EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (MANAGED MIGRATION) REGULATIONS

2018 No. [XXXX]

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 The regulations amend the Universal Credit (Transitional Provisions) Regulations 2014[1] ('the 2014 Regulations') and make some amendments to orders commencing provisions in the Welfare Reform Act 2012[2] and Universal Credit Regulations 2013[3].These amendments make provision to:

- introduce the process existing benefit[4] claimants will follow when they are managed migrated to Universal Credit (UC) by the Department (DWP);
- provide for payments to cover the gap between existing DWP benefits ending and the first payment of UC;
- allow for transitional protection (TP) to be considered, calculated, paid and administered for existing benefit claimants who, upon managed migration, would have a lower entitlement to UC than their total existing benefit awards;
- provide for a 12 month grace period so the Minimum Income Floor (MIF) will not apply to self-employed claimants who are managed migrated and, by September 2020, also not apply to natural migrants and all other new gainfully self-employed claimants;
- make provision so claimants who are receiving an existing benefit and are also in education, are able to meet the UC entitlement conditions when they manage migrate to UC;
- introduce a 'Gateway Condition' so that claimants who are receiving income-related Employment and Support Allowance (ESA(IR)), income-based Jobseeker's Allowance (JSA(IB), Income Support (IS) or Housing Benefit (HB) with a Severe Disability Premium (SDP) included in their award will not claim UC if they need to make a new claim for support, but will remain on existing benefits; and
- introduce 'SDP transitional payments' for those eligible claimants who have already lost the SDP as a result of moving to UC through natural migration by providing an ongoing monthly payment, and an additional lump-sum payment to cover the period since they moved.

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[1] http://www.legislation.gov.uk/uksi/2014/1230/contents/made
[2] http://www.legislation.gov.uk/ukpga/2012/5/contents/enacted
[3] http://www.legislation.gov.uk/uksi/2013/376/pdfs/uksi_20130376_310515_en.pdf
[4] Income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit and tax credits.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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)

3.2 The territorial application of this instrument includes Scotland.

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. Separate 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 The Minister of State for Employment, Alok Sharma, has made the following statement regarding Human Rights:

"In my view the provisions of The Universal Credit (Transitional Provisions) (Managed Migration) Amendment Regulations 2018 are compatible with the convention rights."

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, HB, Working Tax Credit and Child Tax Credit.

6.2 The UC (Transitional Provisions) Regulations 2013[5] came into force on 29th April 2013 and provided for the introduction of UC to limited categories of claimant. 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 DWP's 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 UC (Managed Migration) Regulations 2018 add provision to the UC (Transitional Provisions) Regulations 2014 to provide for the planned migration of all existing benefits claimants to UC.

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[5] http://www.legislation.gov.uk/ukdsi/2013/9780111531549/contents

7. Policy background

What is being done and why?

Migration Process

7.1 The regulations make provision to notify claimants who are receiving existing benefits, advising them 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 certain claimants require more time, e.g. someone who is vulnerable or has complex needs.

7.2 Although the notification will give a deadline day to make a new UC claim, this can be extended if the claimant contacts DWP before that day and they 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 DWP 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.

7.3 Provided that the existing benefit claimant (and their partner, if they have one) makes 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 (TP) 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.

7.4 If the claimant contacts the DWP after the deadline day but before the "final deadline" within one month of their existing benefits ending their UC claim will automatically be backdated to the deadline day and transitional protection will be applied to the UC award.

7.5 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 person or a different couple. This may be because of a change of circumstances. It may also be because UC and existing benefits have slightly different definitions of what constitutes a couple, meaning that some claimants who are in receipt of an existing benefit as a couple will be treated as single claimants in UC.[6]

7.6 This will always be the case where the existing benefits have treated them as a polygamous marriage (i.e. a unit of three) because 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 day if no UC claim is made. Therefore, provided that the UC claim is made on or before the deadline day, or after the deadline day 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.

7.7 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

[6] See regulation 3 of the UC Regulations 2013.

safeguard the efficient administration of UC; or if it is in the interests of any claimant or class of claimant.

7.8 Housing Benefit claimants moving to UC under the managed migration process will be eligible to receive HB for the first two weeks of their UC award, in line with those claimants who migrate to UC because of a change of circumstances. As well as making amendments so the two week HB "run-on" can apply to managed migration claimants, 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.

7.9 Like the HB "run-on" 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 the day before the deadline date, if the claimant fails to comply with the managed migration process.

7.10 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 the award.

7.11 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 are able to finalise and terminate the tax credits award if the claimant moves to UC during that time.

7.12 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 (TE)

7.13 The regulations provide that claimants who have formed a couple or separated at the point they make a new UC claim; or are a member of a polygamous marriage who is treated as a single claimant under UC legislation, do not qualify for TP.

7.14 Transitional protection will primarily be provided in the form of a transitional element (TE). This TE will be calculated by comparing the total amount of all existing benefits the claimant has been awarded with the total amount of UC 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.

7.15 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.

7.16 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.

7.17 Where a claimant is subject to the benefit cap the regulations provide that the total amounts of existing benefits and UC used in the TE calculation cannot be above the benefit cap.

7.18 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 TE), despite their earnings remaining the same. Regulation 55(1)(b) therefore provides for a mechanism to ensure that the TE is not incorrectly eroded in this circumstance.

7.19 Where the total amount of existing benefits is greater than the indicative UC amount, the TE will be equal to the difference between the two amounts will be awarded. 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 TE 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].

7.20 A claimant who is a lone parent and who has one child and is in receipt of IS, CTC and HB. On the day before they make their UC claim, they are entitled to:

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

7.21 These are then turned into monthly amounts as follows:

CTC daily rate	£9.11 x 365 ÷ 12 =	£277.09
IS weekly amount	£73.10.x 52 ÷ 12 =	£316.77
HB weekly rate	£225 x 52 ÷ 12 =	£975.00
Total monthly legacy amount		**£1,568.86**

7.22 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**

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

and the two are compared to see whether TE needs to be applied to the UC award. In this case no TE is awarded because the claimant would not receive less UC i.e. less that £1,568.86.

7.23 Once TE has been applied to the UC award, it is treated the same as other elements once the award is calculated and deductions are applied. This means that when earnings are applied to the award, TE will not permanently reduce if a claimant's earnings have temporarily increased.

7.24 Once TE has been calculated, regulations allow for it to be revised or superseded and the result applied to the new UC claim or UC award only 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 the claimant had misrepresented their circumstances, or failed to report a change of circumstances they were required to report; or where a decision on a previous existing benefit award had been revised following an upheld appeal.

7.25 The regulations also allow for TE to be eroded by an increase in the second or subsequent assessment period of another element included in the UC award, or when a new UC element is added to the UC award. An illustrative example of how this would work is below.

7.26 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
TE	£100.00
Total monthly UC indicative amount	**£1,901.57**

7.27 However, in an assessment period after TE has been awarded they report that their rent has increased by £25 to £1,000. Based on this, their UC is adjusted as follows:

Child Element	£277.08 + £231.67
Standard Allowance	£317.82
Housing Element	£1000.00
TE	£75.00
Total monthly UC indicative amount	**£1,901.57**

7.28 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 be correspondingly reduced from their TP award.

7.29 The regulations also provide for circumstances where the TE will end. The circumstances are where:

- there is a sustained drop in earnings for more than three months to a level below the Administrative Earning Threshold (AET) in UC[8] where the

[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/uksi/2013/376/pdfs/uksi_20130376_310515_en.pdf

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 TE will be re-applied to the new UC award. This is to ensure that claimants who are not paid monthly do not lose TE as a result of their monthly UC assessment period periodically encompassing an extra payday.

Transitional Protection – transitional capital disregard

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

7.31 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.

7.32 A claimant makes a claim for UC as part of the managed migration process and has capital above £16,000 disregarded. As a result, they can be awarded UC, but will have any capital in excess of £6,000 and up to £16,000 treated as yielding an income of £4.35 per month for each complete £250 over £6,000. The capital deduction is therefore £10,000 ÷ £250 x £4.35 = £174.

7.33 The claimant's award of UC would be:

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

Self-employment and the Minimum Income Floor

7.34 Where self-employed claimants are managed migrated to UC and are found to be 'Gainfully Self-Employed' (GSE), they will be allowed to enter the 12 month Start-Up period and will not have the MIF[10] applied to their UC award until this period has ended, regardless of how long they have been self-employed prior to managed migration.

7.35 This also includes benefit claimants who are self-employed who when managed migrated were not GSE when they made their UC claim, but were found to be GSE 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 TE) would be reduced

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

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

accordingly.

7.36 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, plus 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

7.37 Where claimants are receiving an existing benefit and are also in education,[11] but would not meet the UC entitlement conditions when they migrate, the regulations treat them as having met those conditions so they can make a claim for UC and be entitled to TP if applicable. This exemption would last until the course that they were attending ends.

Discretionary hardship payments

7.38 The regulations also make provision so discretionary hardship payments can be made to claimants who are being managed migrated to UC.

Claimants in receipt of severe disability premium (SDP)

7.39 Regulations have been included to support the transition for those individuals who are in receipt of the SDP in JSA(IB), IS, HB or ESA(IR). Claimants receiving the SDP are likely to lose in monetary terms if they need to claim UC following a change of circumstance that results in the need to make a new claim for support. Claimants moving to UC because of this – as a "natural migration" – are not eligible for TP. The regulations provide that these claimants will no longer naturally migrate to UC, but will remain on their existing benefits or be able to claim another existing benefit instead.

7.40 The regulations also make provision so that eligible claimants who have already naturally migrated to UC will be considered for 'SDP transitional payments'. This will be an ongoing monthly payment, and an additional lump-sum payment to cover the period since they moved to UC. The monthly payments are based broadly on the amount of SDP that the claimant was receiving prior to migration, and are a flat rate of:

- £280.00 a month for claimants not in the UC Limited Capability for Work and Work-Related Activity (LCWRA) group (i.e. the broad monthly equivalent of the lower rate SDP at £64.30 a week); or
- £80.00 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. Basically, the additional amount by way of the LCWRA element is taken into account against the extra payments offered by the additional protection.
- £360 a month where joint claimants were receiving higher rate SDP in their existing benefits

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

- £280 a month where joint claimant are not receiving the LCWRA component in UC
- £80 a month where joint claimants are receiving the LCWRA component in UC

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

- ensures that the additional transitional payment is restricted to cases which are still entitled to UC. This is because cases who have ceased to be so 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 the claimant migrated naturally to UC, has 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 case remained on legacy 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 the managed migration cases, thereby providing a continuity of treatment.

7.42 There is also a check as to whether:

- the claimant (or partner) has, since natural migration, got a carer who recieves 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 main qualifying benefits for SDP, such as Disability Living Allowance or Personal Independence Payments.

7.43 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 legacy benefits, SDP would not have ceased.

7.44 As with TP, the additional transitional payment will end where a UC claimant forms a couple or separates from their partner or where entitlement to UC ends. Finally, these payments will eventually be converted into TP once the managed migration process begins. Once these payments have been converted to TP, they will be subject to the rules associated with TP and will erode or end in certain circumstances.

7.45 Finally, the regulations allow the transitional payment to be backdated to the point the claimant 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 could be substantial, provision has been made so any lump sum payment can be disregarded in UC for a duration of the UC award, or 12 months, whichever is longer.

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 (DWP) undertook a consultation on these regulations with the Local Authority Associations (LAs) between 22nd June and 3rd August 2018. By the end of this consultation period the DWP had 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.

10.3 COSLA also suggested that DWP 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 successfully complete a UC application and are left with gap in support for their housing costs.

10.4 All LAs 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 for these claimants to navigate and access the UC new claim process. They also highlighted the importance that UC could play as part of this process especially if access to this was in advance of the UC claim being made.

10.5 In terms of vulnerability the LAs felt the responsibility should not be just on the claimant to identify their own vulnerability and that DWP 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 the claimant 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.

10.7 The LAs also stated how crucial communications and support for claimants was during the run up to them being asked to migrate to UC especially as some of the claimants being migrated would have had minimal engagement with the LA for a number of years. London Councils suggested DWP should consider means of communication beyond standard letters to utilise increased engagement especially if a claimants mobile number is available so a text could be sent or by using more eye catching forms of physical communication, such as postcards. They also felt that 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 to not apply TP 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 TP.

All the LAs that responded said that the roll out schedule for managed migration will have a big impact on future burdens on LAs so they are keen see more detail of the Department's plans and that the role LAs will be needed to play in the managed migration process will need to be clarified. They pointed out that LAs are ideally placed to support claimants in moving to UC and so DWP should include them as key delivery partners.

Social Security Advisory Committee Recommendations

10.9 The Department also presented the draft regulations to the Social Security Advisory Committee (SSAC) who took the regulations on formal reference. The Committee undertook a public consultation on these proposals between 22 June and 20 August 2018. The Committee's report made several recommendations which are summarised below.

Operational Readiness

10.10 The Committee urged DWP to ensure that it was operationally ready to manage migrate claimants to UC. They therefore recommended that DWP make an assessment of how effectively UC was currently operating and its readiness, based on publically defined criteria, for the managed migration process to begin. They also recommended that DWP work closely with LA's, Housing Associations and other organisations to develop the detailed design of this process.

10.11 As the managed migration process will start by testing the approach with small numbers of claimants they 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 adjustments can made to the policy, process or the support on offer before the majority of claimants are managed migrated to UC.

10.12 From the point of view of communications SSAC recommended that DWP explore and test 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. They also highlighted the importance of claimants with disabilities receiving information in the format that they need.

10.13 The Government accepted this in principle.

Publishing an Impact Assessment

10.14 The SSAC report recommended that DWP publish an impact assessment, by the end of March 2019, setting out the impact 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. They also recommended that an action plan for mitigating the effects of any adverse impacts identified be published alongside the assessment.

10.15 The Government accepted this in principle.

Transferring Claims

10.16 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 which should underpin the managed migration exercise was that the risk should rest with the State rather than the individual.

10.17 As a result they highlighted that DWP 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 DWP conduct and publish 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 DWP pre-populate as much of the new UC claim as possible.

10.18 They also felt that DWP should make the claiming process simpler, e.g. by removing the requirement for people to attend Claimant Commitment or identity interviews where there are no work-related requirements.

10.19 The Government agreed to explore options.

Implicit Consent

10.20 The SSAC report also recommended moving away from explicit consent in UC to one of implicit consent as their 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 DWP and other stakeholders to look at the possibility of introducing this and reporting back on the findings in March 2019.

10.21 The Government agreed to explore options in collaboration with the Social Security Advisory Committee.

Defective Claims

10.22 The Committee also recommended that DWP remove from regulations the requirement that TP not be applied to a subsequent UC claim if an initial managed migration claim was defective. This was because they felt if a claimant was able to make a subsequent claim by the deadline day specified in their notification that TP should be applied to their UC award.

10.23 The Government accepted this recommendation.

Alternative Methods of Claiming

10.24 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 they recommended that DWP publicise what alternative methods were available for claiming UC e.g. the option of making their claim by telephone or via a home visit. They also indicated that where DWP had identified a claimant was finding the digital process difficult, that they should be provided with ongoing support to manage their digital UC claim.

10.25 The Government accepted this recommendation.

Mitigating the effect of missing the deadline

10.26 As part of the migration process DWP proposes to terminate a claimant's 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 which will prompt them to respond, however they felt the proposal as it stands again transfers risks to claimants. They therefore recommended mitigating this risk by putting in place protection for those who miss their deadline day and who do not qualify for the one month backdating rule in UC. They therefore recommended that DWP 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.

10.27 The Government accepted option (i) adopting the Tax Credit practice.

Gap to the first payment of Universal Credit

10.28 The Committee also felt that claimants who may be completely reliant on benefits paid fortnightly, should not bear the risks of the Government's policy that UC be paid monthly because the choice it offered was between financial hardship as they waited for their first payment, or getting into debt to DWP by requesting an advance payment.

10.29 As a result they recommended that DWP review what steps it can take to mitigate the effects of this. Their preference was to introduce an automatic run-on of two weeks for JSA(IB), ESA(IR) and IS in the same way HB currently does. If this was not possible they recommended making the repayment terms for an advance more flexible than current arrangements.

10.30 The Government accepted this recommendation.

Transitional Protection

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

10.32 The Government rejected the recommendation.

Earnings and Transitional Protection

10.33 They were also concerned about the treatment of claimants with fluctuating earnings who would lose TP if their earnings takes them off UC and they do not make a new UC claim within three months of it ending. Instead they recommended that this should be for a six month period.

10.34 The Government agreed to seek further evidence.

Publishing Worked examples

10.35 Finally, SSAC recommended that DWP 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 changes in circumstances (particularly in relation to earnings and patterns of working). This was to assure them that the method of calculating this amount meets the commitment that there will be no cash losers for existing claimants when UC is implemented.

10.36 The Government accepted this recommendation in principle.

Social Security Advisory Committee Considerations

10.37 Although not part of the Committee's formal recommendations, they did comment on a number of other aspects of DWP's proposals which they thought merited further consideration.

Severe Disability Premium

10.38 The SSAC report welcomed the decision not to migrate claimants in receipt of the Severe Disability Premium (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, they felt that the payment on offer fell short of the level available via SDP within existing benefits. They 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 as well;
- an element should to be added to UC equivalent to the value of SDP fulfilling a similar function;
- the cohort of claimants in this group will be the least able to comply with the obligation to make a timely claim for UC and therefore most in danger of missing out on TP.

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 proposed that where a self-employed claimant was managed migrated to UC and are found to be GSE, that they would be allowed a six month 'grace period' before the MIF was applied to their UC award, regardless of how long they have been self-employed prior to managed migration.

10.41 The SSAC report felt that this period of time was too short and should be 12 months instead. It also outlined its concerns with the application of the MIF itself and suggested DWP undertake a robust evaluation of the policy so it could determine whether it operates equitably, what effect it has on the self-employed themselves, and what effect it is having on start-ups generally. They also felt that evaluation should extend to the related tests of GSE 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 those who are naturally migrated to UC or otherwise claim UC for the first time, including from those running a long-standing business, plus 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 DWP's approach to the treatment of tax credit claimants with more than £16,000 in capital. They felt it could be confusing to claimants and that DWP would find it difficult to explain the rules effectively 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 They also felt there was the possibility of inconsistent treatment as a claimant with capital just over £16,000 who dips below that limit, only to go above it again within the first year of UC entitlement, would have their award terminated whereas a claimant with substantially more capital and having a similar dip, but not enough to bring them below lose the £16,000 limit, would continue to be entitled.

10.45 Based on SSAC's comments DWP will 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 They also commented on the fact that TP would end if claimants form a couple or separate and although they felt that this was understandable in some cases that in others, the loss of TP may have adverse consequences e.g.:

- deterring two single people on benefit from living together; or
- deterring a claimant leaving an abusive relationship. In respect to cases of domestic violence they felt there were grounds to make an exception to the TP rules; or
- in the case of a couple where both partners were entitled to the SDP, if one partner suffers a deterioration in health which requires admission into a residential care home they become separate benefit households for UC purposes. Under these proposals the partner still at home would lose TP of their SDP. The same would be true if one of the partners died.

10.47 As a result they felt there was scope for DWP to examine the hard cases that seem likely to emerge as a result of this rule and make provision for transferring TP where it is justified.

10.48 The Department has considered these comments but believe it appropriate to end TP when a claimants circumstances are no longer recognisable to those on which the original TP calculation was made i.e., it is no longer a like-for-like comparison. Therefore, TP will end altogether if a claimant's circumstances change significantly.

Stakeholder engagement

10.49 The Department has representation from Local Government on its Programme Board.

Their role on the board is to represent the services provided by Local Authorities, and ensure these are factored into any decisions; escalate risks, ensure that the design of Universal Credit is workable from a Local Authorities perspective and ensure the interests of Local Authorities are properly represented and impacted.

10.50 The Department carried out a formal consultation with Local Authority Associations on the draft regulations, which ran from 22nd June 2018 until 3rd August 2018. This gave Local Authorities the opportunity to comment on our plans.

10.51 The Department has held engagement events with Local Authorities on Natural Migration to support roll out. In addition, the Department holds quarterly Local Authority engagement events on Universal Credit. These provide insight, for example the issues Local Authorities face with supporting those in Temporary or Supported Accommodation were used to prompt positive changes in policy to protect the financial position of both customers and Local Authorities.

10.52 It has existing consultation forums with the Local Authority Associations and Local Authorities to consider Universal Credit and its impact on Local Authorities as delivery partners for Housing Benefit. There are three key groups that meet six weekly covering the strategic, operational and financial aspects respectively.

10.53 In addition to the above, the Department has three bespoke groups for landlords to discuss Universal Credit 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 the of the Social Rented Sector meetings include Housing Associations. The Department have used these Forums to design and test new tailored landlord products such as the landlord portal and a new Alternative Payment Arrangement application process.

10.54 The Department will build on these existing forums and will continue to work closely with Local Authorities and Housing Associations as we proceed with managed migration.

10.55 As the Department moves forward with its detailed design for managed migration, it will continue its intensive work with the range of external organisations that support claimants in order to help identify and resolve any issues they may face.

10.56 An event was held with over 70 stakeholders in October to discuss the managed migration process, including: the timetable and approach; how we are preparing; our communications strategy; and perceived challenges. This event is the beginning of on-going engagement on managed migration with future workshops planned to support continued collaborative working.

10.57 The initial four workstreams will focus on: (1) how we create a successful claimant experience, exploring how we understand our claimants and their needs; (2) how we deliver that experience, including what role delivery partners and external organisations might play in migration; (3) how we communicate and engage with claimants, engaging effectively with different types of claimants; and (4) how we identify and support our most vulnerable claimants.

10.58 These workstreams will take place over the course of the Autumn and invitations will be extended to those organisations that attended the October event including Local Authorities, Housing Associations, third sector organisations as well as other organisations with relevant insights and experience. These workstreams will form only the initial iteration of our collaboration with stakeholders and we envisage several further iterations as we move into exploration of more detailed issues.

The Department runs a number of forums which have wide representation from external organisations. The Department's Ministers have also held a number of Universal Credit roundtables with stakeholders and employers. These forums and roundtables are used to share with stakeholders details of new changes to ensure we have 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 DWP website before changes are implemented.

12. Impact

12.1 There is no impact on business, civil society organisations or the public sector. 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.

12.2 The Department has concluded that no benefit recipient with a protected characteristic will be affected because there are no adverse or disproportionate negative impact on equality and the Decision Makers are content that the need to advance equality has been considered appropriately.

12.3 A full assessment has been made of the impact of the introduction of UC and has been published.[12] This also covers information concerning DWP's obligations regarding its Equality Duty. The Department has also agreed to publish an assessment of the impacts of managed migration prior to increasing the scaling of managed migration.

12.4 The Department estimates Transitional Protection will boost over 900,000 households incomes, who would otherwise have a lower UC entitlement compared to their existing benefit entitlement at the point of transition. Because it is simpler the most recent estimates show that around 700,000 households will get entitlements they were not claiming under the legacy system, worth on average £285 per month.

12.5 In respect of 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 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.

12.1 The concessions for those receiving SDP in ESA(IR), JSA(IB), IS and HB will benefit 35,000 claimants who would otherwise migrate naturally to UC and the ongoing transitional payment for former SDP claimants who have already moved to UC will benefit *c*. 7,000 claimants we expect to have moved by December 2018.

12.2 About 500,000 current SDP recipients, who maintain their entitlement to SDP, will receive protection as they move to UC, either through this measure or the existing transitional protection arrangements.

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

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 roll out 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 this process on a small scale from July 2019 with the intention to increase volumes to full operational capacity a year later.

15. Contact

15.1 Beatrice Fannon at the Department for Work and Pensions Telephone: 020 8970 7245 or email: beatrice.fannon@dwp.gsi.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.