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The Committee Secretary
Social Security Advisory Committee
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Dear Sir/Madam

I welcome the opportunity on behalf of the Scottish Government, to inform your advice to the Secretary of State for Work and Pensions on the UK Governments plans for migrating claimants onto Universal Credit (UC).

Whilst the Social Security Advisory Committee's consultation states that it will not consider comments on UC policy, it is impossible to separate certain parts of policy with the potential impacts of the managed migration process as it stands. I hope that you will therefore consider any comments that touch on UC policy in this context.

There are some aspects of these regulations that we welcome including the confirmation that Housing Benefit run-on will continue and the outlined intention for the Transitional Element. These will hopefully ease the stress of moving onto UC for some people. We also welcome the fact that claimants in receipt of the Severed Disability Premium will no longer be able to naturally migrate to UC.

There are however, several areas of serious concern that we have with the regulations which are set out in the Annex to this letter. I hope that you give the point's attached serious consideration when responding to DWP. Separately I will be writing to the Secretary of State for Work and Pensions to, share our views on the DWP's plans for managed migration.

I am copying this letter to the Scottish Parliament's Social Security Committee.

Yours sincerely

SHIRLEY-ANNE SOMERVILLE

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ANNEX

The wait for a first payment

We are extremely concerned that the initial one month plus one week wait for a first payment of Universal Credit is not addressed in the regulations. We assume that the intention is therefore that when someone on a legacy benefit, who may have been receiving their payments fortnightly, makes their claim, they will have to wait at least 5 weeks for their first payment of UC. This would be a huge injustice and clearly this has the potential to cause hardship and serious issues for budgeting within households. There is also no mention of the 5 week wait in Annex 1 of the explanatory memorandum (content of the notification). DWP must make its policy on this issue clear. We fundamentally disagree with any suggestion that claimants currently receiving fortnightly payments of legacy benefits should be forced to wait 5 weeks for their first payment of UC.

Requirement for claimants to make a claim for UC

The requirement for claimants to make a new claim to UC themselves is concerning. The DWP could instead support claimants to make the claim through a home visit or a meeting to go through the application together. On 8 June 2018, DWP published the results of a survey of UC Full Service customers, when asked about making their claim online, only 54% of claimants surveyed were able to make a digital claim unassisted, while a further 21% completed it online but with help. More than four in ten (43%) claimants said they needed more support registering their claim online. We would look for assurances that DWP will put in place a way to identify and support customers that need help when making their claim.

DWP will have responsibility for notifying claimants of their upcoming switchover date, which we understand it intends to do by letter, however there should be an attempt to confirm that people have received this notification. If letters are to be the primary means of communication then we are concerned that many people could fall through the cracks for a variety of administrative or personal reasons. An example of this would be the case of the changes to State Pension Age for women (the WASPI women), where despite DWP claims that all of those affected would have received notification, there are countless stories from people who claim they did not. The explanatory memorandum (paragraph 42) says that before stopping existing benefits, DWP agents will check for evidence of complex needs or a vulnerability and may arrange a home visit. We think the regulations should be considerably more robust and there should be a duty on DWP to identify and assist people in making claims to UC, as well as undertaking home visits where required.

Page 43, section b (of the explanatory memorandum) states that a UC claim can be backdated because of official error. There should be clarity over whether this will include cases where a notification letter has not been received, and if so, what proof will need to be provided.

Roll out schedule

We hope that areas where managed migration is to start will be given sufficient time to prepare and would welcome early sight of the roll out schedule. Those areas first to migrate will not be given as much time to prepare as those who come later – assuming a full roll out schedule is provided from the start. We would urge the Committee to press the DWP for an answer on when the managed migration roll-out schedule will be published.

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We would also like to know which areas will be in the first test phase due in January 2019 and whether claimants will be compensated if at a later time any rules are amended as a result of the test phase.

Transitional protection

Regulation 48 requires claimants to provide all necessary information needed to substantiate their UC claim within the relevant timescales or they will not be granted transitional protection. There seems to be no reference to claimants having good reason not to provide some information and no account made for DWP error or local variation in approach. This could therefore lead to many claimants missing out on transitional protection for some minor administrative errors.

Whilst it is welcome that those who have migrated to UC via natural migration will be compensated for the loss of Severe Disability Premium (SDP), and existing claimants with SDP will be protected – it is deeply disappointing that there does not appear to be any provision made for those new claimants to UC who would have previously qualified for a SDP premium under legacy benefits.

We would invite the committee to consider the different impact changes in circumstances, changes to uprating and changes in rent, may have on the value of the housing costs element, if the transitional element is reduced as a consequence of an increase in rent liability then a claimant will be worse off financially after paying their housing costs.

Transitional protection and earnings

Paragraph 127 of the explanatory memorandum discusses the matching up of UC assessment periods with wages and the potential loss of transitional protection. We note that provision is made for keeping transitional protection when UC Assessment Periods do not match up with wages. DWP is clearly aware of the problem that UC assessment periods cause when interacting with the way many people receive wages and has made provision for the loss of transitional protection but not for the loss or reduction of the UC award.

There is no mention of the impact that surplus earnings for self-employed people would have on transitional protection. There should be clarity on whether surplus earnings will be taken into account when calculating transitional protection.

Paragraph 65 of the explanatory memorandum, regarding Regulation 54, says that the calculation for the indicative UC monthly amount (used to assess the level of transitional protection when compared to legacy benefits) will be based on a claimants last day of entitlements to legacy benefits. There should be consideration for someone who may have a high earning week or month at this point. This could lead to significantly lower transitional protection.

Sanctions

Regulation 53 (4) states that the total amount of UC calculated should be calculated before any reduction for a sanction. The Committee will want to ensure that the DWP has taken account of the fact that the initial period of a JSA sanction is commonly a disqualification period, rather than a sanction period.

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Helping landlords to support their tenants

We would like to maximise the ability of landlords to support tenants who are migrating from Housing Benefit (HB) to UC. Some of these tenants may be vulnerable, or simply have been receiving HB for a long time, in many cases paid direct to their landlord and thus not be used to engaging with their landlord on their rent. This may be a difficult adjustment, and landlords will have to work to support tenants through that adjustment.

As mentioned above regarding the roll-out schedule, landlords need to have as much information as possible on when their tenants are going to be migrated, so that they go through the relevant business planning in terms of increased pressure on welfare rights teams and rent officers. This may require additional capacity so good notice will be essential to allow for recruitment etc.

We would like to see where possible, landlords to be partners in any communication strategy that will support transitional protection so that they can encourage tenants to respond to the transition notice.

It would also be desirable for DWP to inform landlords (where direct payments are currently in place) when individual tenants are due to be migrated – either through a checking system or a notification, which could be managed directly or through the Landlord Portal. This would allow them to provide individual support, including calls or home visits to encourage tenants to take action on the basis of receiving a migration letter. Accompanying this a softening of the approach to implicit consent designed to facilitate landlords who are taking an active role in supporting vulnerable tenants with their transition would be very welcome.

UC Housing Element

As drafted the regulations provide that changes in the childcare element will not lead to a reduction in the value of the transitional element, however all other parts of the UC maximum award, if increased, can lead to the value of the transitional element being eroded. The committee may want to consider whether there would be a rationale for the housing element being treated similarly to the childcare element. The value of the housing element is related to actual costs out with the claimants direct control. As drafted it appears that in the event of the housing costs of a claimant increasing leading to an increase in the housing element payable, then the transitional element would be reduced by the same amount. This however would mean that the claimant would be worse off financially once they had paid their housing costs

There is also a specific concern related to the interaction between these regulations and any exercise of the powers in Section 30 of the 2016 Scotland Act to vary the calculation of the housing element. As the regulations are currently drafted it appears that any increase in the value of a housing element paid to an individual as a result of Scottish Ministers' regulations under this part could be offset automatically by a reduction in the transitional element. The Scottish Government intends to use its powers to change the way that under-occupancy in the Social Rented Sector is calculated as part of our commitment to abolish the bedroom tax at source. For those affected this will increase their housing element to the value of any deduction that was previously applied, for this increase to be offset would not meet Scottish Government policy intention, and would seem to substantially undermine the Scotland Act power.

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Transitional capital disregard

After one year of disregarding capital over £16,000 for Tax Credits claimants, we expect that these claims would then be closed. This would result in people who may have been receiving no longer receiving any financial support.

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