

EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (MANAGED MIGRATION PILOT AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2019

2019 No. 1152

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
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Purpose of the instrument

- 2.1 The regulations make provision to:
 - introduce the process that existing benefit¹ claimants will follow when they are managed migrated to Universal Credit (UC) by the Department;
 - create a managed migration pilot so that once 10,000 awards of UC have been made to persons to whom a managed migration notice has been issued, no further notices may be issued by the Department;
 - allow for a transitional element to be considered, calculated, paid and administered to provide protection for existing benefit claimants who, upon managed migration, would have a lower entitlement to UC than their total existing benefit awards;
 - introduce, from July 2019 Discretionary Hardship Payments that can be made to those who have gone through the managed migration process and appear to be in hardship as a result of the termination of their existing benefits or if any other issues related to managed migration have resulted in hardship;
 - introduce, from July 2020 a two-week run-on of Income Support (IS), income-based Jobseeker's Allowance (JSA(IB)) and income-related Employment and Support Allowance (ESA(IR)) for those whose awards of those benefits have terminated as a result of their claim for UC;
 - provide for a 12-month period when the Minimum Income Floor (MIF) will not apply to self-employed claimants who are managed migrated and, from September 2020, also not apply to those who are naturally migrated in self-employment and all existing UC claimants who become newly gainfully self-employed;
 - make provision so claimants who are receiving an existing benefit and are also in education, are considered to meet the UC entitlement conditions when they are managed migrated to UC;
 - introduce 'transitional payments' for those eligible claimants who were in receipt of the Severe Disability Premium (SDP) as part of their award of

¹ Income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit and tax credits.

JSA(IB), ESA(IR) or IS and have already moved to UC following a relevant change in their circumstances. These payments will comprise:

- an ongoing monthly payment where they are eligible for it;
- an additional lump-sum payment to cover the period since they moved;
- the conversion of the monthly payment into a transitional element at a date to be determined by the Secretary of State so that it can be administered and ended in the same way as for those claimants who are receiving transitional protection;
- abolish, from January 2021, the SDP Gateway that prevents claimants entitled to the SDP from making a claim to UC if they have a relevant change of circumstances. Once the Gateway is removed claimants will move to UC if they have a relevant change of circumstances and may be eligible to be considered for transitional payments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These regulations replace the draft UC (Managed Migration Pilot and Miscellaneous) Regulations 2019² (“the Pilot Regulations”), laid before Parliament on 14th January 2019.
- 3.2 The principal changes to the regulations are to add a provision to remove the SDP Gateway and increase the transitional payment amounts to be paid to claimants previously entitled to the SDP.
- 3.3 The reason for changing the regulations is that a recent High Court judgment³ found that the differential treatment between SDP claimants who have already moved to UC, and those who are prevented from doing so because of the SDP gateway, is not justified. These regulations remedy that differential treatment.
- 3.4 The Pilot Regulations were subject to the affirmative procedure. This set of regulations follows the negative procedure. The change to the negative procedure is a direct consequence of removing a provision that would have been inserted into the 2014 Regulations via the previous set of Pilot Regulations (regulation 63).
- 3.5 This is not a policy change, as the decision to allow, or not allow, an extension is not appealable. However, this provision clarified the position with regard to appeal rights where claimants are issued migration notices, ask for more time to make a UC claim, or ask for the migration notice to be cancelled. While it is desirable to have this clarification, it is not essential during the pilot phase as claimants will be selected and monitored carefully with extensions to the time needed to make a UC claim granted wherever needed, and that is why we have removed it.
- 3.6 The Government is conscious that the present timetable for laying and coming into force of these Regulations will breach the 21-day rule, which allows for the Committees to scrutinise the instrument. We have not taken this decision lightly. Following careful consideration, and particularly the delay engendered by amending the text of the Regulations to address the issues in the judgment, we decided that our

² <http://www.legislation.gov.uk/ukdsi/2019/9780111178317/contents>

³ https://www.matrixlaw.co.uk/wp-content/uploads/2019/05/TP-AR-CSX-SSWP-Judgment-Final-2May19_.pdf

primary concern should be to pay the former SDP recipients the transitional payment as quickly as possible as well as responding quickly to the judgment.

- 3.7 The Committees and both Houses will still have the usual period to consider the Regulations, and to raise any matters they feel necessary.
- 3.8 The provisions for transitional payments to former SDP recipients who have moved to UC following a relevant change of circumstances are included with in these regulations. This is because they will be converted into a Transitional Element and therefore form part of the wider transitional protection framework.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.9 The territorial application of this instrument includes Scotland.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.
- 4.3 Corresponding legislation for Northern Ireland will be produced and led by the Department for Communities in Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Welfare Reform Act 2012 provides for the introduction in Great Britain of a new working age income-related social security benefit, UC, and the abolition of JSA(IB), ESA(IR), IS, Housing Benefit (HB), Working Tax Credit and Child Tax Credit (CTC).
- 6.2 The UC (Transitional Provisions) Regulations 2013⁴ 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 Departments reconfiguration of the legislation relating to the rollout of UC. They deal with the effects of transition from existing benefits to UC.
- 6.4 The Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 add provision to the 2014 Regulations to provide for the planned migration of all existing benefits claimants to UC.

⁴ <http://www.legislation.gov.uk/ukdsi/2013/9780111531549/contents>

- 6.5 These regulations were previously part of the UC (Managed Migration) Regulations 2018 (laid before Parliament on 5th November 2018), which were withdrawn and replaced by the Pilot Regulations (laid before Parliament on 14th January 2019).
- 6.6 The Pilot Regulations replicated the previous regulations, with the omission of the regulations relating to the SDP ‘Gateway’, which prevent claimants who are receiving ESA(IR), JSA(IB), IS or HB with the SDP included in their award from claiming UC, but instead allows them to remain on existing benefits.
- 6.7 The Pilot Regulations have been withdrawn and replaced with The UC (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 to include revised provisions for former SDP recipients.
- 6.8 This new set of regulations revokes the Gateway Regulations from January 2021 and raises the level of transitional payments that will be made available to eligible SDP claimants where they have already moved to UC.
- 6.9 As per the previous Pilot Regulations these regulations also include provision, which will provide that once 10,000 awards of UC have been made to persons to whom a managed migration notice has been issued, no further migration notices may be issued by the Department

7. Policy background

What is being done and why?

Migration Process

- 7.1 Managed Migration means that people who are currently on various working age benefits will be moved to UC as part of a carefully managed process. These regulations set out that this will be piloted with up to 10,000 people initially, and no further managed migration will take place without further regulations.
- 7.2 The regulations make provision to notify claimants who are receiving existing benefits (referred to in paragraph 6.1) that they will need to make a new UC claim by a specific deadline in order to begin the managed migration process to move to UC. The regulations give a minimum period of three months for the claimant to make a new UC claim, permitting this period to be extended if analysis shows that certain claimants require more time, e.g. someone who is vulnerable or has complex needs.
- 7.3 Although the notification will give a deadline day to make a new UC claim, this can be extended if claimants contact the Department before that day and demonstrate good reason for their request, e.g. because they have gone into hospital. As well as allowing claimants to request an extension to the deadline day, the regulations also allow Departmental staff to extend it. For example, staff may identify that a claimant needs extra support to make a new UC claim, or the claimant may have requested an extension, but there is insufficient evidence to decide straight away whether the claimant has good reason. The decision to allow, or not allow, an extension is not appealable.
- 7.4 Provided that existing benefit claimants (and their partner, if they have one) make the UC claim by the deadline day specified in the notification, existing benefits will be paid up until the day before they made their UC claim and Transitional Protection will

be considered. If they do not make a new UC claim by the deadline day, their existing benefits will end and will be paid up until the day before that day.

- 7.5 If claimants contact the Department after the deadline date but within one month of their existing benefits ending, their UC claim will automatically be backdated to the deadline date and Transitional Protection can be applied to the UC award. If a claimant does not contact the Department until after a month after the deadline date they were given, their claim will not be considered as a managed migration claim which means their claim will be assessed under the UC regulations⁵ without the consideration or award of Transitional Protection.
- 7.6 Claimants in receipt of existing benefits who are treated as a couple or as members of a polygamous marriage when the notification is sent may need to claim UC separately either as single persons or a different couple. This may be because of a change of circumstances. It may also be because UC and existing benefits have different definitions of what constitutes a couple. This means that some claimants who are in receipt of an existing benefit as a couple will be treated as single claimants in UC.⁶
- 7.7 This will always be the case where the existing benefits have treated them as a polygamous marriage (i.e., a unit of three or more) because UC does not recognise polygamous marriages and so in UC there are only joint and single claims. In these cases, the existing benefit awards will end on the day before the day that the first member of the couple claims UC, or on the day before the deadline date if no UC claim is made. Therefore, provided that the UC claim is made on or before the deadline date, or after the deadline date and the UC claim date has been ‘backdated’, the UC claim made by the other member of the couple will start on the same day.
- 7.8 The regulations allow for the notification to be cancelled if: it was issued in error; UC claims are no longer being accepted in an area or category of case in order to safeguard the efficient administration of UC; or if it is in the interests of any claimant or group of claimant.
- 7.9 Housing Benefit claimants moving to UC under the managed migration process will be eligible to receive a two-week Transitional Housing Payment, in line with those claimants who migrate to UC because of a change of circumstances. The regulations also make new provision for a two-week “run on” for claimants in receipt of JSA(IB), ESA (IR) or IS from 22nd July 2020.
- 7.10 Like the Transitional Housing Payment, the amount of these “run-ons” will be fixed according to the amount of the award payable immediately before claiming UC. These payments are disregarded as unearned income for UC purposes so would not reduce the first UC payment. This will provide claimants with additional financial support until they receive their first payment of UC. The “run-ons” will also apply where the existing benefits are brought to an end because the claimant has failed to comply with the managed migration process by their given deadline and there has been no extension to it.

⁵ http://www.legislation.gov.uk/ukxi/2013/376/pdfs/ukxi_20130376_310515_en.pdf,
<http://www.legislation.gov.uk/ukxi/2013/380/contents/made>;

<http://www.legislation.gov.uk/ukdsi/2013/9780111531556/contents>

⁶ See regulation 3 of the UC Regulations 2013

http://www.legislation.gov.uk/ukxi/2013/376/pdfs/ukxi_20130376_310515_en.pdf

- 7.11 The JSA(IB), ESA(IR) or IS “run-ons” will also apply to claimants who naturally migrate to UC because they have a change in their circumstances and the claim to UC terminates their existing benefits award.
- 7.12 Managed migrating claimants will also be treated as entitled to an award of a tax credit during the tax credits renewal period at the start of a new tax year, when the new tax credits award has not yet been determined. This is required so that HMRC can finalise and terminate the tax credits award if the claimant moves to UC during that time.
- 7.13 Provision is included to allow the start day of a UC award to be deferred for up to one month from the day it was made. This has been included to delay the start date of UC claims if the number of claims that need to be assessed would put pressure on operational capacity to the point of threatening service delivery to claimants.

Transitional Protection – transitional element

- 7.14 The regulations provide that claimants who have formed a couple or separated at the point that they make a new UC claim, or are a member of a polygamous marriage and thus treated as a single claimant under UC legislation, do not qualify for Transitional Protection.
- 7.15 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. The UC amount calculated in this way is the “indicative UC amount”. This method of calculation has been designed to provide a balanced, like-for-like comparison of entitlement under the two regimes.
- 7.16 As UC is paid monthly, the total monthly amount of existing benefits to which the claimant is entitled on migration day needs to be calculated so that a comparison can be made. To do so:
- the daily rate of the tax credits award (as determined by HMRC) is converted to a monthly figure by multiplying it by 365 and dividing it by 12;
 - the weekly rate of IS, ESA(IR) or JSA(IB) is converted to a monthly figure by multiplying it by 52 and dividing by 12;
 - the weekly rate of HB is converted to a monthly figure by multiplying the total amount of HB by 52 and dividing by 12. However, this calculation is modified where appropriate to take into account any rent-free weeks specified in a HB claimant’s tenancy agreement.
- 7.17 Where the existing benefits records do not hold all of the required information – e.g., information about capital would not be available for someone who had solely been claiming tax credits – the regulations permit this to be drawn from other sources.
- 7.18 Where a claimant is subject to the benefit cap, the regulations provide that the total amounts of existing benefits and UC used in the transitional element calculation cannot be above the benefit cap.
- 7.19 There will be tax credit claimants whose level of earnings is high enough not only to produce an indicative UC amount of nil but also to reduce further any UC paid at the end of the month (which could only consist of the transitional element), despite their earnings remaining the same. Regulation 55(1)(b), therefore, provides for a

mechanism to ensure that the transitional element is not incorrectly eroded in this circumstance.

7.20 Where the total amount of existing benefits is greater than the indicative UC amount, the transitional element will be equal to the difference between the two amounts. However, where the UC indicative amount is reduced nil (because of earnings) the excess earnings (after the work allowance and taper) are added to the transitional element amount. This is to ensure that a person whose earnings have not changed will not have reduction from the existing benefits when they receive their first UC payment. An illustrative example of how this would work is below.⁷

7.21 A claimant who is a lone parent with one child and who is in receipt of IS, CTC and HB, will be entitled to the following benefits on the day before the UC claim is made:

CTC daily rate of	£9.11
IS weekly amount of	£73.10
HB weekly rate of	£225.00

7.22 These amounts are then turned into monthly amounts as follows:

CTC daily rate	$£9.11 \times 365 \div 12 = £277.09$
IS weekly amount	$£73.10 \times 52 \div 12 = £316.77$
HB weekly rate	$£225 \times 52 \div 12 = £975.00$

Total monthly legacy amount	£1,568.86
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7.23 The UC indicative amount is also calculated:

Standard Allowance	£317.82
Child Element	£277.08
Housing Element	£975.00

Total monthly UC indicative amount	£1,569.90
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These two amounts are then compared to see whether the transitional element needs to be applied to the UC award. In this case, no transitional element would be awarded because the claimant would not receive a lower UC entitlement, i.e., an award that is less than £1,568.86.

7.24 The transitional element will be included as part of the overall UC award. Any future deductions for earnings, other income or capital will be made from that overall UC award and not directly from any specific element. This means the transitional element itself will not reduce if a claimant's earnings have temporarily increased.

7.25 Once the transitional element has been calculated, the regulations allow for it to be revised or superseded and the result applied to the new UC claim or UC award in certain cases. These are: where it is discovered that the information used to calculate the total legacy amount or the indicative amount was incorrect; where claimants have misrepresented their circumstances, or failed to report a change of circumstances that they were required to report; or where a decision on a previous existing benefit award has been revised following an upheld appeal.

7.26 The regulations also allow for the transitional element to be eroded by an increase in the second or subsequent assessment period if another element included in the UC

⁷ Numbers in all illustrative examples have been rounded to the nearest 1p.

award increases, or when a new UC element is added to the UC award. An illustrative example of how this would work is below.

7.27 A claimant is in receipt of £1,901.57 UC, which is made up as follows:

Child Element for 2 children	£277.08 + £231.67
Standard Allowance	£317.82
Housing Element	£975.00
Transitional Element	£100.00

Total monthly UC indicative amount £1,901.57

7.28 However, if the claimant reports an increase in rent by £25 to £1,000 in an assessment period after the transitional element has been awarded, the UC award would be adjusted as follows:

Child Element	£277.08 + £231.67
Standard Allowance	£317.82
Housing Element	£1000.00
Transitional Element	£75.00

Total monthly UC indicative amount £1,901.57

7.29 However, this will not apply where new childcare costs are included in the UC award or where existing childcare costs increase. This is intended to maintain the incentive for UC claimants to start work or increase their hours, since any increase of their UC award for additional childcare costs would otherwise correspondingly reduce their Transitional Protection award.

7.30 The regulations also provide for circumstances where the transitional element will end, which are as follows:

- there is a sustained drop in earnings for more than three months to a level below the Administrative Earning Threshold (AET) in UC⁸ where the claimant's earnings had been equal to or above that threshold in the first UC Assessment Period (i.e., the first month of the UC award);
- a couple separates, or a claimant forms a couple with a new partner; or
- the UC award ends. However, where a claimant whose UC had ended because of the level of their earnings returns to UC within four months of their previous UC award, the transitional element will be re-applied to the new UC award. This is to ensure that claimants who are not paid monthly do not lose the transitional element as a result of their monthly UC assessment period periodically encompassing an extra pay day.

Transitional Protection – transitional capital disregard

7.31 It is a financial condition of entitlement to UC that a claimant does not have capital

⁸ The AET is the administrative distinction between being in work and out of work and ensures that only claimants on no income or very low income will receive intensive support. See regulation 99(6)(a) or (b) of the UC Regulations 2013 http://www.legislation.gov.uk/ukxi/2013/376/pdfs/ukxi_20130376_310515_en.pdf

exceeding £16,000.⁹ Since there is no capital limit on entitlement to tax credits, provision has been made for a transitional capital disregard to be applied in relevant cases.

- 7.32 The regulations permit tax credits claimants with capital exceeding £16,000 to make a UC claim. They may receive UC for up to 12 months unless their capital falls to £16,000 or below, at which point normal UC rules including all financial conditions of entitlement would be applied. The disregard would not be re-applied even if the claimant's capital rose above £16,000 again within 12 months of the UC award commencing. An illustrative example of how this would work is below.
- 7.33 A claimant makes a claim for UC as part of the managed migration process and has capital above £16,000 disregarded. As a result, UC can be awarded, but any capital in excess of £6,000 and up to £16,000 will be treated under normal UC rules as yielding an income of £4.35 per month for each complete £250 over £6,000. The capital deduction, therefore, is $£10,000 \div £250 \times £4.35 = £174$.
- 7.34 For example, a claimant with more than £16,000 in capital might receive a UC award as follows:

Child Element	£277.08 +
Standard Allowance	£317.82 +
Capital deduction	£174 -
Total monthly UC	£420.90

Self-employment and the Minimum Income Floor

- 7.35 Where self-employed claimants are managed migrated to UC and are found to be 'Gainfully Self-Employed'¹⁰, they will enter the 12-month Start-Up period and will not have the MIF¹¹ applied to their UC award until this period has ended, regardless of how long they have been self-employed prior to being managed migrated.
- 7.36 This also includes benefit claimants who are self-employed who when managed migrated were not gainfully self-employed when they made their UC claim, but were found to be gainfully self-employed at a later point. Once the Start-Up period ends, the UC claimant would be subject to the MIF and the overall UC award (which may include a transitional element) would be reduced accordingly.
- 7.37 The regulations also make provision for this to apply to all other new gainfully self-employed claimants from 23rd September 2020. This will include claimants who naturally migrate because they have a change in their circumstances and other new claimants to UC, including from those running a long-standing business, as well as those existing UC claimants who become gainfully self-employed. There will be no retrospective application to those claimants already subject to the MIF.

Claimants in education

⁹ Section 5, Welfare Reform Act 2012 (2012 c.5)

¹⁰ As defined in Regulation 64 of The Universal Credit Regulations 2013 ([SI 2013/376](#))

¹¹ The MIF is an assumed level of income designed to encourage individuals to increase their earnings by developing their self-employment.

- 7.38 Where claimants are receiving an existing benefit and are also in education,¹² but would not meet the UC basic condition¹³ that they are “not receiving education” when they migrate, the regulations treat them as having met this condition so that they can claim UC and be entitled to UC and Transitional Protection, if applicable. This exemption would last until the course that they were attending ends.

Discretionary hardship payments

- 7.39 The regulations also make provision so that discretionary hardship payments can be made to claimants who are being managed migrated to UC and who appear to be in hardship as a result of the termination of their existing benefits or if any other issues related to managed migration have resulted in hardship.

Claimants in receipt of Severe Disability Premium (SDP)

- 7.40 Regulations have been included to support the transition for those claimants who are entitled to the SDP in JSA(IB), IS, or ESA(IR). Those who were entitled to SDP as part of a Housing benefit (HB) only claim will not be eligible for these SDP transition payments. The legacy system’s complex mix of disability elements has been simplified in UC. UC has two disability elements for adults, and its funding has been targeted differently from the existing benefits, with more money targeted at the most severely disabled.
- 7.41 The Limited Capability for Work and Work Related Activity Element (LCWRA), which is paid to those on UC who are more severely disabled, is awarded at a considerably higher rate than the Support Component which was the corresponding element of ESA(IR). As part of this simplification the SDP has not been carried forward into UC. Those in receipt of SDP who are moved to UC will be eligible for Transitional Protection.
- 7.42 The UC (Transitional Provisions) (SDP Gateway) Amendment Regulations 2019 introduced a Gateway whereby those claimants in receipt of an existing income related benefit, as above, which includes an award of SDP cannot make a claim to UC until they are required to claim as part of the formal managed migration process. This came into force on 16th January 2019.
- 7.43 A recent High Court judgment¹⁴ found that the differential treatment between SDP claimants who have already moved to UC, and those who are prevented from doing so because of the SDP gateway, is not justified.
- 7.44 In light of this judgment, the Government has decided to abolish the SDP gateway from January 2021.
- 7.45 This Statutory Instrument makes provision so that eligible claimants who have moved to UC following a relevant change in their circumstances will be considered for ‘transitional payments’. These will consist of an ongoing monthly payment, and an additional lump-sum payment to cover the period since they moved to UC. The monthly payments reflect the amount of SDP that a claimant was receiving prior to migration, and are a flat rate of:

¹² See regulation 12(2) of the UC Regulations 2013.

¹³ Section 4 (Basic Conditions) of The Welfare Reform Act 2012 ([2012 C5](#))

¹⁴ https://www.matrixlaw.co.uk/wp-content/uploads/2019/05/TP-AR-CSX-SSWP-Judgment-Final-2May19_.pdf

- £285 a month for claimants not in the UC LCWRA group (i.e. the broad monthly equivalent of the lower rate SDP at £65.85 a week).
- £120 a month where the UC claimant has been determined as having LCWRA, and who therefore already receives an additional amount in their UC award because of their health condition. The higher rate of the LCWRA component is taken into account against the extra payments offered by the transitional protection.
- £405 a month where joint claimants were receiving the higher couple rate SDP in their existing benefits.
- £285 a month where joint claimants were receiving the lower couple rate SDP and are not receiving the LCWRA component in UC.
- £120 a month where joint claimants were receiving the lower couple rate SDP and are receiving the LCWRA component in UC.

7.46 The regulations provide for a one-off check, which:

- ensures that the additional transitional payment is restricted to claimants who are still entitled to UC. This is because claimants who have ceased to be entitled would have had changes of circumstance which means that they cannot be considered as being in an equivalent position to someone still on UC and requiring support;
- excludes cases where, since moving to UC following a relevant change in their circumstances, they have formed a couple or separated from their partner. These would be excluded on the basis that such wider changes would have been likely to affect entitlement to the SDP had the claimant remained on existing benefits, and that protection should not cover such wider lifestyle changes;
- both the above criteria are also criteria by which it is proposed to end Transitional Protection for managed migration cases, thereby providing a continuity of treatment.

7.47 There is also a check as to whether:

- the claimant (or partner) has, since moving to UC, got a carer who receives either Carer's Allowance or the carer element of UC in respect of them. This is because their care needs would be met elsewhere in the benefit system; and
- the claimant/partner is still getting the qualifying benefits for SDP, such as Disability Living Allowance or Personal Independence Payments.

7.48 These are designed as a check to ensure that some of the basic qualifying conditions for the SDP remain and, as such, had the claimant still been on existing benefits, SDP would not have ceased.

7.49 As with Transitional Protection, the 'transitional payment' will end where UC claimants form a couple or separate from their partner or where entitlement to UC ends. At a future date, to be determined by the Secretary of State, these payments will be converted into a transitional element. Once these payments have been converted to a transitional element, they will be subject to the rules associated with Transitional Protection and will erode or end in certain circumstances.

7.50 The regulations allow the transitional payment to be backdated to the point that claimants migrated to UC, provided that they had not had a change of circumstances

that would have caused the inclusion of the SDP in their award to have ended. A lump sum covering this period may be paid, based on the relevant flat rate payment at the point the regulations come into force. As some of the backdated payments may be substantial, provision has been made so any lump-sum payment can be disregarded in UC for the duration of the UC award, or 12 months, whichever is longer.

- 7.51 There are also some other groups of claimants who will be included in the transitional payments scheme. These are:
- a. Those who become entitled to backdated amounts of SDP following Legal Entitlement and Administrative Practices (LEAP) exercises being undertaken by the Department (e.g. they are subsequently found to have been entitled to SDP after they moved onto UC and it is backdated to before their UC claim).
 - b. Those whose PIP applications have taken a long time to be processed. Once processed, SDP eligibility is backdated to the period up to when they claimed UC.
 - c. Those who have not received SDP in legacy due to maladministration/error e.g. those whom the Department did not identify as having entitlement and therefore never had it included in their award.
 - d. Those who win their appeal or Mandatory Reconsideration of their legacy award and were therefore entitled to SDP in the period before they moved to UC.
 - e. Claimants who have inadvertently breached the SDP gateway to claim UC.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 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 Archive' website: www.legislation.gov.uk

10. Consultation outcome

Local Authority Associations

- 10.1 The Department undertook a consultation on these regulations with the Local Authority Associations (LAAs) between 22nd June and 3rd August 2018. The Department received responses from Glasgow Local Authority, the Convention of Scottish Local Authorities (COSLA), the Welsh Local Government Association (WLGA) and London Councils.
- 10.2 COSLA welcomed the exception made in relation to the treatment of the childcare costs element to the process for reducing the transitional element of the UC award when other elements of the award are increased. They also welcomed the 6-month grace period for those who were self-employed, but felt this may not be a sufficient period of time as it is very common for it to take more than a year for self-employed businesses to be established or indeed become profitable. The Department subsequently amended the regulations, increasing the grace period to 12 months.
- 10.3 COSLA also suggested that the Department should consider providing additional Discretionary Housing Payment funding which could be used to mitigate the risks of managed migration, e.g., covering the housing costs of any claimants who, for good

reason, fail to complete a UC application successfully and are left with gap in support for their housing costs.

- 10.4 All LAAs who responded highlighted their concern regarding the many vulnerable claimants who would be migrated to UC, especially as a large proportion of these will have a health condition. This covered the ability of these claimants to navigate and access the UC new claim process. They also highlighted the important role that LAs could play as part of this process especially if they were aware in advance of who was being required to claim UC.
- 10.5 In terms of vulnerability, the LAAs felt that the responsibility should not be just on claimants to identify their own vulnerability and that the Department needed to do preparatory work to identify vulnerability and check for complex needs prior to commencing migration.
- 10.6 COSLA and WGLA were also concerned about the ability to backdate the UC award if claimants missed the deadline day by which they had to make a new UC claim and felt that the ability to do this should be extended to all claimants with the possibility to have flexibility to extend this period, if necessary. The Department subsequently amended the regulations, allowing backdating for one month for all claimants.
- 10.7 The LAAs also stated how crucial communications and support for claimants was during the run up to migration, especially as some of the claimants being migrated would have had minimal engagement with the LA for a number of years. London Councils suggested that the Department should consider means of communication beyond standard letters to utilise increased engagement especially if a claimants' mobile numbers are available, so a text could be sent, or by using more eye-catching forms of physical communication, such as postcards. They also felt that the availability of telephone applications and home visits needed to be clearly advertised in all managed migration communication material.
- 10.8 COSLA and London Councils also felt it was excessively harsh not to apply Transitional Protection to subsequent UC claims if a claimant makes a defective claim as it effectively meant claimants only have one chance to get their application right in order to receive it. The Department subsequently amended the regulations, removing the defective claim provision.
- 10.9 All LAAs that responded said that the rollout schedule for managed migration would have a big impact on future burdens on Local Authorities (LAs) so were keen to see more detail of the Department's plans stating that the role that LAs will be required to play in the managed migration process would need to be clarified. They pointed out that LAs are ideally placed to support claimants in moving to UC and so the Department should include them as key delivery partners.

Social Security Advisory Committee Recommendations

- 10.10 The Department also presented the draft regulations to the Social Security Advisory Committee (SSAC), which took the regulations on formal reference. The Committee undertook a public consultation on these proposals between 22nd June and 20th August 2018. The Committee provided its report on the consultation on 5th October 2018. The Government laid its response to the Committee's report before Parliament alongside the UC (Managed Migration) Regulations 2018 on 5th November 2018. The Committee's report was also published on this date.

All the documentation regarding the SSAC consultation and the Government's response can be found at:

<https://www.gov.uk/government/publications/draft-universal-credit-managed-migration-regulations-2018-ssac-report-and-government-statement>

The Committee's report made several recommendations, which are summarised below.

Operational Readiness

- 10.11 The Committee urged the Department, to ensure that it was operationally ready before commencing managed migration. It, therefore, recommended that the Department makes an assessment of how effectively UC is currently operating and its readiness, based on publicly defined criteria, before the managed migration process begins. It also recommended that the Department works closely with LAs, Housing Associations and other organisations to develop the detailed design of this process.
- 10.12 As the managed migration process will start by testing the approach with small numbers of claimants, SSAC felt that the scope of this test should include a range of practical ways of migrating claimants to UC, with 'dummy runs' being carried out and evaluated for a cross-section of claimant scenarios (especially those claimants in vulnerable situations) so that adjustments could be made to the policy, process or the support on offer before the majority of claimants are managed migrated to UC.
- 10.13 From the point of view of communications, SSAC recommended that the Department explores and tests all potential options for communications needed for this exercise, including text messages, telephone calls, home visits and advertising campaigns against claimants from segmented groups and / or their representatives. The Committee also highlighted the importance for claimants with disabilities to receive information in the format that they need.
- 10.14 The Government accepted this recommendation in principle.

Publishing an Impact Assessment

- 10.15 The SSAC report recommended that the Department publishes an impact assessment by the end of March 2019, setting out the impact that managed migration would have on claimants and their family members based on protected characteristics and taking into account other areas such as homelessness, lone parenthood and the impact on LAs and third-sector bodies. It also recommended that an action plan for mitigating the effects of any adverse impacts identified be published alongside the assessment.
- 10.16 The Government accepted this recommendation in principle.

Transferring Claims

- 10.17 One of the proposed facets of the managed migration process is that claimants make a new claim when they migrate to UC. The Committee, however, strongly felt that an important principle that should underpin the managed migration exercise was that the risk should rest with the State rather than the individual.
- 10.18 As a result, they highlighted that the Department has powers, in the Welfare Reform Act 2012, for a claim to an existing benefit to be treated as a claim for UC. As a result, they recommended that the Department conducts and publishes a segmented analysis

of the claimants being managed migrated to see if it is possible to dispense with the need for a new claim and transfer data held on the relevant benefits automatically to UC. They also recommended that if a new claim was unavoidable that the Department pre-populates as much of the new UC claim as possible.

10.19 The Committee also felt that the Department should make the claiming process simpler, e.g., by removing the requirement for people to attend interviews to agree a Claimant Commitment or verify their identity when they have no work-related requirements.

10.20 The Government agreed to explore options.

Implicit Consent

10.21 The SSAC report recommended moving away from explicit consent in UC to one of implicit consent as its consultation identified that this was affecting the ability of welfare rights workers, family members and other advocates to help claimants during the claim process. To facilitate this, SSAC offered to work with the Department and other stakeholders to look at the possibility of introducing this and reporting back on the findings in March 2019.

10.22 The Government agreed to explore options in collaboration with SSAC.

Defective Claims

10.23 The Committee recommended that the Department removes from regulations the requirement that Transitional Protection cannot be applied to a subsequent UC claim if an initial managed migration claim was defective or incomplete. This was because they felt if a claimant was able to make a subsequent claim by the deadline day specified in their notification that Transitional Protection should be applied to their UC award.

10.24 The Government accepted this recommendation.

Alternative Methods of Claiming

10.25 The Committee recognised that digital inclusion is important and beneficial to claimants, but pointed out that there were still claimants who may not have reached the digital capability to make an online UC claim. Based on this, it recommended that the Department publicises what alternative methods were available for claiming UC, e.g., the option of making claims by telephone or via a home visit. It also suggested that if the Department identified claimants who were finding the digital process difficult, it should provide them with ongoing support to manage their digital UC claim.

10.26 The Government accepted this recommendation.

Mitigating the effect of missing the deadline

10.27 As part of the migration process, the Department proposed to terminate claimants' existing benefits if they do not make a new UC claim by a given deadline day, unless the deadline day is extended because the claimant satisfies one of the prescribed conditions which would allow backdating of the claim for up to one month. Although the Committee accepted that for some claimants there needed to be a trigger to prompt them to respond, they felt that the proposal as it stood transferred risks to claimants. It, therefore, recommended mitigating this risk by putting in place protection for those

who miss their deadline day and do not qualify for the one-month backdating criteria in UC. It, therefore, recommended that the Department explores the possibility of:

- (i) adopting the Tax Credit practice, by establishing a grace period after the existing benefit award had been terminated, where the claim for UC can be made without having to show good cause for backdating; or
- (ii) suspending payment of the existing benefit for a period pending receipt of the claim for UC, without terminating entitlement to the existing benefit so arrears of the benefit could be paid when they made the UC claim.

10.28 The Government accepted option (i), adopting the tax credit practice and providing for a one-month back dating period for all claimants who managed migrate to UC.

The period before the first payment of Universal Credit

10.29 The Committee felt that claimants who are reliant on benefits paid fortnightly should not bear a risk from the Government's policy that UC is paid monthly, because the choice it offered was between financial hardship while waiting for the first UC payment, or getting into debt with the Department, by requesting an advance payment.

10.30 As a result, the Committee recommended that the Department considers steps that it can take to support claimants before receipt of their first UC payment. SSAC's preference was to introduce an automatic, two-week run on for JSA(IB), ESA(IR) and IS, which would operate in the same way as the Transitional Housing Payment. If this was not possible, it recommended making the repayment terms for an advance more flexible than current arrangements.

10.31 The Government accepted this recommendation.

Transitional Protection

10.32 The Committee recognised that the Department had given careful consideration to its proposals on Transitional Protection. However, it felt that some aspects of the policy needed further thought. As a result, it recommended that rather than allowing access to full UC entitlement (including housing cost) for tax credit claimants with more than £16,000 in savings, these claimants should be barred from receiving housing costs in UC. This was because it felt that while Transitional Protection should ensure claimants do not receive less under UC than they receive under existing benefits, it should not allow them to receive more.

10.33 The Government rejected the recommendation.

Earnings and Transitional Protection

10.34 The Committee was also concerned about the treatment of claimants with fluctuating earnings who would lose Transitional Protection if their earnings take them off UC and they do not make a new UC claim within three months of its ending. The Committee, therefore, recommended that this period should be extended from three months to six.

10.35 The Government agreed to seek further evidence.

Publishing Worked examples

10.36 Finally, SSAC recommended that the Department should publish, ahead of the Parliamentary debates on the regulations, worked examples showing how the total

legacy amount is calculated for tax credit claimants who have had changes in circumstances (particularly in relation to earnings and patterns of working). This was to assure the Committee that the method of calculating this amount meets the commitment that there will be no cash losers for existing claimants when UC is implemented.

The Government accepted this recommendation in principle.

Social Security Advisory Committee Considerations

10.37 Although not part of the Committee's formal recommendations, a number of other aspects of the Departments proposals were commented on as the Committee thought that they merited further consideration.

Severe Disability Premium

10.38 The SSAC report welcomed the decision not to migrate claimants in receipt of the SDP if they had a change of circumstances, the payment to claimants who had already migrated to UC and lost SDP and arrears being paid in respect of this from the start of a claimants UC award. However, it felt that the payment on offer fell short of the level available via SDP within existing benefits. It also commented that:

- payment of the Enhanced Disability Premium was not included in the proposals for transitional payment even though this was not replicated in UC either;
- an element should be added to UC equivalent to the value of SDP and fulfilling a similar function; and
- the claimants in this group will be the least able to comply with the obligation to make a timely claim for UC and, therefore, are most in danger of missing out on Transitional Protection.

10.39 The Government has considered these comments and believe the current proposals offer a fair and balanced response to help provide additional financial support to what is a very specific group of claimants with distinctive needs.

Impact on the self-employed

10.40 The original regulations provided that where self-employed claimants were managed migrated to UC and found to be gainfully self-employed, they would be allowed a six-month 'grace period' before the MIF was applied to their UC award, regardless of how long they had been self-employed prior to managed migration.

10.41 The Committee felt that this period of time was too short and should be extended to 12 months instead. It also outlined its concerns with the application of the MIF itself and suggested that the Department undertakes a robust evaluation of the policy to establish whether it operates equitably, what effect it has on the self-employed themselves, and what effect it is having on business start-ups generally. SSAC also felt that this evaluation should also extend to the related tests of gainfully self-employment, which underpin the way in which the MIF operates.

10.42 The Government has changed its previous policy on this group of claimants and will now allow them to enter the 12-month Start-up period if they are managed migrated. From September 2020, this will also apply to those who naturally migrate to UC or who claim UC for the first time, including from those running a long-standing business, and those existing UC claimants who become gainfully self-employed.

There will be no retrospective application to those claimants already subject to the MIF.

Capital above £16,000 for former Tax Credit Claimants

- 10.43 The Committee commented on the Departments approach to the treatment of tax credit claimants with more than £16,000 in capital. It felt that it could be confusing to claimants and that the Department would find it difficult to explain the rules without inadvertently encouraging claimants to bring their capital below £16,000, which could mean they would fall foul of the deprivation of capital rules in UC.
- 10.44 The Committee also felt there was the possibility of inconsistent treatment as claimants with capital just over £16,000 that dips below that limit only to go above it again within the first year of UC entitlement would have their award terminated, whereas claimants with substantially more capital who experienced a similar dip, but not enough to bring them below lose the £16,000 limit, would continue to be entitled.
- 10.45 Following SSAC's comments, the Department agreed to explore the best way to communicate with claimants who will be managed migrated to ensure that they are aware of the deprivation of capital rules.

Loss of Transitional Protection

- 10.46 The Committee also commented on the fact that Transitional Protection would end if claimants formed a couple or separated and although SSAC felt that this was understandable in some cases, in others the loss of Transitional Protection may have adverse consequences e.g.
- deterring two single people on benefit from living together; or
 - deterring a claimant leaving an abusive relationship. In cases of domestic violence, SSAC felt that there were grounds to make an exception to the Transitional Protection rules; or
 - in the case of a couple where both partners were entitled to the SDP, if one partner suffered a deterioration in health that required admission into a residential care home, they would be considered as separate benefit households for UC purposes. In this scenario, the partner who remained at home would lose Transitional Protection of SDP.
- 10.47 As a result, the Committee felt there was scope for the Department to examine cases that seemed likely to emerge as a result of this rule and make provision for transferring Transitional Protection where it was justified.
- 10.48 The Department considered these comments, but believes it appropriate to end Transitional Protection when a claimant's circumstances no longer resemble those on which the original Transitional Protection calculation was made, i.e., it is no longer a like-for-like comparison. Therefore, Transitional Protection will end altogether if a claimant's circumstances change significantly.
- 10.49 Since, the consultation the Department wrote to SSAC in December 2018 regarding the re-laying of the Pilot regulations. The Committee decided that the regulations could proceed without the need for formal reference to SSAC. Nevertheless, the

Committee invited officials to attend the SSAC meeting in January¹⁵ to explore the proposals in the regulations in more detail and understand the work that had gone into the revised regulations.

- 10.50 The Department has since written to SSAC regarding the policy changes being made to transitional payments based on the recent High Court judgment. The Committee decided that the regulations could also proceed without the need for formal reference to SSAC.

Stakeholder engagement

- 10.51 The Department has representation from Local Government and Local Authorities (LAs) on its UC Programme Board. Their role on the board is to represent the services provided by LAs, and ensure that these are factored into any decisions, escalate risks, ensure that the design of UC is workable from a LAs perspective and ensure that the interests of LAs are properly represented and impacted.
- 10.52 As described in paragraphs 10.1 – 10.9, the Department carried out a formal consultation with LAAs on the draft regulations, which ran from 22nd June 2018 until 3rd August 2018. This gave LAs the opportunity to comment on plans for managed migration.
- 10.53 The Department held engagement events with LAs on natural migration to support rollout. In addition, the Department holds quarterly LA engagement events on UC. These provide valuable insight on issues, such as, the challenges that LAs face in supporting those in Temporary or Specified Accommodation, which were used to prompt positive changes in policy to protect the financial position of both claimants and LAs.
- 10.54 The Department also has existing consultation forums with the LAAs and LAs to consider UC and its impact on LAs as delivery partners for HB. There are three key groups that meet every six weeks, covering the strategic, operational and financial aspects respectively.
- 10.55 In addition to the above, the Department has three bespoke groups for landlords to discuss UC and related issues. These meet quarterly: one for Social Rented Sector landlords, one for Private Rented Sector landlords and one for Scottish Social Rented Sector landlords. Both of the Social Rented Sector meetings include Housing Associations. The Department has used these forums to design and test new tailored landlord products, such as a Landlord Portal¹⁶ and a new Alternative Payment Arrangement application process for payments of the UC housing element.
- 10.56 The Department will build on these existing forums and will continue to work closely with LAs and Housing Associations as managed migration proceeds.
- 10.57 As the Department moves forward with its detailed design for managed migration, it will continue its intensive work with a diverse range of external organisations in order to inform its approach to the managed migration process to ensure that claimants are supported to claim UC successfully.

¹⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/782301/ssac-minutes-jan-2019.pdf

¹⁶ The Landlord Portal enables social landlords to submit information directly to the Universal Credit online system, which supports timely and accurate payment of housing costs to Universal Credit claimants.

- 10.58 We have held three separate events with these organisations; October 2018, March 2019 and June 2019 to discuss the managed migration process, including: the timetable and approach; how the Department is preparing; the Department’s communications strategy; and perceived challenges.
- 10.59 Since the first event in October 2018, the Department has held a number of workshops and webinars with organisations including LAs, Housing Associations, third sector organisations with relevant insights and experience, focusing on three work streams: (1) Service Design; (2) the Delivery Model and (3) How we identify and support Vulnerable Claimants. A fourth session on Communication and Orientation is scheduled to take place later in 2019.
- 10.60 Stakeholders have used these sessions to inform the Department of the issues, concerns and opportunities that they saw as a result of moving claimants to UC. Stakeholders and officials have worked to plot this information onto a map of the UC service and formulate the concerns into a series of “problem statements” so that the Department and stakeholders can design solutions that meet the challenges together.
- 10.61 Ministers have also held a number of UC roundtables with stakeholders and employers. These forums and roundtables are used to share details of new changes with stakeholders to ensure that the Department has considered all the impacts.

11. Guidance

- 11.1 Comprehensive guidance is under development to support advisers and decision makers and will be published on the Department’s website before changes are implemented.

12. Impact

- 12.1 There is no direct impact on business, charities or voluntary bodies. However, the Department will be working with a number of civil society organisations in order to identify and support those claimants who might need extra help.
- 12.1 A full assessment was made of the impact of the introduction of UC and has been published.¹⁷ This covers information concerning the Departments obligations regarding its Equality Duty. On 7th June 2018, analysis was published in the “UC Programme Full Business Case Summary”¹⁸, which sets out the rationale for UC and outlines the expected employment impacts, economic case, and the value for money assessment. The Government has however, accepted in principle the recommendation of SSAC to publish an assessment of the impacts of managed migration.
- 12.2 A Regulatory Impact Assessment has not been prepared for this instrument because it has no direct impact on business or in relation to the impact on individuals, charities and the wider public sector.
- 12.3 The Department has concluded that no benefit recipient with a protected characteristic will be affected adversely because there are no adverse or disproportionate negative

¹⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220177/universal-credit-wr2011-ia.pdf

¹⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725477/uc-business-case-summary.pdf

impacts on equality and the Decision Makers are content that the need to advance equality has been considered appropriately.

- 12.4 The Department estimates that Transitional Protection will boost the income for over 900,000 households that would otherwise have a lower UC entitlement compared with their existing benefit entitlement at the point of transition. Because UC combines six different benefits, the most recent estimates show that around 700,000 households will receive entitlement to benefits that they were not claiming under the legacy system, worth, on average, £285 per month.
- 12.5 With regard to claimants with capital exceeding £16,000, it is estimated that around 35,000 claimants who are managed migrated will have capital in excess of £16,000. Analysis of the Office of National Statistics Wealth and Assets Survey found that as many as 80% of those with capital in excess of £16,000 will have over £20,000.
- 12.6 For those claimants who are receiving SDP, there will be about 40,000 claimants who will benefit from the protection afforded by the regulations.

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 continuing rollout of Full Service in this final phase will be closely monitored. We will continue to take a 'test and learn' approach and will start testing the managed migration process on a small scale from July 2019. The regulations limit the Government from issuing further migration once 10,000 awards of UC have been made to persons to whom a managed migration notice has been issued. Consequently, the Government will be required to revoke these regulations by means of a negative statutory instrument in order to continue managed migration.
- 14.2 The Department has committed to publishing a report assessing the impact of managed migration in the pilot phase.

15. Contact

- 15.1 Beatrice Fannon at the Department for Work and Pensions Telephone: 020 8970 7245 or email: beatrice.fannon@dwp.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 James Bolton, Deputy Director for Universal Credit, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Alok Sharma MP – Minister of State for Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.