

EXPLANATORY MEMORANDUM TO
THE UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) AMENDMENT
REGULATIONS 2022

2022 No. 752

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations contain amendments in relation to the natural migration process¹ and remove provisions that are no longer necessary following the full roll-out of Universal Credit (UC) across Great Britain. They also amend the Universal Credit (Transitional Provisions) Regulations 2014² (‘the 2014 Regulations’) to clarify or revise policy intent relating to the managed migration³ of claimants from existing benefits⁴ to UC⁵.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments Extent and Territorial Application

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Welfare Reform Act 2012⁶ (the ‘2012 Act’) provides for the introduction in Great Britain of a new working age income-related social security benefit, UC, and the abolition of income-based Jobseeker’s Allowance (JSA), income-related Employment and Support Allowance (ESA), Income Support, Housing Benefit, Working Tax Credit

¹ In these cases, where a claimant has a change of circumstances that would cause a new claim to a benefit UC is replacing, the claimant will need to make a new claim to UC if they wished to continue to receive welfare support.

² <https://www.legislation.gov.uk/ukxi/2014/1230/contents/made>

³ A managed migration is where an existing benefit claimant who has had no relevant change of circumstance that would require a new claim to UC, is informed by the Government that all awards of their existing benefits are to terminate and that they will need to make a claim to UC.

⁴ Income-based Jobseeker’s Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, Working Tax Credit and Child Tax Credit.

⁵ They also make the necessary consequential amendments to various pieces of legislation as a result.

⁶ <https://www.legislation.gov.uk/ukpga/2012/5/contents>

and Child Tax Credit.

- 6.2 The UC (Transitional Provisions) Regulations 2013⁷ came into force on 29th April 2013 and provided for the introduction of UC to limited categories of claimants. A series of Commencement Orders also brought into force provisions relating to UC, and repealed the legislation relating to JSA and ESA for UC claimants in specified postcodes.
- 6.3 The 2014 Regulations came into force on 16th June 2014 and revoked and replaced the 2013 Regulations, subject to certain savings, as part of the Government's reconfiguration of the legislation relating to the rollout of UC. Those regulations set out the effects of transition from existing benefits to Universal Credit (UC).
- 6.4 The Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 ('the 2019 Regulations') added provision to the 2014 Regulations to provide for the migration of claimants to UC by the Government, where no relevant change of circumstances has taken place. They also limited the number of awards of UC that could be made to persons to whom a migration notice has been issued to 10,000.

7. Policy background

What is being done and why?

- 7.1 The 2014 Regulations contain the key provisions for claimants moving from exiting benefits to UC, including provision for natural and managed migration. During the phased rollout of universal credit, the provisions in the Welfare Reform Act 2012 were commenced gradually. Now UC is fully rolled out, and to support the next phase of managed migration, the regulations are being simplified and clarified as follows.

Abolition of the Secretary of State discretion to determine that claims for Universal Credit may not be made

- 7.2 Regulation 4 of the 2014 Regulations permits the Secretary of State to suspend taking new UC claims to safeguard the efficient administration or to ensure the effective testing of systems. This provision was needed when UC was in its infancy as an additional safeguard to its safe and controlled introduction. UC is now fully rolled-out and the robustness of UC Information Technology systems and administration is now such that this power is no longer needed and should therefore be revoked.

Abolition of the exclusion of claims for certain existing benefits

- 7.3 Regulation 6 was introduced during the roll-out of UC. The primary function of regulation 6 was to prevent⁸ a person returning to Housing Benefit (HB), Tax Credits or Income Support (IS) once they have claimed, or are receiving, UC but this provision was superseded in 2015 by article 7 of the Welfare Reform Act 2012 (Commencement no 23 and Transitional and Transitory Provisions) Order no 23⁹ which prevents claims for HB, Tax Credits and IS where a person could claim UC. Any exception that remained relevant (principally those claimants in temporary and supported accommodation who continued to be entitled to UC) were replicated in article 7.
- 7.4 As a result, regulation 6 is no longer needed and should be revoked.

⁷ <http://www.legislation.gov.uk/ukdsi/2013/9780111531549/contents>

⁸ Subject to certain exceptions which no longer apply or are replicated elsewhere.

⁹ https://www.legislation.gov.uk/ukdsi/2015/634/pdfs/uksi_20150634_310319_en.pdf

Restriction on claims for housing benefit, income support or a tax credit

- 7.5 These regulations also insert provision into the 2014 Regulations which prevents claims for IS, HB and tax credits (subject to some limited exceptions). The limited exceptions¹⁰ where an IS, HB or tax credit claim can be made are if claimants are:
- single people or members of a couple over state pension age who are able to claim HB and tax credits;
 - claimants in temporary or supported accommodation who can claim HB for their housing costs;
 - existing tax credit claimants who need to renew their tax credit claim each year or make a claim for a different tax credit.
- 7.6 This provision is not new but is being moved from its current position as article 7 of the Welfare Reform Act 2012 (Commencement No. 23 and Transitional and Transitory Provisions) Order 2015¹¹ to simplify and improve the legislative position so it can be read in conjunction with the other provisions relating to the transition to UC.
- 7.7 Article 7 was drafted to operate during the phased introduction of UC. Now UC is fully rolled out, some of the complex provisions in that article regarding the timing of a claim no longer serve a purpose and so are not replicated in the new Regulation 6A.

Termination of existing benefits – removal of requirement for Secretary of State to determine that the basic conditions are met

- 7.8 These regulations include a provision that will remove regulation 8(1)(b) of the 2014 Regulations. This provision was introduced for the very early stages of the UC rollout. It requires that the Secretary of State is satisfied that the basic conditions of eligibility for UC (excluding the condition that a claimant commitment has been agreed) have been met before awards of IS, HB or Tax Credits can be terminated when UC is claimed.
- 7.9 This particular amendment resolves an inconsistency in the current legislation. The provision governing the termination of income-based Jobseeker's Allowance (JSA(IB)) and income-related Employment and Support Allowance (ESA(IR)) is contained in Commencement Orders rather than the Transitional Regulations. Here, the only requirement is that a Universal Credit (UC) claim has been made; there is no requirement for the Secretary of State to be satisfied the basic conditions have been met.
- 7.10 This means that under the current Regulation 8(1)(b) there could be cases where a doubt as to whether meeting the basic conditions means that an Housing Benefit (HB) and/or Tax Credits award¹² cannot be terminated at the point of UC claim pending further investigation, but the income-based Jobseeker's Allowance (JSA(IB)) or income-related Employment and Support Allowance (ESA(IR)) award must be terminated. Where it is found that the claimant does not satisfy UC's basic conditions, the claimant would find themselves remaining on HB or Tax Credits (subject to continued entitlement), but unable to make a new claim for JSA(IB) or ESA(IR).

¹⁰ The exceptions did allow claimants who are Frontier Workers to make a new claim for tax credits however, this exception has been removed by the Welfare Reform Act 2012 (Universal Credit) (Commencement No.34 and Amendment) Order 2022. <https://www.legislation.gov.uk/uksi/2022/302/contents/made>

¹¹ https://www.legislation.gov.uk/uksi/2015/634/pdfs/uksi_20150634_310319_en.pdf

¹² A claimant cannot receive IS and JSA(IB) or ESA(IR) at the same time, so this will not arise in IS cases.

Therefore, this amendment is to ensure such a situation cannot arise.

- 7.11 New paragraph (2B) is inserted into Regulation 8 making clear that the termination will not apply to a single person or a couple who are over state pension age. This will allow the legacy award to be reinstated should a UC claim be made in error by a claimant, or joint claimants over state pension age.
- 7.12 The regulations also include consequential amendments that need to be made to regulations 7, 12 and 12A also in the 2014 Regulations for the above change.

Managed migration - persons who claim as a different benefit unit

Revocation of regulation 47

- 7.13 The current regulation 47 of the 2014 Regulations provides for cases where claimants who were being treated as a couple or members of a polygamous marriage when they received a migration notice are treated as single when they claim UC. This could be because they separate after the issue of the notice, or it could be because of differences between UC and existing benefits rules. For example, in existing benefits the members of a polygamous marriage are all treated as part of one award whereas in UC the parties to the first marriage are treated as a couple and the party to the second marriage is treated as single and this results in two separate awards. Also, in Tax Credits some married couples who live apart continue to be treated as couples for Tax Credit purposes whereas they are single for UC purposes.
- 7.14 In cases of couple separation, it is likely that, partners who have separated will make their single claims for UC at different times after receiving the migration notice. Regulation 47 provides that when the first UC claim is made by one of those persons all awards of the existing benefit, to which they or their ex-partner are entitled, will terminate. This means that a claimant, who was receiving benefit for a partner from whom they had separated, could have their entitlement to benefits stopped if that partner (who was not entitled to existing benefits) makes a UC claim before they do, even though they may continue to meet the benefit's conditions of entitlement.
- 7.15 The above situation does not align with the current treatment of cases of natural migration following couple separation. In these situations, where one of the separated couple makes a single claim for UC, their ex-partner (provided they were the lead claimant for their legacy benefit) will remain entitled to their existing benefits which will be reassessed for them as single awards.
- 7.16 The removal of regulation 47 from the 2014 Regulations means that there will be consistency between when couples separate and naturally claim UC due to the change of circumstance and the position for couples who separate after being issued with a migration notice. In both cases, the claimant who is receiving the benefit payments can remain on that benefit until they make a new Universal Credit (UC) claim¹³.
- 7.17 Regulation 47 also provides where there are UC claims on separate dates, both will start from the earliest of those dates i.e. if one claimant made a UC claim two months before the other the later claim would start from the earlier date. For this provision to apply, the later claim will need to have been made on or before that claimant's "final deadline" as prescribed by regulation 46(4).

¹³ This position was also raised as a concern during the piloting of managed migration when processes were being developed for the migration of couples from existing benefits to UC.

- 7.18 This was put in place primarily to protect claimants on Tax Credits who are formally recognised as couples (for example are married or in a civil partnership or live as though they are) but who actually live apart. For example, where one member of the couple is away working in another part of the country for that period. Upon claiming UC, they will be treated as single claimants and have to make individual claims in their own right because they had lived apart or are expected to live apart for more than 6 months.
- 7.19 The provision ensured that if one of these claimants made their UC claim on a later day to the other, they did not lose out by having no entitlement between their tax credit termination, which would have occurred when the earlier claim was made, and the date on which they make their claim to UC.
- 7.20 However, upon reconsideration this provision is not, in its current state, necessary as there is already existing provision within the UC regulations¹⁴ that will provide protection for Tax Credit couples, and it allows backdating for up to a month where a claimant has been entitled to an existing benefit and the notification of expiry of entitlement to that benefit was not sent to the claimant before the last day the claimant's entitlement expired.
- 7.21 The Government believes that this will provide sufficient protection since it is unlikely that a situation would arise where claims from these couples would need to be backdated for more than a month. These claimants will still see themselves as a couple and therefore, they will be very likely to co-ordinate the making of their individual single UC claims. It would seem highly unlikely that one would wait for more than a month to make their single claim.

Transitional Protection

- 7.22 It has always been the intention that if a claimant has a change in couple status (a couple separate or a single claimant forms a couple) after being issued with a migration notice then the Government would not consider awarding them Transitional Protection (TP)¹⁵. This is because, even though the change in couple status may not, in its own right, have led to the termination of the claimant's existing benefit awards, it will be such a significant change in their circumstance to make meaningless any comparison between the level of their entitlement of their existing benefits as opposed to their new entitlement to Universal Credit (UC).
- 7.23 The current provisions make clear that this is the position when a couple separate after being issued with a migration notice but before either makes a claim for UC. However, the regulations do not so clearly provide that Transitional Protection (TP) should not be considered when a single notified existing claimant makes a new joint claim to UC as a member of a couple with another single existing benefit claimant.
- 7.24 These regulations therefore amend regulation 50(2) of the 2014 Regulations to make clear that TP should never need be considered for cases of single claimants who form a

¹⁴ Regulation 26(3)(aa) of The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013
<https://www.legislation.gov.uk/ukxi/2013/380/regulation/26>.

¹⁵ Transitional protection will be provided in the form of a transitional element. This will be calculated by comparing the total amount of all existing benefits that the claimant has been awarded with the total amount of UC that they would be entitled to when calculated according to the circumstances on which the claimant's existing benefit awards were based.

couple after being required to claim UC.

Managed migration – adjustment to transitional element where other elements increase

- 7.25 During the passage of the 2012 Act, the Government announced that existing benefit claimants who are migrated to UC by the Government who would otherwise have an initial lower entitlement to UC than they had to their existing benefits at the point they make their UC claim will be Transitionally Protected¹⁶. To this end, regulation 55 of the 2014 Regulations establishes how Transitional Protection will be applied to the UC award via the calculation of a Transitional Element (TE) in UC.
- 7.26 The announced policy has also always been that TE will subsequently be reduced by an increase in a UC element already in award or the award of a new UC element.¹⁷ Although this is the case, an issue has been identified in the legislative structure that where a UC claimant:
- was previously on income-related Employment and Support Allowance and was in receipt of both the Severe Disability Premium (SDP) and the Work-Related Activity Component;
 - was moved to UC by the Government and awarded the Limited Capability for Work (LCW) addition and received TE as a result of previously receiving the SDP in their existing benefit(s);
 - they could lose out financially at a later date if they were subsequently found to have Limited Capability for Work and Work-related Activity (LCWRA).¹⁸
- 7.27 From a policy perspective, it has always been the intention that a reassessment from LCW to LCWRA be treated as an increase in the claimant’s health related element and TE should therefore be reduced by the amount of the difference between the LCW and the LCWRA.
- 7.28 However, the issue identified in the legislative structure means that LCW and the LCWRA are two distinctly different elements. They are not two rates of the same element and therefore, where a claimant’s health deteriorates and their work capability is reassessed, they do not experience an “*increase*” in their health-related element. Instead, the LCW is terminated and the LCWRA is awarded as a new element.
- 7.29 This means, that under a strict reading of regulation 55, the claimant’s TE should be reduced by the full amount of the Limited Capability for Work and Work-related Activity (LCWRA) (not the difference between it and the Limited Capability for Work (LCW)) whilst the LCW amount would also be stopped. This could result in claimants having their overall entitlement to Universal Credit (UC) reduced when they experience a deterioration in their health.
- 7.30 As a result, these regulations amend the 2014 Regulations to put it beyond doubt that the treatment of the LCWRA as a relevant increase is an exception to the general rule regarding amounts awarded for the first time to ensure these claimants do not lose in the above cases where LCWRA is subsequently applied to the UC award.

¹⁶ <https://www.gov.uk/government/publications/transitional-protection-universal-credit-policy-briefing-note>

¹⁷ Other than the childcare costs element.

¹⁸ This would also apply to claimants who were naturally migrated to UC and awarded the SDP Transitional Payment as this payment is “*turned into*” TE

Managed migration - protection for students

- 7.31 Regulation 60 of the 2014 Regulations makes provision for the treatment of existing benefit claimants who are in full-time education,¹⁹ but upon making a new UC claim, having received a migration notice, would not meet the UC basic condition²⁰ that they are “not receiving education”. (This only affects single UC claimants, or couples who are both students, as joint claimants still qualify for UC if only one of them meets that condition).
- 7.32 In these cases, regulation 60 exempts the claimants from this condition where they have received a migration notice so they can:
- claim and be entitled to UC;
 - be awarded Transitional Protection (TP);
 - until the course they are attending (at the point they make their UC) ends.
- 7.33 As a result, a claimant could cease to be entitled to UC and then make another claim (which might be months or even years later) if they remained on the course they were on when first claiming UC. However, any other TPs they were receiving would have ceased, subject to the exception that allows TP to be carried forward to a new claim within 4 months where the previous award ceased because of earnings.
- 7.34 The amendment being made stipulates that where the UC award ends the exemption will only be reapplied where transitional protection would be reapplied.
- 7.35 This clarifies the intention of the regulations and ensures that the protection given to full-time students is consistent with the treatment of other forms of TP that can be applied to those who move to UC which are:
- the transitional capital disregard, which is applied to Tax Credit claimants with capital of over £16,000 who are required to claim UC; and
 - the Transitional Severe Disability Premium Element which can be awarded to eligible ex-recipients of existing benefits’ Severe Disability Premium.
- 7.36 The regulations also provide that the full-time student protection will cease following a sustained reduction of earning and following a change in couple status in the same way that the Transitional Element and the Transitional Capital Disregard will cease following those changes. This change creates greater consistency in the application of the suite of Transitional Protection measures that the Government is providing those who move to Universal Credit (UC).

Abolition of discretionary hardship payments

- 7.37 In the October 2018 Budget announcement, the Government committed to building on the introduction of the two-week Transition to UC Housing Payment for claimants who move to UC, which provides a two-week run-on of payments of HB when a claimant moves to UC. This was achieved by the introduction of the two-week run-ons of ESA(IR), IS and JSA(IB). from 22nd July 2020.
- 7.38 Prior to the introduction of these run-ons the Government introduced a Discretionary

¹⁹ See regulation 12(2) of the UC Regulations 2013 <https://www.legislation.gov.uk/uksi/2013/376/regulation/12>.

²⁰ Section 4 (Basic Conditions) of The Welfare Reform Act 2012 <https://www.legislation.gov.uk/ukpga/2012/5/section/4>.

Hardship Payment which provided interim support to claimants in its managed migration pilot²¹. This allowed them access similar support until the run-ons commenced. As the run-ons have now been introduced, the Government considers this provision is no longer needed.

Managed migration - abolition of the limit on number of cases migrated

- 7.39 The 2019 Regulations gave the Government the ability to manage migrate claimants from existing benefits to UC where no relevant change of circumstances had taken place by issuing a migration notice.
- 7.40 The 2019 Regulations also limited the number of claimants the Government could move in this manner by stipulating that when the number of awards made to persons who have been issued with a migration notice has reached 10,000, no further migration notices can be issued.
- 7.41 This regulation was added in response to concerns expressed by stakeholders over the uncertainty of the process and the impact to existing benefit claimants who may have circumstances that needed specific consideration when moving to UC.
- 7.42 Prior to its suspension, the emphasis of the pilot was to develop a better understanding of the processes that would be needed to support existing claimants to safely move to UC, through careful design and testing with small groups of claimants.
- 7.43 In response to the pandemic the UC service demonstrated its ability to scale up its capacity to meet demand in a way that supported people to claim UC when they were facing uncertain circumstances.
- 7.44 The regulations remove the limit set on Universal Credit (UC) programme's test and learn process as to how many claimants can be notified and migrated to UC.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 Informal consolidated text of instruments is available to the public free of charge via "The National Archives" website: www.legislation.gov.uk.

10. Consultation outcome

Social Security Advisory Committee

- 10.1 The Government presented the draft regulations to the Social Security Advisory Committee (SSAC) on the 8th December 2021. During its statutory scrutiny of these proposals, the Committee particularly considered draft regulation 9. Draft regulation 9 focuses on the managed migration process, and has the effect of removing the cap on the number of migration notices (10,000) that could be issued to existing claimants on legacy benefits. The committee did not recommend any changes to the regulations, though made recommendations on the operation of the migration process.

²¹ This pilot has now come to an end but was introduced in Harrogate from July 2019.

10.2 All the documentation regarding the SSAC consultation and the Government's response can be found at: <https://www.gov.uk/government/news/the-universal-credit-transitional-provisions-regulations-2022>.

11. Guidance

11.1 Comprehensive guidance is under development to support advisers and decision makers. Initial guidance has been published on the gov.uk website to support advisers.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector. An Impact Assessment has not been prepared for this instrument. This is because a full assessment was made of the impact of the introduction of UC was published in December 2012.²²

12.3 A Regulatory Impact Assessment has not been prepared for this instrument because the legislation does not apply to activities that are undertaken by small businesses.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The continued rollout of the final phase of UC will be closely monitored.

15. Contact

15.1 James Calverley at the Department for Work and Pensions Telephone: 0207 245 3827 or email: JAMES.CALVERLEY@DWP.GOV.UK can be contacted with any queries regarding the instrument.

15.2 Graeme Connor, Deputy Director Universal Credit Policy, at the Government for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 David Rutley - Minister for Welfare Delivery at the Government for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

²² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220177/universal-credit-wr2011-ia.pdf