put together these packages on a more regular footing without imposing on more important legislative packages. There are a wide range of groups that the Department talk to as part of this process, including the Upper Tribunal. There are issues in these packages, such as inaccurate cross references, which could have been done better the first time around. The Legislation team will be running workshops to help improve the statutory process and so the intention to strengthen the process is there.

- (c) **Some of these regulations did not have to come to the Committee because of the six-month rule, is the Department interested in bringing such regulations for information purposes?**

Not necessarily, this will need to be considered on a case-by-case basis, however, the Department acknowledges that processes can be improved by having these conversations.

- (d) **Why is the address for the Compensation Recovery Unit in the regulations? Whenever the address changes, the regulations will have to be amended.**

This has been considered, however, more changes to primary legislation would have had to be made as there is a requirement for claimants to provide information in a prescribed manner and at a particular place and that place is prescribed in the regulations.

- (e) **The following policy intention has been reinstated - a claimant who has been determined to have Limited capability for work and work-related activity (LCWRA), who has previously been determined to have Limited capability for work, does not have to serve the three-month relevant period before the LCWRA element can be included in their UC award. Have claimants missed out prior to this amendment?**

No, they have not. The Department has been delivering the policy and so that period has not had to be served. The amendment puts the matter beyond doubt.

- (f) **Is there any risk that the Department has been delivering this policy illegally as past action has been at odds with regulations as they stand?**

That has not been indicated by Departmental lawyers.

- (g) **Backdating (extending the time for claiming) is to be allowed for up to the length of an Assessment Period (AP), where currently the regulations allow for a maximum extension of one month which can be**

interpreted to mean that backdating can be for more than one AP and so contrary to policy Intent. Is this an issue that has arisen due to Judicial Review or has this backdating issue been there all along? What has been happening to deliver backdating requests and what size of problem is this?

This has not arisen due to Judicial Review; the ambiguity in the legislation has created the need for a manual workaround that enables backdating for an extra day. This requires four different people to go into the system and each step requires approval; not everyone has access to the system to change records retrospectively. This process takes time and volumes have increased over the years.

- (h) Even if backdating is for only a short period there has to be an intensive work around. Have some claimants been missing out on any extra days?**

This information can be provided outside of the meeting, but there has been no suggestion that has happened. The proposed change will put beyond doubt that the whole month approach in UC is applied; the first day of the claim will be the last day of the AP.

- (i) The proposed regulation may be legally correct but will it be easily understood by member of public?**

It is important that the regulation is clear in legal terms.

- (j) Housing Benefit (HB) awarded in respect of a permanent home should be included for the purposes of considering the award of the transitional element in UC; these regulations clarify that. If someone leaves their permanent home due to domestic violence and has to move into temporary or specified accommodation, meaning that they also have housing costs arising out of the temporary accommodation, can someone currently have both housing costs included in the calculation for the transitional element; is that changing?**

Temporary accommodation is excluded from the transitional protection calculation as HB provides support in those circumstances. An award of HB for a permanent home should be included in the calculation. Currently the legislation could be read to mean that both types of housing costs are excluded. This is not happening and the Department wants to make sure that an award of HB is included to ensure the transitional element amount is correct.

- (k) The position for the finalisation of entitlement to Tax Credits where the award is terminated within the tax year following a claim for UC is to be clarified. The Committee has no specific issue with the proposed amendment but it would be good to find out a little more.**

This is a matter for His Majesty's Revenue and Customs (HMRC) but the Department owns the legislation. A tribunal decision found that the legislation was not clear in the context of part year tax credit assessments. The Department responded to the request from HMRC to remove references in the legislation that was causing a lack of clarity.

- (l) What would be the risk of misinterpreting this? What will the regulations fix?**

A lack of clarity around part year assessment. By definition it has to be a part year. There has been no change in HMRC policy.

- (m) A couple will receive a higher transitional severe disability premium (SDP) element if they continue to meet the conditions of eligibility for a higher SDP rate up to and including the first day of the UC award, and no person becomes a carer for either of them in the first assessment period. Does a couple automatically get a transitional SDP element at a lower rate, if, due to a change of circumstances, they move onto UC and are in receipt of SDP with only one member in receipt of Carer's Allowance?**

That is correct. The UC system is set up to calculate claimants' circumstances.

- (n) What happens if, at a later date, both members of the couple require care?**

Changes do not affect the transitional element.

2.5 The Chair thanked officials for attending and for their dexterity in handling the range of questions. Following a private discussion, the Committee decided that it would not take the regulations on formal reference and that they may proceed accordingly. However, the Committee would like further information on the impact of current legislation on backdating. In particular, can the Department provide reassurance that claimants in Great Britain and Northern Ireland have not lost out on any days of their entitlement following their claim for UC together with an application for backdating.

3. Private Session

[Reserved item]

Date of next meeting

The next meeting is scheduled to take place on 26 April.

Attendees

Guests and Officials

Item 2: David Higlett (G6, Working Age Policy)
Winston Alexander (HEO, Working Age Policy)
Carol Krahe (G7, Universal Credit and Employment Policy)
Steve Lawrence (SEO, Universal Credit and Working Age Policy)
Harvey James (HEO, Working Age Benefits Universal Credit)
Rebecca Wignall (SEO, Universal Credit and Employment Policy)
Jackie Germain (G7, Universal Credit and Employment Policy)

Observer: James Snelling (G6, Policy Team Leader).

Secretariat: Denise Whitehead (Committee Secretary)
Dale Cullum (Assistant Secretary)
Gabriel Ferros (Analyst)
Anna Woods (Assistant Secretary)