04-24: Closure of Tax Credits for State Pension Age Claimants and Transfer to Universal Credit and Pension Credit

INTRODUCTION

1. This Memo gives guidance on The Social Security (State Pension Age Claimants – Closure of Tax Credits) (Amendment) Regulations 2024 and the accompanying The Welfare Reform Act 2012 (Commencement No. 31 and Savings and Transitional Provisions) (Amendment) Order 2024. The regulations come into force on 08/06/24. The amendment made by the Order also takes effect from 08/6/24.

2. All remaining Tax Credit awards will need to end during the tax year 2024-25 ahead of the planned closure of the Tax Credits service, with effect from 06/04/25. Working age persons, including most mixed-age couples (MACs), will transfer to Universal Credit (UC), which is the subject of other regulations. These regulations (and the Commencement Order) described in this guidance concern what happens to those people with a Tax Credit award who are of state pension age, including couples where both members are of state pension age and certain "protected" MACs (see paragraph 15) who will not transfer to UC.

3. The principle is that those with a positive Working Tax Credit (WTC) award (including those WTC recipients who also have a Child Tax Credit (CTC) award) will transfer to UC. CTC-only recipients entitled to WTC but whose income has eroded the WTC element to nil will also transfer to UC. The exception is those who are already in receipt of Pension Credit (PC), who will remain on PC. Those with only a positive CTC award, including protected MACs with a CTC-only Tax Credit award, will transfer to PC. These Regulations (and the Order) are intended to remove impediments, smooth the transfer and allow for Transitional Protection for these cohorts.

TRANSFERS TO UNIVERSAL CREDIT

NOTIFICATION TO CLAIM UNIVERSAL CREDIT

4. Persons of state pension age entitled to WTC will receive a migration notice giving a deadline date of at least three months in which to claim UC.

5. Where a second migration notice must be issued, the deadline for that second notice can be a for period of less than three months – indeed, any length of time that the Secretary of State deems

appropriate[1]. Depending on how long the original notice was outstanding there may be occasions where the final closure of Tax Credits (06/04/25) is less than three months away. It should be noted that this applies to all Tax Credit migration notices, not just those issued to people of state pension age.

1 Universal Credit (Transitional Provisions) Regulations 2014, Reg 44 (3A)

6. Where a migration notice is issued in error, it may be treated as if it were a Tax Credit Closure Notice (TCCN)[1] - a document issued to a person of state pension age entitled to an award of Tax Credits who has been invited to claim, or who is already in receipt of, PC (for more information on the TCCN see paragraph 18). The effect of this provides an alternative to cancelling one notice (to claim UC) and having to reissue the correct one (to claim PC) where it is inexpedient to do so due to the upcoming final closure date of Tax Credits.

1 UC TP Regs, Reg 44 (5A)

WAIVER OF UPPER AGE LIMIT

7. A basic condition of entitlement to UC is that the claimant is below PC qualifying age (which is the same as state pension age) unless part of a mixed-age couple. In order to allow the WTC cohort of state pension age people to receive UC this condition must be waived.

8. Where the claimant (or both members of a joint claim) has

1. reached the qualifying age for PC; **and**

2. is not already entitled to PC

then the upper age limit is waived[1].

1 UC TP Regs, Reg 60A (1)

9. The waiver will no longer apply once Transitional Protection (in the form of the transitional capital disregard of £16,000 and/or a transitional element) has ceased, thereby ending the UC award (unless the reason the Transitional Protection ceased is because erosion due to increases in other elements has reduced the amount of the transitional element to zero). The waiver will no longer apply if the claimant claims PC[1].

1 UC TP Regs, Reg 60A (3)

DISREGARD OF ‘NOTIONAL INCOME’ FROM UNCLAIMED RETIREMENT PENSION INCOME

10. Where a UC claimant has reached the qualifying age for state pension credit and has deferred a pension - whether state pension, retirement pension (for those who reached state pension age before

06/04/16) or non-state pension - that unclaimed pension income is taken into account as 'notional income' from the date the person could expect to acquire it if they applied for it. As such unclaimed pension income is not treated as 'notional income' in Tax Credits, a person of state pension age moving to UC from Tax Credits may be forced to decide to claim their pension earlier than planned, and any UC award (including any Transitional Protection) could be reduced or potentially terminated soon after migration.

11. In order to alleviate this problem, where a person of state pension age, including the pension-age member of a MAC, was deferring their pension at the time they were sent a migration notice, the unclaimed pension that would normally be regarded as 'notional income' is disregarded for 12 months (12 assessment periods or APs) after transfer to UC[1]. If the UC award ends after less than 12 APs due to a temporary increase in earnings and the claimant then requalifies for UC within three months, any remaining months of the disregard period will apply from the start of the repeat claim.[2]

1 UC TP Regs, Regs 60B(1), 2 Reg 60B(2); Reg 57

EXEMPTION FROM THE BENEFIT CAP

12. Single persons of state pension age, or couples both of whom are of state pension age, transferring to UC through managed migration will not have the Benefit Cap applied to their award.

1 UC TP Regs, Reg 60C

MINIMUM EARNINGS THRESHOLD FOR EMPLOYED AND SELF-EMPLOYED PERSONS OF STATE PENSION AGE

13. Transitional Protection ceases when a claimant has ceased working, or their earnings have fallen below a specified threshold (equal to 18 hours per week for a single claimant or 29 hours per week for joint claimants, at the National Living Wage, converted to a monthly amount) for three successive assessment periods[1]. These regulations introduce a separate, single threshold for single claimants of state pension age and couples both of whom have reached state pension age, who have migrated from Tax Credits. The threshold is set at a monetary value of the monthly equivalent of 16 hours per week at the National Living Wage. (NB - This does not apply to persons of state pension age in a mixed-aged couple).

1 UC TP Regs, reg 56 (2)

14. If earnings drop below that level for three consecutive APs then the claimant will cease to be entitled to UC from the start of the following AP. However, the threshold will not apply for the first 12 APs following migration[1], meaning that in practice only earnings in AP 10 onwards will count towards the three AP earnings test.

1 UC TP Regs, Reg 56 (3A)

PRESERVATION OF SAVING PROVISION FOR MIXED-AGED COUPLES MIGRATING TO UNIVERSAL CREDIT

15. Current legislation states that couples may only qualify for PC and Pension-Age Housing Benefit (PAHB) if both members have reached state pension age. However, this does not apply to a mixed-age couple (MAC) who was entitled to either benefit on 14/05/19 and who has at all times remained entitled to one or other benefit since then. If claiming only one of the benefits, they also retain the ability to claim the other benefit so long as there is no gap between when they are not entitled to either. These are known as 'protected MACs'.

16. A 'protected MAC' who is receiving WTC (including those working but receiving only CTC because the WTC element is tapered to nil) and PAHB will be sent a migration notice to apply for UC if they are not already in receipt of PC. This will end the PAHB award (either upon the UC claim, or upon reaching the deadline date without a claim). (Note: protected MACs entitled only to CTC and PAHB will be invited to apply for PC.)

17. These amendments allow these protected MACs sent a migration notice to reapply for PAHB or claim PC following the end of the UC or PAHB award (provided they do so within 3 months of the end of the respective award)[1].

1 Welfare Reform Act 2012 (Commencement No. 31 and Savings and Transitional Provisions and Commencement Order No.21 and 23 and Transitional and Transitory Provisions) (Amendment) Order 2019, Article 4 Para 3, 4

TRANSFERS TO PENSION CREDIT

CLOSURE OF TAX CREDIT AWARDS

18. Those pension-age Tax Credit claimants who will be invited to claim PC (see paragraph 3) or who are already in receipt of PC will be issued with a TCCN, informing them their award of Tax Credit will end by a specified deadline day[1]. In the case of a joint Tax Credit claim, a TCCN must be sent to both claimants[2]. That deadline day must be at least three months from the day on which the TCCN is issued. That period can be less than three months, however, where;

1. The claimant is already in receipt of PC when the TCCN is issued, **or**

2. The TCCN is a reissue after the original TCCN or Migration Notice has been cancelled[3].

1 The Welfare Reform Act 2012 (Commencement Order No.32 and Savings and Transitional Provisions) Order 2019, Para 3A(1); 2 Para 3A(5); 3 Para 3A(4)

19. The flexibility to give less than three months' notice for the first group is provided because the claimant will not have to move to a new benefit nor submit a new claim - all that will need to occur is to reassess the existing award to include amounts for children to replace the CTC, cease deducting any WTC, and award Transitional Protection where appropriate.

Note: while the legislation does not define a lower minimum notice period, Ministers have stipulated that existing claimants must not be given less than two months' notice. The reason for flexibility to set a shorter notice period for the second group is the same as that specified for UC earlier (see paragraph 5) – there may not be enough time before the closure of Tax Credits to allow a whole three-month notice period.

20. The deadline day may be extended if the claimant requests an extension before the deadline day, and there is 'good reason' to allow the extension. Good reason is not defined in legislation; the circumstances could include the claimant needing more time to get the information or evidence needed to support the claim, needing to get someone to help them make the claim, or hospital admission (this is not exhaustive). The deadline can also be extended on the Secretary of State's own initiative if there is good reason, for example if we have information that indicates the claimant would need more time. If the deadline is extended, the claimant must be informed of the new deadline[1].

1 The Welfare Reform Act 2012 (Commencement Order No.32 and Savings and Transitional Provisions) Order 2019, Para 3A(6) and (7)

21. A TCCN may be cancelled if it (i) has been issued in error, or (ii) where the Secretary of State considers it is necessary to do so in the interests of the person (or any class of person), or to safeguard the efficient administration of UC[1]. The intention is that cancellation in the second case should only be used in exceptional circumstances and does not exclude a TCCN being sent at a later date if the circumstances giving rise to the original cancellation no longer apply. Where a TCCN has been issued in error to a claimant who should have been issued with a Migration Notice, it may be treated as if it is a Migration Notice (with the same deadline) as an alternative to cancelling it and issuing a Migration Notice[2].

1 The Welfare Reform Act 2012 (Commencement Order No.32 and Savings and Transitional Provisions) Order 2019, Para 3A(8); 2 Para 3A(9)

22. Once the claimant has been issued with a TCCN, the provision which allows an existing Tax Credit claim to continue following the closure of Tax Credits to new claims on 01/02/2019 ("the savings provision") will be 'switched off' for the claimant on the appropriate day. If the claim for PC is made on or before the deadline day the Tax Credit award will be ended with effect from the date of claim, so the final day of the Tax Credit award will be the day before the claim starts. If the PC claim is made after the deadline day, the Tax Credit award will end with effect from the deadline day, with the last day of the award being the day before the deadline day. For those already in receipt of PC, it will also end with effect from the deadline day. Following closure of the Tax Credit award, an in-year finalisation of the Tax Credit

award is possible, rather than waiting until the end of the financial year, as would normally be the case[1].

1 The Welfare Reform Act 2012 (Commencement Order No.32 and Savings and Transitional Provisions) Order 2019, Para 3B

TRANSITIONAL PROTECTION ON CLOSURE OF TAX CREDITS

23.On transfer to PC, to be eligible for Transitional Protection a claimant must:

1. be issued with a TCCN, **and**

2. be entitled to Child Tax Credit on their 'migration day', **and**

2. 1 be entitled to Pension Credit when the TCCN is issued, **or**

2. 2 have made a claim to PC before the expiry of one month beginning with the deadline day[1].

1 State Pension Credit Regulations 2002, Sch IIB Para 2(1)

24. 'Migration day' is the last day of the Tax Credit award, i.e. the day before the PC claim starts when the claim is made on or before the deadline day, or for claims made after the deadline day (and for existing cases) the day before the deadline day (see also paragraph 22).[1]

1 SPC Regs 2002, Sch IIB Para 1

25. If the claimant couple cease to be a couple, or a member of a couple forms a different couple, or a single claimant forms a couple, between the issue of the TCCN and migration day then Transitional Protection cannot apply.[1] This also applies if they are treated as a couple for Tax Credit purposes but not for PC purposes (see DMG 77115 et seq for guidance on when a person is and is not treated as a member of the household for PC).

1 SPC Regs 2002, Sch IIB Para 2(2)

CALCULATION OF TRANSITIONAL PROTECTION – THE 'TRANSITIONAL ADDITIONAL AMOUNT'

26. A 'Transitional Additional Amount' (TAA) is added to the appropriate minimum guarantee in PC to provide the Transitional Protection. There is a TAA if

1. the representative weekly amount of CTC (the daily rate on the migration day multiplied by seven[1]), plus, where applicable,

2. the weekly amount of PC on migration day (in the case of an existing PC award), is greater than the ‘indicative SPC amount’[2].

1 SPC Regs, Sch IIB Para 4; 2 Para 3

27. The indicative SPC amount is based on the normal PC rules, including amounts for children or qualifying young persons but disregarding any WTC, and applying these assumptions:

1. the claimant is responsible for any children or young persons the claimant is responsible for in CTC (including any beyond the two-child limit imposed in CTC, which does not apply in PC).

2. the amount of any earned income is the weekly equivalent of the annual gross earnings used in the CTC calculation. An amount for tax and National Insurance must be deducted from the gross earnings as appropriate[1].

1 SPC Regs, Sch IIB Para 5

28. The rules around being responsible for children or young persons are different in CTC and PC. Where the child/young person is counted for CTC but not for PC, then that child will count towards the indicative SPC amount (for calculating the TAA) but will not actually be included in the award of PC[1].

1 SPC Regs, Sch IIB Para 5(2)(a)

29. Where the TAA amount is found to be incorrect due to misrepresentation or non-disclosure of information, or due to official error, or due to Tax Credit decisions made on or after the migration day following an application for revision (made before the migration day) or on appeal in relation to that application, the TAA can be redetermined[1].

1 SPC Regs, Sch IIB Para 9

DISREGARD OF ‘NOTIONAL INCOME’ FROM UNCLAIMED RETIREMENT PENSION INCOME

30. “Notional income’ that would normally be taken into account when a person defers receipt of a pension (whether state pension, Retirement Pension or non-state pension) is disregarded, if the claimant is deferring on the day the TCCN is issued. This disregard will apply for the first 52 weeks of the PC award (or until the PC award ends, if earlier)[1]. Corresponding provision will apply to people of state pension age who are migrated to UC (see paragraph 11).

1 SPC Regs, Reg 18 (5A)

TREATMENT OF CAPITAL

31. There is no upper capital limit in PC (instead capital over 10k provides an assumed income of £1 for every £500, or part thereof, over £10k). As such, unlike for UC where an upper limit of £16k applies, there

is no need for a capital disregard upon transfer to enable claimants to access Transitional Protection. The capital will be factored in when one calculates the weekly income in the indicative PC calculation.

INITIAL CALCULATION OF THE TRANSITIONAL ADDITIONAL AMOUNT

33. The calculation of the initial amount of the TAA depends on whether the amount of guarantee credit in the indicative SPC amount is positive or nil.

1. If the amount of the guarantee credit in the indicative SPC amount is **greater than nil** the TAA is
    1. the representative weekly amount of CTC plus the weekly amount of PC (in the case of an existing PC award) to which the claimant was entitled on migration day; minus
    2. the weekly indicative SPC amount

  if any amount remains.

2. If the amount of the guarantee credit in the indicative SPC amount is **nil** the TAA is
    1. the sum of the representative weekly amount of CTC plus the amount (if any) by which the income deducted in the calculation of the indicative SPC amount exceeds the amount of the appropriate minimum guarantee; minus
    2. the amount of the maximum saving credit, but only if the indicative SPC amount includes a savings credit or would do so but for the fact that the claimant's income is such that the savings credit is reduced to nil

  if any amount remains[1].

1 SPC Regs, Sch IIB Para 6

EROSION AND TERMINATION OF TRANSITIONAL ADDITIONAL AMOUNT

33. The TAA is reduced by the amount of any increase in any of the amounts in the PC appropriate minimum guarantee or by the inclusion of another additional amount[1]. Note: this applies regardless of whether, in the same week, another additional amount reduces or ceases.

1 SPC Regs, Sch IIB Para 7

34. The TAA will no longer apply if:

1.the TAA is reduced to nil, **or**

2. the claimant was a member of a couple and ceases to be a member of that couple or becomes a member of a different couple, **or**

3. the claimant is no longer responsible for any children/young persons for whom they were receiving CTC at the time the TCCN was issued[1].

1 SPC Regs, Sch IIB Para 8

35. If the PC award ends, even where the TAA has not been fully eroded or withdrawn, the TAA cannot be reinstated on a subsequent award[1]. The only exception is where a claimant moves from NI to GB, and the PC award ends solely due to the move to GB, in which case they will retain the TAA in their new claim to PC (as long as the TAA had not eroded or terminated beforehand)[1].

1 SPC Regs, Sch IIB Para 8(2); 2 Para 8(3)

BACKDATING AND PART-WEEK PAYMENTS

36. In PC a claim may be backdated for up to three months where the entitlement conditions are met from the earlier date. In the case of a claim by a person of state pension age moving from CTC, as the CTC award cannot be ended retrospectively, backdating is restricted so the PC claim cannot start from a date prior to the end of the CTC award[1]. This means that where the claim is made on or before the deadline day in the TCCN it cannot be backdated; if it is made after the deadline day, provided the claim is made within three months of that day, it may be backdated to the deadline day but no earlier.

1 SS (State Pension Age Claimant: Closure of Tax Credits) (Amendment) Regs 2024, Reg 5(1)

37. Claimants moving from Tax Credits to PC will be entitled to a part-week payment where their PC award begins on or before the deadline day, on a day which is not the first day of their benefit week. This is to bridge any gap that would otherwise fall between the last day of their Tax Credit award and the first day for which PC would be payable under usual payment rules. The part-week is to be calculated by determining the amount that would be payable for a full week, divided by 7 and multiplying by the number of days in the part-week. A part-week payment will not be payable unless the claimant is likely to be entitled to PC for the first complete week following the part-week[1].

1 SS (State Pension Age Claimant: Closure of Tax Credits) (Amendment) Regs 2024, Reg 5(2) to (4)

ABOLITION OF TWO-CHILD LIMIT IN PENSION- AGE HOUSING BENEFIT

38. The two-child limit in PAHB is abolished, as it now becomes largely redundant by virtue of the CTC cohort moving to PC, receiving Guarantee Credit, and therefore being passported to full PAHB[1].

1 Housing Benefit (Persons who attained the qualifying age for state pension credit) Regs 2006, Reg 22

AMENDMENTS REGARDING THE DEFERRAL OF STATE PENSION

39. Where a person has deferred their state pension or, for those who reached state pension age before 6/4/16, their retirement pension, days during the deferral period for which they were receiving certain other social security benefits are excluded when calculating the amount of pension increase or lump-

sum payment they are entitled to when they claim their pension. Receipt of UC already prevents accrual of deferral benefits by persons of state pension age who are members of a couple deferring retirement pension, and by any persons of state pension age (whether single or in a couple) deferring “new” state pension. These changes provide that a single person deferring retirement pension does not accrue any pension increase or lump-sum payment while they are in receipt of UC.[1]

1 Social Security (Widow’s Benefit and Retirement Pensions) Regulations 1979 (days to be treated as days of increment), Reg 4, Social Security (Deferral of Retirement Pensions) Regulations 2005, Reg 3

ANNOTATIONS

The number of this Memo (04-24) should be noted at paragraphs:

Universal Credit Part: ADM M7070 (Para 4,5), M7063 (Para 6), E1071 (Para 7-9), H5158 (Para 10-11), E5041 (Para 12), M7530 (Para 13-14), DMG 77140 (Para 15-17)

Pension Credit Part: DMG 77301, 77331, 78549

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, Existing arrangements for such referrals should be followed, as set out in Memo ADM 04/19 - Requesting case guidance from DMA Leeds for all benefits.

DMA LEEDS: June 2024