

Social Security Advisory Committee
Minutes of the meeting held on 11 October 2023

Chair: Dr Stephen Brien

Members: Bruce Calderwood
Carl Emmerson
Kayley Hignell
Gráinne McKeever
Charlotte Pickles

Apologies: Phil Jones

1. Private Session

[PARTIALLY RESERVED ITEM]

Consideration of postal regulations

1.6 The Committee agreed with the Postal Regulations sub-group's recommendation that the following regulations were a suitable candidate for clearance by correspondence:

The Social Fund Maternity and Funeral Expenses (General) (Amendment) Regulations (Northern Ireland) 2023

The Chair asked the Committee Secretary to notify the Department that the Committee was content for the above regulations to proceed.¹

2. The Universal Credit (Transitional Provisions) (Amendment) Regulations 2023

2.1 The Chair welcomed the following officials to the meeting: Graeme Connor (Deputy Director, Universal Credit Policy); James Snelling (G6, Universal Credit Policy); James Barrott (G7, Universal Credit Policy and Analysis); Becky Wignall (SEO, Universal Credit Policy); Steve Lawrence (SEO, Universal Credit Policy) and Susannah Davies (Legal Group).

¹ The Committee was not quorate at the point this decision was made, therefore action was taken in accordance with its formal Rules of Procedure which states: "(4) Where - (a) the Secretary of State gives notice of a proposal to make regulations under any of the relevant enactments; and (b) it appears to the Chair that the proposal - (i) requires urgent consideration of the Committee, and (ii) need not be formally referred to the Committee, the Chair or, in his absence, the Vice Chair, may agree on behalf of the Committee, after consultation with at least three other members of the Committee, that the proposal need not be formally referred to the Committee."

2.2 Introducing the item, Graeme Connor explained that these regulations make further provision for transition to Universal Credit (UC) following the judgment in the case of *R (TP and AR) (No. 3) v SSWP [2022] EWHC 123 (Admin)* (known as TP No. 3). They provide additional financial support for those entitled to the transitional Severe Disability Premium (SDP) element in UC to ensure the amount of transitional protection more broadly reflects the amount they received in legacy immediately before moving to UC. The process for making payments to existing claimants has not yet been defined.

2.3 Prior to the meeting, the Committee had asked whether there is a difference between Enhanced Disability Premium (EDP) or Disability Premium (DP) recipients, who are not also on SDP and have naturally migrated to UC, and those who remain on legacy benefits. To clarify, this is because most EDP only claimants (without SDP) are better off as the limited capability for work and work-related activity (LCWRA) element in UC is higher than it is in legacy benefits. Claimants need to be eligible for SDP to receive the transitional SDP element and an additional amount if they are in receipt of EDP, DP, Disabled Child Premium or the Disabled Child Element (Tax Credits).

2.4 The Committee had also asked how the rates for the Transitional Payments were determined. The rates are a broad representation of the premium amounts in legacy benefits but slightly rounded down. The amounts will be added together to determine the transitional payment and are subject to the usual erosion rules.

2.5 The Committee also wanted to understand why the quality of data had changed in 2018 regarding the number of claimants entitled to premiums with and without SDP. In response, the data was held on Jobseeker's Allowance Payment System (JSAPS) but the digital data feed (within JSAPS) was discontinued in 2020 and the information is not held for any disability premiums paid on Jobseeker's Allowance or Employment and Support Allowance (ESA). The Department is working on a digital solution to get the data. The ESA payment information is aggregated and so it is difficult to isolate the relevant premiums from other ESA payments and any deductions made to awards. Work to gather data is ongoing, so for the Equality Assessment the Department reverted to data gathered in 2018. The Department is aware of the number of people entitled to the SDP transitional payment in UC, which is about 44,000 midway through this year, including those with transitional protection eroded to nil. The Department can see how those numbers have built up. On volume there are about 50,000 building up to 78,000 by 2028/29.

2.6 The Committee raised the following main questions in discussion:

- (a) **How many thousands of people and households are going to experience natural migration over the next few years?**

About 6,000 a year initially, but that will tail off. Communications will be available on gov.uk and the Department will speak to the Operational Stakeholder Engagement Forum (OSEF) in November to explain the changes to the regulations.² Notifications to individual claimants will be in place when the payments are made.

- (b) This change will benefit disabled people but that was not referenced in the equality impact assessment.**

Yes, that was missed and should have been included. The proposals will clearly benefit disabled people.

- (c) Communications will be on gov.uk, and the Department is meeting with OSEF to ensure that stakeholder organisations understand the change. What is happening for claimants?**

Claimants will be notified once payments have been made.

- (d) Is there a difference between those who are entitled to disability premiums, who are not entitled to SDP, and naturally migrate to UC and those on legacy benefits and entitled to the premiums?**

These regulations are to be amended in response to the Judicial Review (JR) and so the focus is on claimants entitled to UC. It is worth reiterating that the LCWRA amount is higher in UC and the transitional SDP element is added to get broadly the same amount the claimant received in legacy benefits; the transitional SDP element has been adjusted to take into account that LCWRA in UC is more than the equivalent amount in ESA.

- (e) Most people on EDP only will be better off because of the higher rate of LCWRA. An important point is the difference between ‘most’ and ‘all.’ It has also been said that that these regulations are in response to the JR as opposed to solving the issue for everyone.**

Regarding the EDP-only cohort, a single claimant receiving EDP will be better off on UC by £112 a month due to the increase on the LCWRA element. A couple would also be better off by £77. What has not been scoped out are other circumstances. The Department will provide further information regarding this point outside of the meeting.

- (f) Is there a group that loses out due to natural migration?**

² Following the meeting, the date of the Department’s presentation to OSEF has changed to January 2024.

There are potentially some who could be worse off because they are no longer eligible for a child premium, but that would not be driven by EDP as there can be other factors.

- (g) Who are the winners and losers? Is it the same position for all the other disability premiums?**

If the claimant did not receive SDP in legacy but received the disabled child element or the disabled child premium, they may have a lower UC entitlement.

- (h) The Department is responding to the JR but the Committee is keen to understand the policy rationale. Is it reasonable to have discrepancy there? What is that reasonable ground?**

The Department has successfully defended other cases where rates have been different.

- (i) Regarding backdating, it is fairly unusual to have a regulation which says you 'may' backdate, with the how and when missing. Why is there no high-level detail?**

The Department needs to identify who will be entitled to the backdated payment. The Judge did not say that the Department had to make recompense. In some cases, it may be difficult to identify claimants who may be entitled to these payments, for example, if someone's UC entitlement has eroded to zero, how will they be identified? It is not as simple to say that everyone will be paid the same amount. It will be a challenge to go through 50,000 cases, some of which would have been better off on UC for other reasons. This all needs to be worked through, but the Department thought it would be better to have the regulations in place.

- (j) If the regulations for the gateway were in force and the backlog needed to be resolved, would the Department bring those regulations to the Committee in design terms only?**

It is likely they would not be brought before the Committee and the Department would wait for the design solution so it could be challenged.

- (k) What will the status of the payments be? How would someone appeal if rules are not set out or defined in law; the draft regulations for the scheme only specify that there 'may be' payments. What would be the authority for such a payment?**

That is a good challenge. The Department will take that away and come back to the Committee outside of the meeting.

- (l) The legislation as it stands appears to be discretionary, but it does not offer a framework for discretionary payments or a clear route for challenge.**

The legislation is designed in this way as the policy is not ironed out and so there can be no provision in the legislation for these backdated transitional payments.

- (m) Paragraph 3 of the new schedule 3 to regulation 63 of the *Universal Credit (Transitional Provisions) Regulations 2014* refers to a transitional SDP element or amount which has been reduced to nil; however, reference to other groups in line for backdating is vague and discretionary.**

This will be taken away to look at the primary powers so that the Department can amend and be more specific in the regulations.

- (n) Turning to the additional amounts, the values are a broad representation between payments in legacy and UC. How did the Department reach those amounts? What is the mechanism and how do they work with uprating?**

These amounts will be part of the uprating discussion in November, but there is no guarantee that they will be uprated. It is for the Secretary of State to make that decision. The EDP single rate is £80 per month, which is not full transitional provision because the actual rate is £84.72. The rate for couples is rounded down too. For each disabled child, the amount is £175 which is also rounded down and was uprated by the Consumer Price Index for 2023/2024.³

- (o) What is the calculation because they seem to be different for each?**

A broad rate associated with the current rate.

- (p) The rationale is not clear.**

The Department can provide more information outside of the meeting.

- (q) Given it is a couple of per cent, why not push through full transitional provision so that the claimant is protected?**

³ Further information regarding the additional amount rates has been received from the Department and can be found at Annex B.

There is a rationale for natural migration cases not receiving full protection. This will need to be looked into and the Department will come back to the Committee.

- (r) Can someone who is only on Housing Benefit lose money if they move to UC via natural migration?**

Those cases can become complex as sometimes underlying Tax Credit Entitlement is not claimed. However, about 80% are better off as the taper rate is better.

- (s) SDP does not have a couple rate but the new additional amounts do. Is that correct?**

There is a higher SDP rate paid to couples but the majority are single cases. There are 44,000 single cases and 2,000 for couples.

- (t) In relation to protected characteristics, age was nicely done in the Impact Assessment, but there needed to be a bit more thought for religion. Race was curious, there is a big difference but it is not clear why.**

Noted. The Department will look into that.

- (u) There does not seem to be a good handle on the legacy systems but the Department seems confident that there is enough information about individuals or the unpredictable person's entitlement; there seems to be a disconnect. Why does the Department not have those categories on the legacy system to report against protected characteristics?**

Individual case managers and work coaches can see on the legacy systems if SDP is in payment; it is automatically pulled. That cannot be picked up as a whole population. Good data is not always available because digital data systems are not operational.

- (v) Natural Migration occurs when someone makes a claim to UC. The system can work out entitlement, but it cannot trawl through to see if someone is on a legacy benefit?**

Analysts do not have the necessary software. Digital UC colleagues are trying to produce a digital solution.

- (w) Is it the case that no one in DWP knows how many people are getting these premiums?**

The Department does have various ways of estimating these assumptions through, for example, surveys.

- (x) The JSAPS system knows the money is right, but not why?**

Yes, the total amount of benefit is known but it will not be clear how that amount is made up. If there are deductions being made from someone's benefit, that is even more complex.

- (y) There are legal requirements to keep track of protected characteristics. What does the Department have to do to get that information in the UC system?**

There are no plans to capture that. Some data is easier to collect than others.

- (z) Data is important to understand policy intention. Lack of data is a problem from this Committee's perspective as well as legal.**

Noted. The backdating part of the legislation will be reviewed rapidly.

2.7 The Chair thanked officials for attending and answering the Committee's questions. He asked that the information which had been promised during discussion be provided to the Committee at the earliest opportunity.

2.8 Following a period of private discussion, and confirmation from the Department that the backdating provision within the regulations would be removed, the Committee decided that it would not take the regulations on formal reference and that they may proceed.⁴

⁴ The Committee was not quorate at the point this decision was made, therefore action was taken in accordance with its formal Rules of Procedure which states: (4) Where - (a) the Secretary of State gives notice of a proposal to make regulations under any of the relevant enactments; and (b) it appears to the Chair that the proposal - (i) requires urgent consideration of the Committee, and (ii) need not be formally referred to the Committee, the Chair or, in his absence, the Vice Chair, may agree on behalf of the Committee, after consultation with at least three other members of the Committee, that the proposal need not be formally referred to the Committee.

3 & 4. Private Session

[RESERVED ITEMS]

Date of next meeting

The next meeting, which would take place wholly online, is scheduled to take place on 8 November.

Annex A

Attendees

Guests and Officials

Item 2: Graeme Connor (Deputy Director, Universal Credit Policy)
James Snelling (G6, Universal Credit Policy)
James Barrott (G7, Universal Credit Policy)
Becky Wignall (SEO, Universal Credit Policy)
Steve Lawrence (SEO, Universal Credit Policy)
Suzannah Davies (Legal)
Kanwarjeet Singh Uppal (SEO, Universal Credit Policy) [OBSERVER]

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

Annex B

The Universal Credit (Transitional Provisions) (Amendment) Regulations 2023***Further information provided to the Social Security Advisory Committee by the Department after the meeting***

- (a) **Turning to the additional amounts, the values are a broad representation between payments in legacy and UC. How did the Department reach those amounts? What is the mechanism and how do they work with uprating?**

These amounts will be part of the uprating discussion in November but there is no guarantee that they will be uprated. It is for the Secretary of State to make that decision. The EDP single rate is £80 per month, which is not full transitional provision because the actual rate is £84.72. The rate for couples is rounded down too. For each disabled child, the amount is £175 which is also rounded down and was uprated by the Consumer Price Index for 2023/2024

Update: as agreed following the SSAC meeting, the new rates will be:

The additional amounts for:	Single rate	Couple rate
Enhanced Disability Premium	£84	£120
Disability Premium	£172	£246
Disabled Child Addition (lower rate)	£177 for each eligible child	n/a