

**Moving claimants to Universal Credit from other working age benefits  
Social Security Advisory Committee Consultation  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 We welcome the opportunity to respond to this consultation. Given the importance and sheer magnitude of the managed migration process, it is disappointing that the Department for Work and Pensions (DWP) has not carried out its own consultation(s) on the different options available to move legacy benefit claimants to universal credit (UC).
- 1.2 We urge the Government to delay the start of managed migration and consult further on other options for migration, including an automatic transfer option. Managed migration should not proceed until existing issues in the current full service system are adequately resolved including those relating to payment timeliness and the varying levels of universal support. In addition there needs to be absolute certainty that the system can deal with the increased volume of claimants in terms of IT capability, UC service centre telephone capacity and work coach capability that managed migration will bring.
- 1.3 If the managed migration process is to be implemented as set out in the draft regulations, then we believe that the timescale is too ambitious. At present there are many unknowns in how the process will work – we cannot see how it will be possible to get all of the required IT, communication products, staff guidance and training, and support services promised in place in time to start proper testing in January 2019.
- 1.4 Although we are generally supportive of the test and learn approach, we do not think such an approach is appropriate where weaknesses or problems in the process can have such serious financial impacts on low-income claimants. The testing period should be used to see

how the processes and materials work for claimants with adjustments based on feedback – it should not be a period where nearly everything is developed from scratch or manual processes are used because the IT is not ready. We therefore think DWP should delay the testing start date to at least January 2020.

- 1.5 Of course, any delay in managed migration means that more claimants will naturally migrate and miss out on transitional protection. We are supportive of the plans to delay the move of certain claimants in receipt of the severe disability premium to UC until transitional protection is in place – but there are other groups in a similar position who also merit this protection. If there is any delay to managed migration we think it would be necessary to also delay natural migration either for everyone or for other groups who will lose out upon moving to UC.
- 1.6 We do not think that the process outlined in the draft regulations will deliver an easy and seamless process from the claimant’s perspective and we think there are points in the process where the risk of people falling into financial hardship is high. We recommend the following:
- The preparatory letters should be used to encourage contact from claimants with complex needs and vulnerabilities who will need additional support and a longer deadline for the migration notice.
  - Careful thought should be given to the branding of communications – tax credit claimants will not be used to communications from DWP and may ignore any letters assuming they are not relevant.
  - Adequate resource needs to be in place to deal with increased volumes of calls and queries. This resource will need to have the skills to deal with all related questions to avoid claimants getting passed between DWP, HM Revenue & Customs (HMRC) and Local Authorities.
  - The minimum period allowed for claimants to make their UC claim as directed in the migration notice should be increased from one month to eight weeks, with an extension to 12 weeks in specified circumstances.
  - The requirement to issue post-migration notice reminder letters should be included in the regulations as a further safeguard.
  - A legislative solution is needed for situations where cancellation notices are used for people not in a position to claim UC.
  - A non-exhaustive list of things that constitute good reason for asking for an extension of the deadline should be included in the regulations.
  - Regulation 46 should be amended to stop the termination of existing benefits where a request has been made to extend the deadline.
  - Further safeguards should be added to the regulations to require HMRC to issue a written decision in response to a request to extend the deadline and this should include a right of appeal.
  - The requirement to check for vulnerable/complex needs before termination of existing benefits should be included in the regulations.

- Anyone who claims UC within one month of their deadline date should have their position restored without the need for good cause/reason. This is a much needed safeguard.
- There should be a longer backdating period allowed for those who miss the deadline and have a good reason for doing so – this should be a minimum of six months and there should be a clear right of appeal against a refusal to accept good cause in the legislation.
- Regulation 58 should be removed as it potentially introduces additional complexity into the process – we think that operational planning should be possible based on the number of migration notices issued in a period without the need for this further provision.
- Regulation 48(2)(a) and (b) should be removed. This would allow people who make a valid UC claim before their deadline date to keep transitional protection even if they have made a previous defective claim.
- There should be a requirement in the legislation for DWP to issue a notice showing the calculation of transitional protection with associated right of appeal against the underlying calculations.
- The grace period for self-employed claimants to protect against the Minimum Income Floor (MIF) should be extended from six months to 12 months.
- The power for DWP to end the six-month grace period for self-employed claimants who are not, in DWP's view, seeking to increase their earnings to the relevant threshold, should be removed.

1.7 DWP confirmed, in 2012, that the principle behind transitional protection was to avoid cash loss at the point of change from legacy benefits to UC. This is perhaps the most important part of migration for claimants and they will therefore expect that the monthly payments they get from UC will broadly equal payments they were getting under legacy benefits (if converted to a monthly figure). They will certainly expect from that headline message that their overall household income will be the same.

1.8 And yet, the method chosen to calculate transitional protection is likely to lead to situations where that is not the case – this may mean people end up with more money or less money than they had under the legacy benefit systems. While it may not be possible to ensure everyone gets exactly the same amount due to different rules underlying each benefit, a full analysis should be undertaken to ensure the Department understand where variations might occur and whether mitigations are possible. At the very least, communications will need to manage people's expectations in this regard.

1.9 We also recommend that draft regulation 53 is amended. At present, we do not think it is clear what rate of tax credits should be used in the calculation of 'total legacy benefit amount' because it refers to a daily rate of tax credits that is not part of the usual tax credit calculation. Under tax credit legislation, the daily maximum rate of elements is calculated, but income and the thresholds are calculated by reference to a relevant period.

## **2 About Us**

- 2.1 The LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 General comments**

- 3.1 The 'managed migration' process is the most crucial part of the roll-out of UC, created in order to transfer nearly three million existing legacy benefit claimants across to UC. DWP must do everything possible to make the process easy and seamless and prevent anyone from suffering financial hardship or unreasonable inconvenience as a result.
- 3.2 It is important that every element of the process is carefully thought through and adequately tested before starting the migration process to ensure that people do not lose out or face significant delays or disruption to the money that they rely on. It is also crucial to ensure that the existing UC system is fully fit for purpose and can deal with the increased volume of claimants in terms of IT capability (for example, our understanding is that many processes are still manual rather than automated as intended), UC service centre telephone capacity and work coach capability. We are very concerned at the ability of work coaches to deal with the significant increase in claimant volumes post migration, especially given the fact that they will be very different claimant groups than they are traditionally used to dealing with.
- 3.3 Tax credit claimants generally have little regular interaction with HMRC and those that do use the phone or online accounts to do so. However, tax credits do not place obligations on claimants beyond the requirement to report changes of circumstances relating to the claim and end of year finalisation – very different to the requirements of UC, which requires face-to-face interaction and claimant commitment obligations. Dealing with these claimants will be a challenge for work coaches.
- 3.4 We do not think that the process outlined in the draft regulations will deliver an easy and seamless process from the claimant's perspective and we think there are points in the process where the risk of people falling into financial hardship is high.

- 3.5 In our view, the timing of managed migration is too ambitious and we cannot see how everything can be in place to allow for proper testing from January 2019 with roll-out to larger volumes of claimants from July 2019. If the process is to go ahead as described in the regulations, we urge DWP to delay the testing start date to at least January 2020 in order to allow all of the detail to be fully thought through, adequate staff guidance and processes to be developed and to ensure the existing full service UC service is working properly and effectively and can deal with the increased volume of claimants. We cannot see how it is possible to develop all of the relevant processes, IT and supporting communications and guidance in four months. The testing period should be used to see how the processes and materials work for claimants, not to develop everything from scratch during the testing process. Although we are generally supportive of the test and learn approach, this cannot be at the expense of claimants potentially falling into hardship or experiencing delays or falls in payments.
- 3.6 Although the explanatory memorandum contains some information about how the process will work, some critical details are missing such as:
- How the actual migration will work – will it be done by postcode area (as with the roll-out of full service UC), by claimant group or in some other way (alphabetically, random selection, claimant self-selection, etc.)?
  - What information will be given about transitional protection, the timescales for calculating it and how it can be challenged?
  - Where will the additional support for claimants come from? We understand that the DWP's ambition is to work more closely with third sector organisations and local authorities but this support needs adequate funding and should be in place before the migration starts in January 2019.
- 3.7 We are disappointed that DWP has not consulted on all of the options available to move people from legacy benefits to UC. Given the delays to the roll-out of UC, there has been ample time and opportunity to carry out such a consultation. A full consultation would have allowed the pros and cons of each option to be considered in some detail and for interested organisations and claimants to offer comment before a final decision was made.
- 3.8 Many claimants, and indeed advisers, expect that 'managed migration' means that they will automatically be transferred across to UC without the need to end their existing benefit claim and make a separate claim. However, the proposed process is not a transfer or migration of the claimant to UC – instead it involves the ending of their existing benefit and an instruction to make a brand new claim for UC, providing supporting evidence even in cases where claimants have been on benefits a significant amount of time without any change in their circumstances, have no new information to that already held and certainly no change in their residence or identity.
- 3.9 This approach places responsibility of dealing with a very complex set of processes – both in ending their existing benefit and claiming UC – firmly with the claimant. Many of the claimants we deal with are vulnerable in some way and if anything goes wrong or their payments are disrupted, delayed or stopped, they will suffer significant hardship. Coupled

with the existing problems in the current UC full service system, for example difficulties people have making an online claim, the fact that 1 in 5 claims do not succeed,<sup>1</sup> issues around payment timeliness, and the various administrative and design features that cause hardship, we do not think the process outlined is the best way to migrate claimants. Instead, we would favour an automatic transfer without the need for a separate claim for UC at the outset, which would minimise the risk of payment gaps, delays in processing and people falling out of the system and losing transitional protection – all of which are likely under the proposed mechanism.

- 3.10 We have focused our response on the migration of tax credit claimants rather than other legacy benefit claimants. We have done this because we feel it is where we can add most value to the consultation as our expertise sits with tax credits rather than other benefits and we believe there are other organisations who are far better placed to comment on the detail in respect of the other legacy benefits.
- 3.11 That said, many of the points made in this response apply to all legacy benefit claimants who will go through the managed migration process. There is one specific point we would like to make. Although the regulations stop certain claimants in receipt of the Severe Disability Premium in legacy benefits from naturally migrating to UC following a change of circumstances, there are other groups who are in a similar position and who will lose out significantly under UC compared to legacy benefits. People in those other groups may well naturally migrate, for example if they move address to another Local Authority area, and we cannot see the rationale for protecting one group and not these other groups. We urge the DWP to identify those who will lose out and introduce similar protections to stop natural migration from happening before transitional protection is in place.
- 3.12 We are generally supportive of the UC ‘test and learn’ approach, but we urge caution at using it for testing through the managed migration process when so much is at stake for the claimants. To minimise the risk to claimants, as much preparation, research and testing should take place before the testing phase of the migration with real claimants starts to ensure that the process is as robust as it can be. Of course, that should not mean that further changes cannot be made based on feedback, but as much as possible should be dealt with before involving real claimants where the risk of hardship should something go wrong is high.
- 3.13 Although we urge the Government to consult further on other options for migration, including an automatic transfer option, and to delay the start of migration, the bulk of our response assumes that the migration will proceed as outlined in the draft regulations and offers comment on the detail of those regulations.

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<sup>1</sup> <https://www.theguardian.com/society/2018/may/12/one-in-five--turned-down-for-universal-credit-rules-too-complex>

## **4 The overall migration timetable**

### **4.1 *Timescale for migration***

- 4.1.1 As noted above, in paragraph 3.5, we are very concerned that the timetable to start the managed migration process is too ambitious. According to the minutes from the June 2018 SSAC meeting<sup>1</sup> the Department originally intended to bring the draft regulations to SSAC earlier in 2018 so that the legislation could be passed and testing started in July 2018.
- 4.1.2 Page 34 of the Explanatory Memorandum (Para 144) states that testing for managed migration will start on a small scale with the intention to increase volumes to full operational capacity by July 2019. However, in the minutes of the SSAC meeting, it is stated that although July 2019 would mark an increase in numbers, it would still be part of a period of testing (albeit with slightly higher numbers) and that volumes will not pick up significantly until the end of 2019/beginning of 2020.
- 4.1.3 It is reassuring to see in the minutes that the DWP recognise the need to start with a small volume initially, but even on this revised timetable, there remains very little time between now and January 2019 to get everything in place to ensure it can be tested properly. This is also happening against a backdrop of growing concerns about the operation and impact of the full service UC system. As a result, we think it is necessary to delay the testing of the migration process to at least January 2020 to allow the right process to be developed that reduces the risk of financial hardship and claimants dropping out of the system, issues in the current UC system to be resolved and any further changes made (for example, see Esther McVey's speech to Reform where she confirmed that changes are still needed to the existing system<sup>2</sup>).

### **4.2 *Selection of claimants to migrate***

- 4.2.1 One of the key pieces of information missing from the explanatory memorandum is how claimants will be chosen to enter the managed migration process. The roll-out of UC has proceeded based on postcode areas and therefore that may be a way of choosing claimants to enter the managed migration process.
- 4.2.2 However, there are other ways of moving claimants to UC – for example by claimant group, such as self-employed claimants, or simply random or alphabetical selection, even claimant self-selection – and whichever option is chosen there will be significant consequences and impacts both for DWP and claimants. However, there is also likely to be an impact on local advice agencies who support claimants and who need to plan their resources in order to support claimants. We have seen some areas roll-out with full service UC without adequate

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<sup>1</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/725572/ssac-minutes-jun-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725572/ssac-minutes-jun-2018.pdf) Para 3.6

<sup>2</sup> <http://www.reform.uk/publication/speech-by-rt-hon-esther-mcvey-mp/>

time for organisations who support some of the DWP's most vulnerable claimants to prepare. This should be avoided in the migration process.

- 4.2.3 The start of the managed migration process is also likely to cause confusion for claimants more generally as there will be two possible routes to UC – one that attracts transitional protection and one that does not. That will cause confusion for claimants as natural migration may occur at any point up until the migration notification is issued<sup>1</sup> and claimants may have received the warm-up notifications relating to managed migration (which may mention transitional protection) even though they may not qualify if they naturally migrate before that date.

## **5 Arrangements for contacting claimants and inviting claims from them**

### **5.1 *Preparation period***

- 5.1.1 We welcome the fact that there is a preparation period for claimants which will last four to six months and which will 'warm' them up to the fact that their existing benefits will be ending and they have to make a claim for UC. We also welcome that these communications will outline the additional support that claimants can access during the migration and activities they can undertake that will help them make the new claim.
- 5.1.2 While these notifications are welcome, they need to be fully tested with claimants and their advisers. We note that some testing has already been carried out, however this is premature when the detail of the regulations and the process are not finalised and as above, we remain concerned about the time available for full testing of products before they are used from January 2019 with real claimants.
- 5.1.3 In addition, if the letters are telling people about additional support that is available, that support needs to be in place from January 2019 and we are concerned about the ability of the Department to do this in the timescale required so that people are fully supported, especially where that involves the use of external organisations.
- 5.1.4 The SSAC minutes from June 2018<sup>2</sup> confirm that claimants will receive only one notification letter even if they are in receipt of more than one legacy benefit. It is not clear whether this also extends to the preparation letters. This seems a sensible approach. However, on

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<sup>1</sup> Draft regulation 48 defines a qualifying claim for transitional protection purposes as a UC claim made by a person who has received a notification under regulation 46 – therefore it seems that as long as the UC claim is made after that date (even if due to a change of circumstances) it should attract transitional protection.

<sup>2</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/725572/ssac-minutes-jun-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725572/ssac-minutes-jun-2018.pdf)



branding, the minutes confirm that a decision has not yet been taken but that Communications are likely to be DWP branded. This should be considered carefully, especially for tax credit claimants who have had no prior dealing with DWP and so may easily ignore a letter that comes from DWP rather than HMRC.

5.1.5 The preparation period should also be used to inform specific claimant groups of new requirements – for example self-employed tax credit claimants should receive information to tell them how their self-employed income needs to be calculated for UC and the records they need to keep along with the reporting deadlines and requirements.

5.1.6 Although we welcome the preparation steps, they may well lead to an increased amount of contact from claimants to DWP, HMRC and Local Authorities. If only one letter is sent, thought needs to be given as to what telephone number will be put on the letter and who will answer those calls and whether they will have sufficient experience of the legacy benefits to answer questions. There will need to be adequate resource on all phone lines to deal with increased demand as a result of the letters going out even though migration may be four to six months away at that point.

## 5.2 ***The migration notice***

5.2.1 The migration notice is the most important document from the claimant's perspective as it will inform them that all awards of existing benefits will terminate and they need to make a claim for UC by the date specified in the notice.

5.2.2 Draft regulation 44(3) states that the deadline day must not be less than one month starting from the date the notice is issued. We think that this period is too short. The one month period runs from the date of issue and we have seen many examples where official letters take a week or even two to arrive, which does not leave enough time for people to take action especially if they need help and support to understand what they need to do and to make the UC claim. It is unlikely they would be able to find and access such support within two weeks given the pressures on the resources of voluntary organisations.

5.2.3 Para 29 states that there is flexibility for this period to be extended, if it is identified that certain claimants require longer timescales to make a new UC claim, e.g. those with vulnerable or complex needs. It is not clear whether this flexibility will only be used if it becomes clear in testing that certain groups need a longer period or whether it is intended to give certain groups a longer period of time to claim. If it is the latter – how will DWP identify whether claimants are vulnerable or have complex needs? In our experience of the tax credits system, very little about claimant vulnerabilities and complex needs is recorded on the system. We repeat again our concern that the test and learn approach is not appropriate for this situation where people may face financial hardship if things go wrong with the process and therefore a decision should be made before testing begins as to which groups should be given longer than the minimum period and how they will be identified.

5.2.4 At the very least, the initial preparation letters could be used to ask claimants to make contact if they feel they will need additional time during the process.

- 5.2.5 We think the regulations should be amended to make the minimum period 8 weeks to be extended to 12 weeks in cases where it is determined that the claimant is vulnerable or has complex needs. This places a duty on the Department to take active steps to find out this information to ensure the correct time limit is specified. Alternatively, if the required information about people's needs cannot be ascertained from legacy benefit systems, a 12-week deadline for everyone would be reasonable.
- 5.2.6 We note that the explanatory memorandum (para 30) states that during the notification period claimants who have not already made a UC claim by a certain point will be sent two reminders – the first two weeks after the notification has been sent and then one week before the day that they need to make a UC claim. We have the same concerns here about whether people will receive these quickly enough to take action but in any event these additional notifications should be contained within the regulations.
- 5.2.7 The draft regulations allow a notice to be cancelled in certain circumstances including '*in any other circumstances where the Secretary of State considers it necessary to do so in the interests of the person, or any class of person, or to safeguard the efficient administration of universal credit*'. The explanatory memorandum states that this may be used where it is identified that a claimant has complex needs that would make it impossible to complete the managed migration at that time or it had been discovered that the claimant has gone abroad temporarily.
- 5.2.8 Although we welcome this provision, it remains a concern as to how DWP will find out the required information in order for this cancellation to occur. If it relies on claimants or their advisers contacting the Department then it is crucial that this is made clear in staff guidance with clear guidelines on when it can and should be used.
- 5.3 There is also an indication that if it was felt that a claimant was not in a position to make a UC claim, even if an extension can be applied to the deadline date, this power to cancel the notice could be used (paragraph 40). The explanatory memorandum says that in such a situation contact will be made with the claimant at a future date to check whether it is appropriate to reissue the notification inviting the claimant to re-enter the managed migration process. This process will be contained in guidance. What is not clear is what the guidance will be if the claimant remains in a position that means they are unable to make a UC claim – there is nothing in the regulations that covers this situation and it is likely to involve the most vulnerable of claimants.
- 5.4 ***Extending the deadline date***
- 5.4.1 Draft regulation 45 allows the deadline day to be changed to a later date either on the DWP's initiative or at the request of the claimant '*where there is a good reason to do so*'. The regulations provide no further detail on what constitutes a good reason.
- 5.4.2 The explanatory memorandum states that this regulation will be used to ensure that claimants who contact the Department because they are having trouble completing the UC claim or cannot make the claim by the deadline day will be able to have the date extended if

they have a good reason. It also confirms that what constitutes 'good reason' will be left to guidance as it is in other parts of the system.

- 5.4.3 We are familiar with a similar concept of 'good cause' in tax credits where people miss the 31 July renewals deadline. In our experience it is difficult to get HMRC to accept good cause and when it is declined there is no right of appeal.
- 5.4.4 We assume that a request for an extension can be made via the telephone (there is no requirement in the regulations for the request to be in writing) but there could be a delay in the Department considering the request or there may be a request for evidence to be sent to support the extension request which may take some time. As far as we can tell, until the determination is made under draft regulation 45(1) that a new deadline day is accepted due to a good reason, the existing deadline day will still apply and so if there is any delay in deciding whether there is a good reason to extend, the legacy benefits will terminate. This is likely to be even more problematic where the request is made close to the existing deadline.
- 5.4.5 We recommend that draft regulation 46 (termination of existing benefits if no claim before the deadline is made) is amended to ensure it does not apply where a request has been made under 45(1)(b) and no determination has been made. We think this is preferable to the suggestion in the explanatory memorandum – that where it is not possible to get the required information to consider good reason or the request will not be considered until after the deadline due to resources – a new deadline day can be set. This is likely to lead to confusion for the claimant who will be notified of the new deadline day but then may get a further deadline day once the request has been considered.
- 5.4.6 Amending regulation 46 instead reduces the need for multiple changes of the deadline day in quick succession and also means there is no need for additional guidance to cover possible complexities such as what happens if the good reason has still not been established by the second deadline date.
- 5.4.7 We also recommend that regulation 45 is amended to include important safeguards for the claimant including:
- A requirement for DWP to issue a written notification (even if that is negative) in response to the request to extend the deadline. At present the regulation only requires the DWP to notify the person if a new deadline day is to be set in response to a request from a claimant. The method of notification is not prescribed.
  - A right of appeal (via mandatory reconsideration) against a decision by the DWP to refuse an extension. The right to request an extension of the deadline is an important safeguard and one that should not leave claimants wholly at the mercy of the Department without any recourse for it to be considered again.
- 5.4.8 In terms of what constitutes good cause, the list in paragraph 36 of the explanatory memorandum sets out circumstances which may be considered as a good cause. This list should be included in the regulations (not as an exhaustive list). We also think that 'financial

disadvantage' should be added to the list to allow a claimant an extension where it would be financially advantageous for them to delay migration.

## 5.5 ***Missing the deadline***

- 5.5.1 We have already noted above that we think the requirement placed on legacy benefit claimants to claim UC separately by a specific date is unreasonable, unnecessary and is likely to lead to people falling into hardship (by missing the deadline) and/or losing out on transitional protection. However, in the event that the process proceeds as set-out in the regulations, further safeguards should be added.
- 5.5.2 We know that each year between 300,000 and 400,000<sup>1</sup> tax credit claimants miss the 31 July renewals deadline and HMRC have to restore the claims for the majority of those people. It has been extremely difficult for HMRC to identify why this may be the case and to reduce the number of cases they are required to restore. This is against a backdrop of a familiar system (in place since 2003), large scale advertising campaigns on TV and radio, reminder text messages and paperwork explaining the deadline. Yet despite all of this, a significant number of people do not take the action required.
- 5.5.3 In our experience of the renewals process and other tax credit and tax processes, it is not until the payments stop (or a debt demand received) that the person is prompted to contact HMRC. We think it is highly likely that some people will fail to take the required action under migration to UC. This is possible for a number of reasons – fear, lack of confidence, disability, other vulnerability, lack of support, poor literacy and numeracy skills, lack of digital skills, failure to understand the importance and finality of the migration notice.
- 5.5.4 Under the proposed process, if the claimant misses the deadline (and they have not requested an extension – see section 5.3 above), their legacy benefits will terminate the day before the deadline day.
- 5.5.5 According to the explanatory memorandum, before the existing benefits are stopped, agents will check for evidence of complex needs or vulnerability to safeguard these claimants. If it is considered that a claimant has complex needs or is vulnerable, the agent has the option either to suggest an extension of the deadline day, arrange a home visit or remove the claimant from the managed migration process by cancelling the notice.
- 5.5.6 This is an important safeguard and yet it does not appear in the regulations. We recommend that draft regulation 46 is amended to place a duty on the Department to check for this evidence. We are however concerned about what information will be available to DWP from HMRC in respect of tax credit claimants. In our experience, the tax credits IT system is not well designed in terms of recording information about people and their needs and it is therefore not clear where or how DWP will get this information to ensure such a check is

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<sup>1</sup> <https://www.gov.uk/government/news/more-than-a-million-people-still-to-need-to-renew-their-tax-credits>

meaningful and likely to identify people with complex needs or vulnerabilities. If the process for finding this out is deficient then the safeguard becomes meaningless.

5.5.7 The regulations could be amended to reverse the burden by placing a duty on DWP to consider whether they have satisfied themselves that the person does not have any complex needs or vulnerabilities and if they cannot then they must extend the deadline or cancel the notice. This would provide a much stronger safeguard for claimants in situations where the problem may be inadequate information from the legacy benefit systems rather than the fact that there is no need.

5.5.8 If no UC claim is made before the deadline day, existing benefits will stop. However, if the claimant contacts the DWP within one month of their legacy benefits ceasing and:

- official error occurs; or
- they have a disability; or
- they can supply medical evidence that they had an illness that prevented them from making a claim; or
- they were unable to make a claim electronically due to a system problem

then they can ask for the date of their UC claim to start from their deadline day and in that case they will be entitled to transitional protection.

5.5.9 Given the potential consequences of someone missing the deadline – both in terms of financial hardship when legacy benefits stop and/or the loss of transitional protection we do not think this safeguard goes far enough.

5.5.10 We strongly urge the Department to amend the regulations to allow anyone who makes a UC claim within one month of their deadline date to have their position restored without the need for any evidence or a reason. This mirrors the current tax credit 30-day grace period where someone missed the renewals deadline as it is often only when money stops that claimants are alerted that there is an issue and that they need to take action. Without a provision like this, there is a real risk that people will suffer hardship in both the short- and long-term (through the loss of transitional protection). This is not a situation that is akin to someone making a brand new claim to UC following a change to their circumstances.

5.5.11 If this is not accepted then at the very least the categories should be extended to include a more general 'good reason' category that can take into account the claimant's circumstances, accompanied by a right of appeal.

5.5.12 In some cases it may be appropriate to restore the position in the same way even when more than a month has gone by and we recommend that backdating be allowed for up to six months (as a minimum) where there is good cause/reason. Again this should be in regulations and there should be a right of appeal.

## 6 Issues associated with making a claim and ending legacy benefit claims

### 6.1 *Delays*

6.1.1 Under existing legislation (Regulation 8, SI 1230/2014), legacy benefits can only be terminated where a claim for UC has been made **and** the Secretary of State is satisfied that the claimant meets the basic conditions specified in section 4(1)(a) to (d) of the Welfare Reform Act 2012. The four basic conditions are:

- The person is at least 18 years old
- Has not reached the qualifying age for state pension credit
- is in Great Britain
- is not receiving education

6.1.2 The third of these basic conditions – the requirement to be ‘in Great Britain’ – requires DWP to establish whether the person is habitually resident. This is something that in our experience can take some time and cause delays.

6.1.3 We recently came across a case where a person had claimed UC but had queried why her legacy benefits were still in payment as she knew that she was being overpaid. The reason was that there was a delay in determining whether she met that basic condition and so HMRC cannot terminate the tax credit award and commence their in-year finalisation process until DWP has satisfied themselves (and then notified HMRC) that these basic conditions are met.

6.1.4 These same rules will apply for managed migration and although the explanatory memorandum<sup>1</sup> talks about legacy benefits terminating the day before the UC claim has been made, this actually means that is the last day of legacy benefit entitlement rather than the actual day that payments will stop. In fact, the legacy benefits cannot stop until DWP have finished their checks on the basic conditions and notified HMRC (for tax credit claimants) and if there is a delay in doing this then the person will build up an overpayment of the legacy benefit which will then be recovered by reducing their UC payments (or if there is no eventual UC entitlement due to the claimant not meeting the habitual residence test, the legacy benefit overpayment will need to be recovered directly). There does not seem to be any way for a claimant to ask for legacy benefits to be stopped to avoid this, although in most cases claimants rely on their tax credits and other legacy benefits such that they cannot afford to be without them.

6.1.5 The NAO recently reported<sup>2</sup> that in 2017 25% of UC claims were not paid in full on time and that of those affected, 40% waited 11 weeks or more and 20% waited nearly five months. On

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<sup>1</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/718580/uc-transitional-regs-2018-explanatory-memorandum.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718580/uc-transitional-regs-2018-explanatory-memorandum.pdf)

<sup>2</sup> <https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit.pdf>

top of potential initial delays in processing the UC claim, the calculation of transitional protection may also result in further delays. We comment further on the mechanism for calculating the transitional protection element below, but it will require the DWP to interact and gather information from the claimant because the legacy benefit systems will not have the required information. For example, for tax credit claimants HMRC will not know if they have any capital or any spousal maintenance, nor will they know what their 'other income' figures are made up of. For example someone may have declared carer's allowance as social security income to HMRC but HMRC will not know the source of the income and will not know that the person is a carer and potentially qualify for the carer element in the UC award.

- 6.1.6 Draft regulation 50 requires the Secretary of State to determine, before making a decision on a qualifying claim for UC, whether a transitional capital disregard is to apply or a transitional element is to be included (or both). Once that determination is made, the transitional amounts need to be calculated.
- 6.1.7 We cannot see anything specific in the regulations that sets a time limit for this calculation to take place nor can we see anything that confirms when it is to take place in relation to decision on the UC claim. Paragraph 71 of the explanatory memorandum suggests that the DWP envisage the transitional amount will be calculated in order to 'ensure that the first UC award equals the amount that the claimant would have received on legacy benefits if they had remained in receipt of the same level of earnings and/or unearned income'.
- 6.1.8 If it is to be included in the first award then there is potential for a delay in making that initial award of UC and thus leaving people without payment for longer than the usual five weeks in the present system. This is due to the information that will need to be collected from the claimant – DWP will need to write to the claimant, state what information is required (which could be quite a substantial amount), allow time for the claimant to respond and then move on to the transitional protection calculations.
- 6.1.9 Payment timeliness is already an issue in the current system (as highlighted by the recent NAO report) – people already struggle with the five-week wait built into the system and although advances are available, these are essentially loans and are recovered from later UC payments which can leave a person struggling financially at a later point. Before migration takes place, it is crucial that DWP ensure all claims are paid within the first five weeks. Consideration should also be given to further mitigations – for example a run-on of legacy benefits that mirrors the two-week housing benefit run-on or a change in the legislation that allows legacy benefits to continue until the day before the first UC payment is to be made rather than just after the claim is made. There are other models of migration that would also allow the payment issue to be alleviated – for example by calculating the first award of UC based on the last month's information from legacy benefits including any transitional protection.
- 6.1.10 We are concerned about the inclusion of draft regulation 58 and it seems to introduce a further layer of complexity and uncertainty. It essentially allows the DWP to defer the start date of a UC claim to no later than one month from the day the UC claim was made. The

memorandum suggests this may be needed to allow flexibility so that the UC start days could be deferred if the number of claims that need to be assessed would put undue pressure on operational capacity. We recommend that this regulation is removed completely as the flow of new claims for UC is directly linked to the issue of migration notices and so the operational demand should be known and planned for from that. This provision would cause confusion for claimants who are already grappling with a complicated process.

## 6.2 **Complexity**

6.2.1 Perhaps one of the most concerning parts of the proposed process is the sheer complexity from the claimant's perspective – this will be even more so where they are in receipt of more than one legacy benefit.

6.2.2 A tax credit claimant, not in receipt of any other legacy benefits, will have the following contact points as the migration process begins:

1. Normal tax credits award notice – which will be based on the usual calculation of income rules and comparison of previous year and (possibly) current year estimated income.
2. Warm-up letter from DWP giving advance notice about migration to UC.
3. Migration notice from DWP.
4. Claim made for UC (undertake these steps for each claimant in a joint claim):
  - a. Set up UC account
  - b. Receive code via text or email
  - c. Submit claim
  - d. Try ID confirmation through Verify
  - e. Make appointment with Jobcentre – possibly to confirm identity and a separate interview (if needed) for habitual residence test purposes.

6.2.3 At this point things become far more complex for the claimant because three things are potentially all happening at the same time:

1. HMRC will start the in-year finalisation process of the tax credit award.
  - a. In-year finalisation paper work will be received from HMRC.
  - b. The claimant will be required to check the details and may have to declare their income – but the figure needed may be different to the one provided previously for tax credit purposes due to the differences between normal calculation of income and in-year finalisation income calculation. The claimant has 30 days to respond to this.<sup>1</sup>
  - c. The claimant may have an overpayment or underpayment directly as a result of in-year finalisation and will receive a final award notice showing this.

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2014/1626/regulation/4/made>



- d. If there are overpayments on the claim (from the current year or previous years) the claimant may receive separate notification letters about the debts.
2. A team in DWP who deal with transitional protection will contact the claimant to gather information in order to calculate the transitional protection.
    - a. The claimant will need to provide any additional information about their income and capital.
    - b. The claimant may receive notices showing the calculation of transitional protection (see below for further discussion of this) which will most likely be different figures to those on the tax credit award notice.
  3. Universal credit claim.
    - a. For the first time the claimant may need to attend a Jobcentre to verify their identity and accept their claimant commitment.
    - b. They will need to understand how to deal with UC online and via their journal and what they need to do in order to keep receiving their payments and (potentially) avoid any sanctions.
    - c. They will receive their UC award notice via their online account which may have deductions for the tax credit overpayments.

6.2.4 This break down only shows the situation where there is one legacy benefit in payment, the second section would be far more complicated as there will be other benefits that are being finalised at the same time and final award notices received – all using different income definitions, different income measures and taking into account different circumstances.

6.2.5 We are very concerned at how claimants will cope with these requirements and their obligations to check the awards and notify HMRC/DWP if anything is wrong when it is all happening at the same time in a relatively short period. The majority of claimants are unlikely to understand all of the calculations which means mistakes are likely to go unchallenged, which could have a long term impact in the case of transitional protection.

## **7 Calculation of transitional protection (including the treatment of earnings and capital)**

### **7.1 Calculation problems**

7.1.1 In the original briefing note<sup>1</sup> on transitional protection, DWP confirmed that the principle behind the protection was to avoid cash loss at the point of change from legacy benefits to UC. This is perhaps the most important part of migration for claimants and they will therefore expect that the monthly payments they get from UC will broadly equal payments

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<sup>1</sup> <http://webarchive.nationalarchives.gov.uk/+/http://www.dwp.gov.uk/docs/ucpbn-6-transitional-protection.pdf>

they were getting under legacy benefits (if converted to a monthly figure). They will certainly expect from that headline message that their overall household income will be the same.

- 7.1.2 However, the method chosen to calculate transitional protection is likely to lead to some claimants receiving a UC amount, including transitional protection that does not resemble their legacy benefit amount.
- 7.1.3 DWP must ensure that they fully understand the range of possible outcomes from the method of calculation chosen and whether this method produces any 'winners' or 'losers'. If there are, these people should be identified and thought given to whether further amendments can be made to the regulations to mitigate any losses. This should include comparing the 'total legacy benefit' figure with the actual payments of legacy benefits and comparing the 'indicative UC figure' with the figure that would be generated in the first award period (if circumstances remain the same) across a range of different claimant types.
- 7.1.4 From a claimant perspective, there is likely to be confusion that the 'total legacy benefit amount' might not actually reflect the amount of money they are receiving at that point from HMRC and that the 'indicative UC amount' may not reflect the actual amount of UC they will get in their first award period.
- 7.1.5 If mitigations to the regulations are not possible, then at the very least DWP need to manage claimant's expectations about what transitional protection can do in terms of ensuring there are no cash losers from the migration.
- 7.1.6 We are concerned with the chosen wording in draft regulation 53(2)(a) in order to calculate a daily rate of tax credits. It directs DWP to 'take the figure for the daily rate of the award on the migration day provided by HMRC and calculated in accordance with Section 13 of the 2002 Act and the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002'.
- 7.1.7 However, those regulations do not provide for a daily rate of tax credits. They provide for the calculation of a daily rate when working out the maximum possible award of working tax credit (WTC) and child tax credit (CTC) but income is calculated for a relevant period – not on a daily basis. If the intention is to actually take the tax credit award for the current relevant period (which will be based on the claimant's latest circumstances that have been reported) and divide it by the number of days in that period then that should be made explicitly clear in the regulations.
- 7.1.8 Tax credit awards are either based on previous year actual income or estimated current year income. As the total legacy benefit amount is to be calculated based on the latest income held by HMRC, this leads to a situation where claimants might be better off not reporting an estimated current year income where it is likely to lead to a reduced tax credit award in order to gain transitional protection (or a higher rate of it). Or the opposite could be true, where claimants do not report a lower estimate of current year income, expecting just to do so at the end of the year, which has the effect that their transitional protection element is lower than it could have been, calculated using a higher previous year income figure. Income

changes are not on the list of changes that must be reported to HMRC when they occur – it is perfectly legitimate to report them after the tax year ends although this may lead to an overpayment. What is more, because there is no existing legislative provision for calculating a daily rate of award, there is no legislative basis to impose the use of an estimated current year income.

- 7.1.9 We have identified a number of areas of potential mismatch between the rules for tax credits and those for UC which will affect the calculation of the transitional protection element but we suspect there will be many more and these must be understood and identified ahead of the migration starting.
- 7.1.10 The income figure used in the calculation of the ‘total legacy amount’ may be different to the figure used to calculate the ‘indicative UC award’ because the regulations apply different income definitions for the indicative UC award. For example, tax credit income rules allow for deductions of pension contributions, gift aid contributions and the deduction of trading losses brought forward from previous years. These deductions will be taken account of in the ‘total legacy amount’ daily rate calculation. However, it appears they will not be taken into account when calculating the ‘indicative UC amount’ which means the income figure used to calculate UC will be higher. While this is beneficial for claimants, in that their transitional protection element is likely to be higher, there may be scenarios where similar definitional problems lead to the opposite result.
- 7.1.11 The regulations state that the indicative UC amount should be calculated after deduction of an amount of tax and National Insurance (to be determined by DWP). There is no information how this amount will be calculated for self-employed individuals and that will have an impact on the amount calculated and therefore the transitional protection.
- 7.1.12 For those with childcare costs there are also some complexities. The indicative UC amount is to be calculated using the average weekly childcare figure from tax credits converted to a monthly amount. However, the tax credits figure will be an average of childcare costs over 12 months and may not represent the actual childcare costs being incurred at the point of migration; indeed some people in tax credits opt to have short-term childcare paid over the period of the childcare (for example school holidays) rather than averaged out across the year. This is likely to lead to calculations of transitional protection that again do not necessarily reflect the amounts in payment. Also, UC contributes 85% towards childcare costs compared to 70% in tax credits, but some tax credit claimants will not benefit from this increased support if they lose out in other areas because it will be off-set against those ‘losses’.

## **8 The impact of proposed transitional protection**

### **8.1 *Qualifying for transitional protection***

- 8.1.1 Transitional protection is only available if there is a qualifying claim. This is defined as a claim for UC before the deadline day or after the deadline day where the award is to commence on or before the deadline day because the claim has been backdated.
- 8.1.2 However, even in these situations, a claim is not a qualifying claim if the claimant has already made a defective claim for UC that has not been remedied as required or a claim has already been made where further information or evidence was requested but not provided within one month (or any extension of one month) under existing UC legislation.
- 8.1.3 This rule means that a claimant loses transitional protection if they are unable to complete their first claim even if they go on to make a valid claim before the deadline date. We cannot see the rationale for this and recommend that these exceptions are removed so that as long as a claim is made before the deadline date (or after if backdating applies), even if it is not the first claim, it is accepted as a qualifying claim. This will provide a further safeguard for claimants who may struggle with the online UC claim process.
- 8.1.4 Draft regulation 50 requires the Secretary of State to determine whether a claimant qualifies for transitional protection (either the transitional capital disregard, a transitional element or both).
- 8.1.5 It also includes two exceptions where no transitional protection needs to be considered. The first involves cases where a new UC claim is made by a single person who was part of a couple while receiving legacy benefits or a claimant who was a member of a couple in an existing benefit award but is no longer a member of the couple.
- 8.1.6 The second exception relates to those who live in supported or temporary accommodation. No explanation is given for this exception on the explanatory memorandum. We support CPAG's proposed amendment here to allow transitional protection in these cases but to insert a regulation that excludes housing benefit from the total legacy benefit amount in certain cases.

### **8.2 *Understanding transitional protection***

- 8.2.1 As discussed in Section 7 above, the calculation of transitional protection is complicated. It is crucial that this calculation is correct and based on the correct information. The explanatory memorandum (Para 69) states that data from legacy benefits will be used but where certain information is unavailable it will be requested from claimants.
- 8.2.2 This suggests that only some claimants will need to provide additional information but we cannot see how that can be the case. For example, for the majority of tax credit claimants, DWP will need to ask about capital because there will be no information about that on the tax credit system and DWP will not know if the person has or has not got capital and if so, the amount that is held.

- 8.2.3 Claimants will need to understand how their transitional protection has been calculated – they will need to see a breakdown of the total legacy benefit amount and also a breakdown of the indicative UC amount. It is not clear from the papers when this information will be given – whether it will be done immediately following the calculation or whether it will be given as part of the first UC award. The regulations should be amended to place a requirement on DWP to notify claimants of how their transitional protection has been calculated.
- 8.2.4 We note that future testing of information about transitional protection is planned, but we are concerned that this will not be in place before migration starts in January 2019. These materials need to be tested prior to migration starting with real claimants and, although small changes can be made based on feedback, the bulk of the work should be done ahead of the migration process starting.
- 8.2.5 It is not clear what the appeal route is if someone does not agree with their transitional protection amount. This needs to be made clear to people. Thought also needs to be given to escalation routes and how DWP will deal with queries that involve the legacy benefit part of the calculation. We are already seeing examples of cases where UC claimants who want to challenge the RTI information are being passed back and forth between DWP and HMRC; a similar situation could occur here. We recommend that DWP take ownership of the issue and liaise with HMRC and Local Authorities where a claimant challenges a figure.
- 8.2.6 Regulation 62 appears to provide for the transitional protection element to be amended where the UC indicative amount used to calculate the figure was wrong for reasons under set categories, including official error. It is not clear how a claimant should pursue that course of action and information should be made clear, including any limitations on deadlines, which would allow the claimant to check their UC indicative amount and request that the official error be corrected.
- 8.2.7 As claimants are manage-migrated to UC, any outstanding tax credit overpayment or new overpayments created as a result of the in-year finalisation process, will transfer from HMRC to DWP and fall to be recovered by DWP as a deduction from ongoing UC awards. Communication about this must be very clear. Claimants should be made fully aware of deductions from their UC awards and given information about how to challenge the rate of deduction, where necessary.
- 8.2.8 In some cases, a tax credit overpayment is created directly as a result of the in-year finalisation process which will be applied at the point of managed migration, even where claimants have either had no changes to report or have reported all changes to HMRC in good time. The overpayment will be deducted from their UC award and may well give the understandable impression to the claimant that, even with a transitional protection element included which promises that they will not be a cash loser, they will in fact be a cash loser due to the tax credit overpayment deduction from their UC payments.

### 8.3 ***Loss of transitional protection***

- 8.3.1 We welcome the announcement that the addition of the childcare element or increases in the childcare element will not erode transitional protection. However, other changes will reduce the transitional element quickly – for example where a new child is added to the claim – and some claimants are likely to suffer hardship as a result.
- 8.3.2 There are some situations where transitional protection is lost completely. This includes where there is a sustained drop of more than three months where the claimant's earned income is less than their relevant earnings threshold (and in their first assessment period, their earnings or joint earnings were equal to or above it).
- 8.3.3 This is likely to have an impact on work incentives as people may be hesitant to take on work, especially if it is short-term work, if they risk losing their transitional protection element. This is also likely to be the case more generally where transitional protection ceases if a UC award terminates – with this rule and the surplus earnings rules, there is a real disincentive for claimants to take on temporary work.
- 8.3.4 It also creates some unfairness as a person who moves to UC with income just below their earnings threshold will be protected against this rule if their earnings fall, but someone with income just above it will lose their transitional protection.
- 8.3.5 Transitional protection is also lost upon the formation or separation of a couple. We are concerned about victims of domestic violence who leave their partner and make a single claim and who will no longer have transitional protection. This is likely to be even more significant where there are disabled children in the family.
- 8.3.6 Transitional protection will not apply to legacy benefit claimants who are not entitled to UC, such as those who have reached their state pension credit age and who may be working and/or be responsible for children and also some of those claiming under EU regulations. Communications need to be very clear that not all existing legacy benefit claimants can go on to claim UC and direct them to what options are available to them instead. It also needs to be made clear for those who would not normally be able to claim UC, but who fall into one of the many exceptions to the standard entitlement rules under transitional protection.

## 9 **The impact on workers (including the self-employed)**

### 9.1 ***Self-employed claimants***

- 9.1.1 We welcome the introduction of a grace period for those migrating to UC from legacy benefits to protect them from the MIF. This period is currently set at six months however we do not believe that this is long enough to allow people to deal with the migration process itself, understand the new requirements of UC and then take steps to increase their income particularly if the business is seasonal. We recommend that the period is increased to 12 months to mirror the start-up period.

- 9.1.2 We are concerned that even the limited six-month period of protection from the MIF for those confirmed to be in gainful self-employment can be terminated if the claimant does not show they are taking active steps to increase their earnings to the level of their individual threshold. We strongly believe this provision should be withdrawn. There may be many reasons why a self-employed claimant migrated from legacy benefits may be unable to increase their earnings this way in the immediate short-term once they start claiming UC and we believe this provision renders the promised temporary protection from the MIF virtually void.
- 9.1.3 It appears that after the six-month grace period, the MIF will be applied to UC awards for migrated self-employed claimants which has the potential to erode the transitional protection, even where the claimant's actual income has not increased. We are concerned that this could lead to considerable hardship and believe extending the grace period to 12 months would go some way to alleviating the problem, notwithstanding fundamental concerns we have about the MIF policy in principle.
- 9.1.4 The change to monthly reporting from annual reporting for self-employed claimants is likely to be challenging. We recommend that DWP consider relaxing the deadlines before payments are affected if reports are late and also ensuring that claimants are given adequate support on what they need to report and when. Self-employed claimants should receive separate preparation notifications to explain the differences in income reporting under UC so that people can start to prepare and get their record keeping in place.

LITRG  
17 August 2018