Social Security Advisory Committee
Minutes of the meeting held on 13 March 2024

Chair:	Dr Stephen Brien
Members:	Bruce Calderwood[1] Rachel Chiu Carl Emmerson Daphne Hall Professor Stephen Hardy Kayley Hignell Philip Jones Professor Gráinne McKeever Jacob Meagher Charlotte Pickles Dr Suzy Walton Les Allamby

1 & 2. Private Sessions

[RESERVED ITEMS]

3 The Social Security (State Pension Age Claimants - Closure of Tax Credits) Regulations 2024

3.1 The Chair welcomed the following officials to the meeting: Graeme Connor (Deputy Director, Universal Credit Policy); Dave Higlett (G6, Universal Credit Policy); David Eaton (G7, UC Pensioner Migration Policy) and Richard Poureshagh (G7 Pension Credit Policy) Michelle Mathieson (HMRC).

3.2 Introducing the item, Graeme Connor cited the complex nature of these regulations. He gave a brief overview of the timeline, indicating that the Department is looking to migrate everyone off tax credits by March 2025, with final migration notices being sent by the end of September 2024. The Department is looking for clearance of these regulations on 3 June 2024 but is aware of outside elements that could impact dates.

3.3 As yet any financial implications of the approach have yet to be cleared by His Majesty's Treasury, so the Department has asked for confidentiality on this issue until such time that this is finalised. This is consistent with the handling of discussions with local authorities and wider stakeholder groups.
3.4 Dave Higlett provided the context of these regulations. With tax credits there is no distinction between people who are working age or pensioners. With very

[1] Present for items 1 and 2

limited exceptions, there have been no new claims to tax credits for five years and those in this cohort have been in receipt of tax credits for at least this length of time. Overall, this involves a small cohort of around 15,000 households, with 10,000 working and 5,000 not working. There is also the cohort of ‘protected’ mixed aged couples currently on pensioner Housing Benefit who are not subject to the mixed age couples’ policy – this means they retain entitlement to claim Pension Credit (PC) and/or pensioner Housing Benefit (pHB), which needs special consideration.

3.5 Within this are further complex issues such as the difference between how deferred pensions and capital are treated in tax credits compared to DWP benefits, which has led to careful consideration of how this cohort people should be moved to DWP benefits smoothly, with little alteration to current benefit rules or regulations.

3.6 The conclusion is a hybrid model, which ensures a soft landing with transitional protection (TP) available if a household in this cohort is manage migrated to either UC or PC and has a lower benefit entitlement at the point of change. Those who are currently in receipt of Working Tax Credits (WTC), and therefore working, shall be invited to claim Universal Credit, which fits more around the incentives to stay in work; whereas those who are in receipt of Child Tax Credit (CTC) only, shall be invited to claim PC. There are a small number of tax credit customers already in receipt of PC. They will remain on PC and their award will be recalculated. As WTC is taken into account in a PC award (reducing it pound for pound), the very small number of households in receipt of WTC and already claiming PC will see their PC award increase when their WTC award ends.

3.7 The Committee raised the following main questions in discussion:

(a) Given the complex nature of these proposals, it may be helpful to have a flow chart in order to work through the potential combinations.

The Department would share a flow chart with the Committee outside of the meeting.

(b) It is a complicated challenge to find the appropriate benefit and level. What does the Department wish to see in terms of claimant actions and behaviours? Would there be a preference for them to stay in work and increase hours and potentially deferring their pension, or for them to make the decision to retire and claim their state pension?

The proposals for a hybrid model are primarily focused on ensuring that pensioners currently receiving tax credits can be safely and effectively moved onto a DWP benefit that most closely aligns to their current circumstances. So, WTC customers in work and migrated to UC can continue to work and there is no disincentive if they wish to do so or to work more if they wish but they won’t be expected to do so. Those on CTC only will continue to receive support for their children but through PC and those already in receipt of PC can continue as they are. It’s worth noting that only around one per cent of those in receipt of PC are working pensioners and earnings are taken into account pound for pound which is why the Department considers that UC is the more appropriate place for the existing working pensioners on tax credits.

Under DWP benefit rules, pension income is assumed and reduces a benefit award if deferred past state pension age. However, the Department wants to ensure that pensioners coming to DWP do not see a sudden drop in their income. The purpose of the 12-month grace period is to give people the time to consider their options while avoiding a cliff edge drop in benefit from day one. By ignoring deferred pension income (both state and non-state) for a 12-month period, the Department can ensure that the usual notional income rules do not simply erode their UC or PC award for that period.

Finally, in respect of pensioner behaviour, it is worth noting that some of this cohort could have claimed PC sooner. The Department assumes that some may have remained on tax credits though inertia.

(c) As per these regulations, someone under this cohort will be unable to defer their pension after the 12-month grace period, is the Department essentially asking people to retire now?

If they are working, tax credits are topping up their income while they continue to build up their pensions. This is not allowed in DWP benefits. The Department does not have the information as to how many people may be deferring their pension while continuing to work and receiving tax credits. The treatment of deferred pensions is one of the key differences between tax credits and UC or PC. The main aim is to ensure that these pensioners do not experience a substantial impact when they move to a DWP benefit, hence the grace period. So, although they will not be able to continue to accrue pension deferrals, the grace period does provide time for pensioners to consider their individual circumstances. At the same time, the Department would not want to double fund.

It is worth noting that the Pension Service can sometimes guide pensioners who may not be aware that they are deferring either a state or non-state pension. As a result, when making a new claim for PC, they find they do not actually need to rely on PC.

(d) With regards to the interaction around work behaviours when looking to claim PC; if only one per cent are in work, is there any other policy intent to stay in work or is the Department wanting them to retire?

The Department's main aim is to ensure that when tax credits close, support is maintained for these pensioners, moving them to the most appropriate benefit with transitional protection, whilst giving them time to make choices. WTC customers who are working can continue to work while on UC. It may mean that some pensioners choose to retire. If they are on a low income, they may be entitled to claim PC. However, this approach means pensioners will not be forced to make such a decision from day one.

(e) What if the 10,000 people who are in receipt of WTC stop working?

The intent of our overall approach to migrating pensioners is to move them to the benefit that best suits their circumstances at the time of sending them the migration notice. However, as is the case now, for any customer already in receipt of WTC that customer could choose to stop working at any time before migration and it is their choice to do that. The 'grace period' for those who were on WTC at the time of receipt of the migration notice and who subsequently move to UC will allow those pensioners time to consider their working plans for the future.

This 'grace period' will give pensioners who were previously on tax credits a period of transition, allowing them time to make financial decisions based on their personal circumstances. The Department is not aware of their individual circumstances in terms of their income and capital. This exercise means that this cohort are not being forced into such decisions and the Department is ensuring that there is support at the point their tax credit ends and their DWP benefit starts.

(f) In terms of communication to claimants about the migration, what does the Department feel are the priorities? Will there be enough information and details of where they can get advice to make the right decisions? Where will they be able to go for advice and will there be a specialist team for this? Will they also get pension advice?

It is difficult because people may not be making the right decision at the moment. The main priority is to move people over to the new benefit and make sure they are transitionally protected at that point. They will then have 12 months to think about their options for the future and whether they wish to retire and/or claim a benefit after that 12-month grace period. As part of this there will be a strategy to communicate to them at the appropriate points in the journey to remind them about aspects, such as notional income, to give them the opportunity to seek independent advice. They can seek this from external organisations who are better placed to provide holistic support.

The Department is conscious that communications will be critical, and it is about reassuring them that they don't need to do anything yet, the

Department will write to them at the appropriate time with information about when and how to apply for either UC or PC. The Department are working very closely with the Communications Team to produce a strategy, pre-migration. There is a delicate balance between giving too much information, which might prompt someone in the wrong direction, and giving the right information to make a decision.

(g) WTCs appear to more suitable for those who have seasonal work, as those who do such work may fall foul of the new Minimum Earnings Threshold (MET) if they do not work for a period of three months. Is there a better way to manage this? Can HMRC recognise seasonal workers and alert them of this issue?

Transitional protection has never been designed to replicate the entitlements under legacy benefits. However, the three-month period resembles the minimum earning period in tax credits.

Seasonal work is different and complicated; however, they still have a reference period in tax credits over a three-month period, with specific rules in place for those in education. Under tax credits, if a seasonal worker finished employment for a period, their tax credits should stop, apart from a four-week run on. They would then have to reclaim tax credits when they start employment again. The main difference with tax credits is that in tax credits the minimum amount of work required to be met is measured in hours but, in UC, the minimum requirement is measured in amount of monetary earnings. However, tax credits still considers patterns of work as part of the overall consideration. The 12-month grace period on moving to UC will allow them to consider their circumstances.

(h) The understanding is that tax credits is assessed on a work cycle over 52 weeks, taking into account average earnings over this period when being deemed as "in work". It is a pinch point between tax credits and UC. By introducing the MET, the Department is taking away TP from those it is not designed to capture. Is there an ability to change this?

HMRC do not average hours or earnings over that period. Officials will consider what hours an individual actually/usually works and whether their usual work pattern means they are meeting the work conditions.

(i) Universities will employ people who may only work 30 weeks in the year and then have no work. In addition, older people are likely to dip and out of work, so three months for the MET may be problematic.

The Department is unaware of how many people may be affected by such a scenario, but it shall ensure that these people land safely on their new benefit, and they will then have 12 months to consider their options. The Department and HMRC are happy to set out the tax credit rules and will provide these to the Committee outside of the meeting.

(j) **The Department should know who these people are and who is earning, with having five years of Real Time Information (RTI) data, and should be able to simulate and reassure the Committee as to how many people will be impacted.**

Once claimants come onto UC, the Department will have their RTI information, and they will have declared their capital on their application. The Department will then be able to have informed conversations, advising those that have capital over the limits of UC that their entitlement will end if that remains the case in 12 months.

(k) **Although the Department will not have information around deferred pensions, it could be inventive by looking at information such as age and if it came to light that someone has a deferred state pension and has been working for a period of time, they may then infer that they could have a deferred occupational pension and proactively provide advice on this?**

The Department is starting to do that now.

(l) **The Committee would like to hear what the strategy is and understand what the process will be.**

These regulations restrict backdating when you migrate, what happens if someone makes a wrong decision and would have been better off on PC after moving to UC or vice versa. Can they get a backdate if they then claim the other benefit?

The Department will either invite people to claim UC, subject to UC rules around backdating, or PC. With PC, the ordinary three-month backdating rule is restricted otherwise the individual would get overlapping benefits of tax credits and PC. Once migrated to UC customers could then decide to make a claim for PC instead but they won't be protected via transitional protection at the point of switching and their entitlement will not be backdated either.

(m) **To clarify: the determination of what benefit they are migrated to is made by the Department. The individual will get TP if they claim the benefit they have been invited to; however, if they think they are better off elsewhere, they will not get TP, and also those who are invited to claim PC will get no choice and no TP?**

Yes, that is correct. TP will be awarded if they move to the benefit that they are asked to move to, and their award is otherwise calculated to be less than what they got on tax credits.

(n) What happens if someone is looking to stop work but is still working when the migration letter is sent?

Customers will be asked to migrate to the benefit based on their circumstances that are relevant at the point of receiving the migration notice. For those who retire, their WTC would end prior to migration and there would be no TP awarded as a result. There are only a small number who are working and in receipt of CTC.

(o) With regards to historic tax credit overpayments, will people come to realise that they have overpayments that could be a decade old when their migration happens or has HMRC already dealt with this? Have the two departments alerted each other on this and what preparations do you have in place?

Tax credit claimants will take any debt with them to UC or PC as part of a continuous system. This is different to those who stop their claim then subsequently come to PC, as they do not bring the overpayment with them. However, HMRC will follow up on these cases.

(p) The migration notice has a three-month time limit; however, if another one needs to be issued by the Department with a shorter time limit, will there be a guaranteed minimum time limit on such notices? In addition, does that apply to those who are currently migrating or just the pension cohort

It can apply to those who are in the process of migrating because amendments to UC Regs will facilitate this. The main concern here is the hard deadline with tax credits ending and there isn't a lot of time to migrate people. The first letter will have a minimum of a three-month deadline and if there is a need for a notice to be reissued for any purpose, it can have a shorter deadline, but it will never be earlier than the original deadline.

(q) It is not the claimant's fault if the DWP is on a tight deadline, arguably there is a lack of safeguards in place.

The Department is just making sure that all circumstances are covered in legislation to allow a notice to be reissued if necessary.

(r) If someone migrates to UC, you have three months and then one month's grace. Is that the same for migrating to PC?

Yes. However, for pensioners already on PC, (i.e. not being migrated) the Department may be able to recalculate their award and notify of the change more quickly.

(s) For those who are protected and eligible to claim PC with pHB. If they have been migrated to UC with TP and their UC claim ends, they have one month to apply for PC and pHB to ensure that protection is not lost. Will they be entitled to one or three months backdating of PC, so do they have to make their claim within a month?

It is unlikely that this will arise that often. Many mixed aged couples will be able to claim in their own right anyway. They will know that they are on TP but will provide clarity to the Committee outside of the meeting.[2]

(t) If someone is responsible for a child and receives TP for both the child and also due to income, why does TP end completely when the responsibility for the child ends? A comparable couple without a child would keep their TP for their income.

This is because they would have been in receipt of CTC as a result of that responsibility for the child. If the tax credit system was not to end but the customer stopped having responsibility for the child, then they would no longer be eligible for CTC anyway. Therefore, as this is a change of circumstance that would otherwise affect entitlement to CTC, it is only right that transitional protection given due to that child responsibility ends when that responsibility for a child ends whilst in receipt of the DWP benefit.

(u) On UC, those who reach qualifying age for state pension credit can be treated as having limited capability for work and work-related activity if they are in receipt of any rate of Attendance Allowance, but they have to be in receipt of either the highest rate of the care component for Disability Living Allowance or enhanced component of daily living for Personal Independence Payment. There is a case of discrimination here. Will this be resolved?

It was agreed that the Committee would write to the Department on this point for a response outside of the meeting.

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[2] The Department subsequently responded as follows: "*Having considered the Committee's comments, the Department has reviewed its original decision and now proposes to allow for up to three months in which to claim, in line with the normal HB or PC backdating rules. The backdating period will run from the end of the UC award as any claim made after that period would result in a break in entitlement and loss of access to HB or PC.*"

(v) **Given the complex nature of these changes, what will happen if bad advice is given?**

The Department is aware of the complexity, and this is all part of our development and testing.

(w) **There is a concern that the wrong advice may be given to mixed age couples, specifically around deferring and drawing down pensions. If the wrong advice was given to the wrong member of a couple, it could have a very detrimental effect on their benefit entitlement.**

The Department is aware of the complexity and difficulty in explaining and understanding, even for those with benefit knowledge. The Department is working out the best way of communicating with those who are migrating. This will involve giving people the time to get onto DWP benefits and then to consider if they may be better off with different entitlements.

(x) **Following on from that, 15,000 households are to be impacted on matters that are very complex, and the Department is not in a position to provide advice; however, you can give guidance and explanation. Will you be providing comprehensive guidance for the advice centres, with examples and calculations, before the letters get sent out?**

A third-party information pack in currently being developed, with conversations around what it should include, balancing the need for information with it not being too overwhelming. The Department will provide more information on this to the Committee outside of the meeting.

(y) **There is a need for individuals to think carefully about their options. If people draw their pensions within the grace period, they will lose their TP. Is this not encouraging people to defer their pensions? If they did draw their pension would it not make sense to disregard that pension for a year also? If you can take away difficult decisions for claimants, this will make the transition easier.**

Not sure how this could be ignored for the purposes of calculating entitlement. However, the Department will consider and come back with their findings outside of the meeting.

(z) **There are quite a few protected characteristics in this cohort, can the Department confirm what the equality impact assessment highlighted? Were there any adverse groups?**

Age is obviously a factor given these changes impact on those who are pension age. Some of the data is reliant on information from HMRC. Those in receipt of CTC have got children, but they are often in different circumstances from a ‘normal family’. With other groups, tax credit data is not perfect.

There are no adversely impacted groups. Pensioners who move across to UC will not have the same conditionality and the benefit cap will also not apply to pensioner households.

(aa) When was the Equality Impact Assessment done. At the beginning, during the process of creating the regulations, or is it ongoing?

Since the beginning and it is ongoing.

(bb) The Committee is hopeful that TP will mitigate against most of the complications

The Department has considered that with these proposals. The Department shall send a letter inviting people to claim the relevant benefit and wants everybody to make their claim. There is a realisation that this group has more complexities, hence the grace period to work through these.

Those on PC will be dealt with by Retirement Services. This involves an older administrative system than UC, so they will speak with customers and deal with then on a clerical basis. There are around 3,000 pensioners with children and a specialist team, which is to be extended, will deal with these cases and swap out their tax credit award with PC.

(cc) Will the letters regarding migration and closure come from HMRC or DWP? It may be the first time that someone is receiving information about the change or have engaged with the DWP, so the departments must give consideration of how the message may be received?

The departments are currently discussing this and there is to be a period of testing.

There have been lessons learnt from the migration of the working age customers to UC , where both department’s logos were put on the letter so that customers recognised the letter as a genuine letter, even though they are not yet DWP customers.

(dd) With regards to the differences between all the benefits, are couples not living together likely to be treated differently?

There are differences between tax credits and DWP benefits in how couples are treated in terms of application for the benefit concerned. In both UC and PC, a couple are normally treated as a couple only if they are living at the same address so if they are living at different addresses for DWP purposes they will need to make claims as single claimants.

(ee) Will there be any issues around the interaction between different operating dates i.e. end of financial year and end of April and when people are to be migrating?

It should not make any difference because they should all be moved by April 2025 and therefore will not be moving while uprating is happening. As it is a small cohort, they shall be moving together.

(ff) If a mixed-age couple (where one is working and one cares for a child) does not live together, what will be the process?

It will be the same process as for working age couples. A letter will be sent, and they will both have to make a separate claim.

(gg) In working age, they both have to apply for UC; however, with mixed-aged couples they may need to claim separate benefits. What will be done to ensure the correct letter is sent? What happens if the wrong letter is sent and at what point would this be discovered?

The Department will look into this and provide information to the Committee outside of the meeting.

3.8 The Chair thanked officials for attending and answering the Committee's questions. He asked that the information which the Department has indicated it will share with the Committee after the meeting be provided at the earliest opportunity.

3.9 Following a period of private discussion, the Committee decided that there were a number of issues that the Committee intended to share with the Minister for Employment: [3]

- inconsistencies between backdating periods for PC and those protected who can claim pHB and PC when their UC entitlement ends;
- communication strategy and ensuring this is accurate and responsive to the needs of those migrating;
- ensuring correct letters are sent to couples who may be deemed as not living together and may have to claim separate benefits;
- lack of incentive to draw down a pension if it is to be taken into account during the grace period. The only sensible option would be to defer. Therefore, should all pensions not claimed be disregarded for the grace period;

[3] Letter to Minister attached as Annex B

- using data held by HMRC which could be rich in assisting tax credit claimants to move smoothly and efficiently; and
- long term strategy for pensioners working and that of deferring and drawing down pensions and the correct method of benefit support for them.

3.10 In the meantime, the Committee decided that the proposed regulations were not a candidate for formal reference, and that they may proceed accordingly.

4 Private Session

[RESERVED ITEM]

5 Date of next meeting

5.1 The next meeting is scheduled to take place on 24 April 2024.

Annex A

Attendees

Guests and Officials

Item 3: Graeme Connor (Deputy Director, Universal Credit Policy)
Dave Higlett (G6, Universal Credit Policy)
David Eaton (G7, UC Migration Policy)
Richard Poureshagh (G7 Pension Credit Policy)
Michelle Mathieson (HMRC)
Rachel Delaney (HMRC)

Observers: Vanessa Dockery[4]
Nicky O'Connor[4]
Rosemary Tittensor[4]
Adam Whitaker[4]
George Beresford[5]
Paul Towers[5]
Matt Izzard[5]
Helen Gadd[5]
Sharmini Selvarajah[5]
Nic Vaughan[5]

Secretariat: Denise Whitehead (Committee Secretary)
Dale Cullum (Assistant Secretary)
Kenneth Ashworth (Assistant Secretary)
Kyle Robertson (Analyst)

[4] Item 3
[5] Item 4

Annex B

SOCIAL SECURITY ADVISORY COMMITTEE

Jo Churchill MP
Minister for Employment
Department for Work and Pensions
Caxton House
6-12 Tothill Street
London
SW1H 9NA

22 March 2024

Dear Minister,

The Social Security (State Pension Age Claimants - Closure of Tax Credits) Regulations 2024

We are grateful to Graeme Connor who, with Dave Higlett and other colleagues, presented the above regulations to this Committee for statutory scrutiny on 13 March. While the number of pension-age households affected is small, these regulations are complex and detailed. Consequently, there are risks to whether all claimants will continue to receive at least their current level of financial support from the Department uninterrupted, as is intended. Recognising this, Graeme demonstrated excellent judgement in ensuring that the Committee was well-prepared for this scrutiny by leading two prior informal briefing sessions to keep us informed of emerging developments and ensuring that we were able to contribute to the Department's work in a timely way; for example, by considering whether there were any gaps or areas that could be strengthened in the developing proposals. While this required additional time commitment, I believe that it was a very valuable investment for both SSAC and the Department.

Following careful consideration of the available evidence, 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.

Nonetheless, in reaching that conclusion, the Committee identified some areas of concern which were discussed with, and are being considered further by, Graeme and his team. I thought it would be helpful to draw these to your attention, so you have an opportunity to reflect on them as you take forward these proposals. The issues are set out in more detail in an annex to this letter, but in summary they are as follows:

- *Backdating rules*: Mixed-age couples will be invited to claim Universal Credit under the proposed regulations but, where they are in receipt of pension-age Housing Benefit at the point of migration, they retain a protection to be able to move over to Pension Credit while still a mixed-aged couple. However, in order to benefit from this protection, under the regulations they need to claim Pension Credit or pension-age Housing Benefit within a month of Universal Credit ending instead of benefiting from the usual three-month backdating rule. In order to remain consistent with the broader rules currently in place for backdating and with the commitment that they would be protected from the mixed-age Pension Credit reform, we recommend you consider granting currently protected mixed-age couples a period of three months to make their claim.

- *Recognising the different dynamics of couples:* It might be advisable for individual members of some couples on Tax Credits to make different decisions when their Tax Credit entitlement stops. However, it remains unclear how the migration letter will communicate this. We would welcome clarification of the process, to provide assurance that all relevant parties will be notified effectively of what they need to claim and what safeguards are in place to ensure there is no adverse impact on the claimant or their partner.

- *Pension drawdown and claiming:* These complicated rules may lead to people making disadvantageous choices and, having seen how that impacts their benefit position, regret that decision. We think there is a case for simplifying the treatment, disregarding pensions that are drawn down or claimed during this grace period, and would urge you to reflect further on this point.

- *Using personal and earnings data already held by HMRC:* This may help the Department design more tailored communications to ensure a smooth transition from Tax Credits to the most appropriate alternative benefit, and to support this cohort of claimants to make better decisions during the twelve-month grace period. We encourage the Department to explore the extent to which it might be able to make use of this, and other available, data at the earliest opportunity, in particular in advance of sending out the first communication.

- *Communications to Tax Credit claimants*: It is vital to get this right given the substantial repercussions these proposals could have on this cohort of claimants. For example, irreversible decisions about drawing down deferred state or private pensions. We would, therefore, welcome an opportunity for further engagement from the Department on this issue as the communications strategy is being finalised, and subsequently to develop a greater understanding of how effective the communications approach has been and how the Department has been responding to any lessons learned.

Longer-term strategy

Following our consideration of these proposals, acknowledging their complexity, potential impacts and the need for them to be landed safely, we reflected on the emerging need for a longer-term strategy for the benefits system for those above state pension age, especially regarding employment. For example, we would be keen to have greater clarification around the Government's longer-term ambitions and strategy for those of pension age who continue in paid work, as well as the Department's views on claimant behaviours on matters such as drawing down/deferring pensions. We would welcome an opportunity to support the Department, for instance in identifying the key questions and challenges that need to be considered and addressed, at an appropriate time.

In conclusion, I wish to reiterate our sincere appreciation for the diligent efforts and thorough attention to detail demonstrated by Graeme Connor and his team. As you take forward the implementation of these regulations, the Committee is keen to ensure that the areas of concern outlined above are considered to ensure a more effective transition for all affected claimants. I look forward to continued collaboration and open dialogue with Graeme and his team as these issues are addressed, and we remain committed to supporting the Department in doing so.

I would be happy to discuss any of the issues raised in this note with you in more detail, if that would be helpful.

A copy of this letter goes to the Secretary of State, the Minister for Pensions, Viscount Younger, Sophie Dean, Kathryn Green and Graeme Connor.

Yours sincerely,

Dr Stephen Brien
Committee Chair

Annex

Backdating rules

The Welfare Reform Act 2012 Commencement No.31 and 32 and Savings and Transitional Provisions Amendment Order 2024, which goes alongside these Regulations, limits the backdating rule for mixed-aged couples who have migrated to Universal credit but who would like to claim Pension Credit or pension-age Housing Benefit while still a mixed-age couple.

Those protected mixed-age couples who are working will be invited to move to Universal Credit. However, once their entitlement to Universal Credit ends, they have just one month in which to re-claim pension-age Housing Benefit and/or Pension Credit to maintain their protection, instead of being allowed the usual three months of backdating. For example, a mixed-age couple in receipt of Tax Credits and pension-age Housing Benefit would be invited to claim Universal Credit but maintaining a protection to claim Pension Credit or pensioner Housing Benefit while still a mixed-age couple if required. However, if their entitlement to Universal Credit ended, for example, because their savings exceeded £16,000, the Order provides for only one month's backdating after which the protection is lost.

We have asked your officials to review this and provide clarification of the rationale for this apparent inconsistency. However, based on the information currently available to the Committee, our view is that currently protected mixed-age couples should be granted a period of three months to make their claim, consistent with the broader rules currently in place for backdating and with the commitment that they would be protected from the mixed-age Pension Credit reform.

Recognising the different dynamics of couples

The Committee was assured the treatment of all couples, regardless of their day-to-day living arrangements, would be consistent under both Universal Credit and Pension Credit – even if different from Tax Credits in certain circumstances. For example, it may be that one member of a mixed-age couple may need to claim Universal Credit, while the other may need to claim Pension Credit; or it may be that the members of the couple live apart for a significant period of time. However, we note that the couple would receive the same migration notice. While this mirrors the process for working-age claimants (who would *both* be expected to claim Universal Credit), with this cohort it is possible that a single communication will not effectively differentiate essential messages about what action needs to be taken by each member of a couple.

We are keen to have a more detailed understanding of how this will work in practice; what steps have been put in place to ensure all relevant parties are notified effectively of what they need to claim and when; and what safeguards are in place to ensure there is no adverse impact on the claimant or their partner so that no-one falls through the net. We would also welcome reassurances that any error would be rectified swiftly with no financial detriment for the individual.

Early pension drawdown

These regulations are complicated and will present challenges to some claimants seeking to understand what actions they need to take, not only in terms of their migration to another benefit but also the decisions they need to make within the twelve-month grace period.

One particular area of concern in this respect is the treatment of deferred state and private pensions, which will not be taken into account as notional income until after the twelve-month grace period.[1] It is possible that claimants may infer an underlying message from the Department to keep any pension deferred until after this period to avoid impacting their benefit entitlement. Put simply, there may be little incentive to claim a pension within the twelve-month grace period as claimants will lose any boost to their pension by continuing to defer and their benefits would cease. Equivalently there is the risk that some might start to claim their state or private pension and then, having seen how that impacts their benefit claim, regret that decision.

The Committee has highlighted this disincentive and risk to your officials and has suggested that one solution to this issue might simply be to consider a disregard of pensions that are drawn down during this 12-month grace period. This would ensure claimants are not inadvertently ‘caught out’ or faced with difficult decisions during this period. This simplification of the rules would allow those affected to be better prepared to get their pensions in place prior to the end of the grace period and ensure their decisions can be better informed.

Utilising personal and earnings data already held by HMRC

The understandable strategy is to anticipate the appropriate option for pension-age Tax Credit claimants and to advise them of which benefits to claim. HM Revenue and Customs already has access to a considerable amount of Tax Credit claimant information – both personal and earnings-related – from at least the previous five years on its Real Time Information system.[2] This data would clearly help the Department ensure a smooth transition of this cohort from Tax Credits to the most appropriate alternative benefit, by ensuring that communications and subsequent conversations are well-designed, well-targeted and contain relevant information that may be important to support this cohort of claimants to make good decisions during the twelve-month grace period. We encourage the Department to explore the extent to which it might be able to make use of this, and other available, data at the earliest opportunity, in particular in advance of sending out the first communication. It should not be necessary for the claimants to have become DWP claimants before more in-depth analysis of their situations can be undertaken.

Communications to Tax Credits Claimants

We had a very good discussion with Graeme and his team on the Department's communication strategy which is currently being developed and tested. While it is clear that good progress is being made and that lessons have been taken on board from the migration of working-age claimants, it is imperative to get this right given the substantial adverse repercussions these proposals could have on this cohort of claimants, for example, irreversible decisions about drawing down deferred state or private pensions.[3]

We would, therefore, welcome an opportunity for further engagement from the Department on this issue as the communications strategy is being finalised, so we can understand how it is working in practice and whether there are further lessons to be learned. In particular, we would be keen to have a greater understanding of:

- How it will be delivered. For example, how the Department's strategy balances the need for providing information and advice to the right people at the right time against concerns of information overload.
- What guidance will be provided to third parties.
- What the migration notices will look like, both in terms of content and tone, and which department will be responsible for the messaging.
- The mitigations being put in place to guard against incorrect notices being sent and the process for highlighting such errors and how they will be rectified (including to mixed-age couples who may be deemed as separate for benefit purposes as mentioned above).

Once migration of this cohort is underway, we would additionally welcome an opportunity to engage with the Department to determine how the implementation of the communications strategy is working in practice, in particular identifying any lessons learned during the process and how the Department is modifying its approach in response to them.

[1] Introduction of Reg 60B The Universal Credit (Transitional Provisions) Regulations 2014.
[2] During the scrutiny session the committee raised a number of scenarios, including that of pensioners with fluctuating earnings for example due to seasonal work, which could be identified in advance. Given the richness of the available data, we believe it is worth identifying some of the more challenging cases in advance and tailoring communications to them.
[3] The Parliamentary and Health Service Ombudsman's recent report on Women's State Pension age communications illustrates the sensitivity of this issue.

Annex C

The Social Security (State Pension Age Claimants - Closure of Tax Credits) Regulations 2024: information provided following the meeting

Question 1

There is an inconsistency with backdating for pension credit (three months) and the protection afforded to those who are able to claim pHB/PC. They can still make a claim for pHB once UC entitlement ends, but must do so within one month – what is the rationale for inconsistent treatment – shouldn't these periods of backdating be consistent?

Under the provision as originally drafted, a claimant would need to apply for HB (or PC) within a month of being notified that their UC award had ended in order for the period on UC to be treated as not creating a break in entitlement to HB. The claim would still need to be backdated to the end of the UC award to maintain continuity. Having considered the Committee's comments, the Department has reviewed its original decision and now proposes to allow for up to three months in which to claim, in line with the normal HB or PC backdating rules. The backdating period will run from the end of the UC award as any claim made after that period would result in a break in entitlement and loss of access to HB or PC.

Question 2

Are there dynamics of couple relationships that may deem them as a couple for tax credits but not for UC/PC? If so, how will these be dealt with? If two applications are needed, how would this be highlighted, what is the process and mitigations to ensure they do not slip through the net? The Department said at the meeting that they will get a single letter they then both have to make a claim to UC – which address would they send that to if they don't spend all their time at a single address – and how can you ensure both parties of the couple have received the letter?

For the purposes of claiming UC or PC, a couple are normally treated as a couple only if they are living at the same address (a couple being classed as two people who are members of the same household and are either married, civil partners of each other or living together as if married or in a civil partnership). Both members of the couple will be sent a migration notice so if a tax credit couple are living at the same address, both notices will go to that address. (Apologies if this was unclear or misunderstood at the meeting). The details of addresses will come from the data feed supplied by HMRC.

For UC, once notified, the couple will need to make a joint claim. In PC, only one partner claims for the couple, so they will need to choose which of them should be the claimant.

When notices are sent to couples in receipt of tax credits, if the couple are separated for the purposes of UC/PC (it is anticipated that this will be a small number) then the separated couple will not receive transitional protection. We will be developing guidance for our case managers and work coaches to assist in ensuring that each member of the couple is directed to the most relevant benefit.

Question 3

There is no incentive to claim pension within the 12-month grace period as the claimant will lose any boost in deferring pension and benefits would cease. Is there a case to disregard pension during 12-month period, as people should otherwise presumably just defer until end of 12 months.

The reason why we are introducing the policy of not taking deferred pension income (both state and non-state) into account for the first 12 months in the calculation of the UC award is to give claimants some time after transition to UC to make the relevant financial decisions that best suit their circumstances and to ensure that notional income doesn't erode their UC or PC award for that year. If people draw down on their pensions during that year and we ignored it, we would be treating actual income differently for these people on UC compared to anyone else who had claimed their pensions. We would in effect be giving these pensioners an amount of benefit on top of their existing income.

Ignoring the income from pension drawn whilst they are claiming UC during that first 12-month period could also wrongly incentivise claimants to draw down on their pension earlier than they had envisaged and encourage them to stop working when perhaps continuing to work and draw down on their pension later is a better option for them.