

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (STATE PENSION AGE CLAIMANTS: CLOSURE OF TAX CREDITS) (AMENDMENT) REGULATIONS 2024

2024 No. 611

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 His Majesty.

2. Declaration

- 2.1 Jo Churchill, Minister of State for Employment at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Andrew Latto, Deputy Director, Devolution, Pensioner Benefits and Carer's Allowance, at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 David Eaton at the Department for Work and Pensions Telephone: 0300 086 5787 or email: PATC.MigrationPolicy@dwf.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 The tax credit service is due to close in April 2025. This instrument amends various pieces of social security legislation to provide for the transfer of people over State Pension age in receipt of Working Tax Credit and/or Child Tax Credit to Universal Credit or Pension Credit as appropriate, with transitional protection to prevent a reduction in benefit entitlement for eligible claimants at the point of transfer.
- 4.2 This instrument also removes the limit on the number of children that may be included in the calculation of an award of Housing Benefit for people over State Pension age.

Where does the legislation extend to, and apply?

- 4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Scotland and Wales, except for regulations 1 and 3 which also extend to Northern Ireland.¹
- 4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Scotland and Wales, except for regulations 1 and 3 which also apply in Northern Ireland.

¹ The Department for Communities in Northern Ireland will be bringing forward corresponding provision, apart from regulation 3, for Northern Ireland.

5. Policy Context

What is being done and why?

- 5.1 As part of the Government’s reform of the welfare system, six “legacy” benefits, including Working Tax Credit (WTC) and Child Tax Credit (CTC) are being abolished and replaced by Universal Credit (UC).² It will not be possible to renew a tax credit award beyond tax year 2024-25, so all remaining tax credit awards will need to have ended by 6 April 2025. Ministers set out the planned timetable for completing the move from tax credits in 2024-25 on 25 January 2024.³ Ministers have given commitments that eligible claimants who move to UC under the process known as “managed migration” and whose circumstances are otherwise unchanged should not see a reduction in benefit entitlement at migration.⁴
- 5.2 Around 28,600⁵ households⁶ with a current tax credit award include a person over State Pension age. Of these, around 13,100 are already in scope for managed migration to UC because they are “mixed-age” couples – couples where one partner is below, and the other is above, that age.
- 5.3 This leaves approximately 15,500 pensioner households (single pensioners or couples, both of whom are over State Pension age) who would, without intervention, see a reduction in income from April 2025 when their tax credit award ended. The Government’s objectives for these households are to provide a smooth transition to the benefit that is most appropriate to their present circumstances – either UC or Pension Credit (PC) depending on their working status – and, in line with the commitments given in respect of working-age households, to ensure that eligible households do not see a reduction in benefit entitlement at the point of transfer, irrespective of which benefit they move to.
- 5.4 Although PC is designed for the needs of most low-income pensioners it is not intended to provide support for those in work. Net earnings above £5 a week for single pensioners or £10 for couples in most cases reduce entitlement penny for penny. UC in contrast is designed to reward work through the earnings taper which reduces entitlement only at the rate of 55 pence in the pound. Additionally, for those with limited capability for work or responsibility for one or more children, only earnings above a work allowance⁷ affect entitlement.
- 5.5 Accordingly, around 10,900 working pensioner households – those entitled to WTC, or WTC and CTC, including any receiving only CTC because their income has reduced the WTC element to nil – will receive a notice (a “migration notice”). This will inform them that their tax credit award will be closed and they should apply for UC to continue receiving support. Around 3,700 households entitled only to CTC and not already entitled to PC (see paragraph 5.6) will be sent a notice (a “tax credit closure notice”) informing them of the closure of their tax credit award and that they should apply for PC.

² The other benefits are Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance and Housing Benefit for people below State Pension age.

³ <https://questions-statements.parliament.uk/written-statements/detail/2024-01-25/hcws213>

⁴ See for example: <https://questions-statements.parliament.uk/written-statements/detail/2018-06-07/hcws745>

⁵ <https://www.gov.uk/government/statistics/child-and-working-tax-credits-statistics-provisional-awards-december-2023> See main data tables, table 3.1. 28,600 includes around 1,300 in Northern Ireland (data provided by His Majesty’s Revenue and Customs).

⁶ “Household” in this document refers to a single claimant or a couple, with or without dependent children.

⁷ From April 2024, the work allowance is £673 a month, or where housing costs are included in the UC assessment, £404.

- 5.6 Some 1,400⁸ households are currently entitled to Pension Credit (PC) and tax credits. These households will also receive a tax credit closure notice which will inform them of the date their tax credit award is to close, and that their PC award will be adjusted. Almost all in this group, which includes around 600 “protected” mixed-age couples (see paragraph 5.22), are in receipt of Child Tax Credit (CTC). To minimise disruption for those entitled to Working Tax Credit (WTC) and PC, they will remain on PC rather than be directed to claim Universal Credit (UC).
- 5.7 The notices will be issued over a period of around four months, starting in July 2024.

Pensioner tax credit households moving to Universal Credit

- 5.8 Provision for the issue of migration notices, the calculation, erosion and termination of transitional protection and the termination of the legacy benefit award is contained in Part 4 of The Universal Credit (Transitional Provisions) Regulations 2014⁹. Given the small size of the pension-age tax credit cohort, a key aim has been to avoid significant redesign of UC (or PC). These provisions will therefore apply unchanged to pension-age households who move to UC, apart from the modifications explained in the following paragraphs.

Notification to apply for Universal Credit

- 5.9 As for working-age claimants managed-migrated to UC, the migration notice sent to pensioner households entitled to WTC will tell them they should apply for UC by a specified date, which will be a minimum of three months from the date the notice is issued. The deadline may be extended where there is good reason to do so (for example, because the person is in hospital and unable to make a claim at that time) and the notice may be cancelled if issued in error. The migration notice and a claim for UC will be the gateway to transitional protection.¹⁰ If a pensioner opts not to claim UC, their tax credit award will still end when the deadline in the notice is reached. If they miss the deadline but claim UC no more than a month later, they can still be considered for transitional protection.
- 5.10 The migration notice provisions are amended to allow the deadline in a migration notice that is re-issued after the original notice was cancelled to be for less than three months. This may be needed in some cases to ensure migration can be completed before the tax credit service closes on 6 April 2025. A minimum period is not specified in legislation, but the intention is that the new deadline will never be earlier than the deadline in the original notice. This will also apply where a tax credit closure notice (intended for pensioner households moving to PC) is issued in error and replaced with a migration notice. The notice provisions are also amended to allow a migration notice that has been issued in error to a person who should have been directed to PC to be treated as a tax credit closure notice, with the original deadline for claiming. This provides an alternative to cancelling the migration notice and issuing the correct notice where it is more expedient due to time pressures to do so.

⁸ As at December 2023. Indicative data provided by His Majesty’s Revenue and Customs.

⁹ <https://www.legislation.gov.uk/ukxi/2014/1230/contents>

¹⁰ Transitional protection consists of a transitional element (TE) to make up the difference between the UC award and legacy benefit award at migration if the UC award would otherwise be less. The TE is reduced by the amount of any increase in, or new award of, other elements. If capital at migration exceeds the normal £16,000 limit for entitlement to UC the excess is ignored for 12 months (the “transitional capital disregard”).

Waiver of the upper age limit

- 5.11 A person cannot normally qualify for Universal Credit (UC) if they have reached State Pension age unless they are a member of a mixed-age couple. In order to allow pensioner households who will be sent a migration notice to move to UC, the upper age limit will be removed for this group of pensioners.
- 5.12 The waiver will end if any of the circumstances that terminate transitional protection applies. These are where a single person forms a couple, a couple ceases to be a couple, the claimant stops work, or their earnings fall below a specified threshold for three consecutive assessment periods¹¹ (but see paragraph 5.15). It will not automatically cease to apply if transitional protection ends only because increases in other elements have reduced it to nil, but it will also end if the pensioner at any point decides they no longer want to stay on UC and claims Pension Credit (PC). Once the waiver ends this will end the UC award as the age condition will no longer be met.

Minimum earnings threshold

- 5.13 Working-age claimants on UC are subject to work-related requirements if they are not working or they are earning below a minimum threshold, unless they are exempt from conditionality for other reasons. If they are self-employed but earning less than the equivalent of the national minimum wage¹² for the number of hours per week they would normally be expected to work, they can be treated as having earnings at that level (this is known as the minimum income floor, or MIF).
- 5.14 In contrast, pensioners who move to UC will not have any work-related conditions or gainful self-employment test applied to them so this potentially means that they could remain on UC with transitional protection even on low or reducing earnings. To prevent this, an earnings threshold for single pensioners and pensioner couples moving to UC will be introduced. The threshold is set at the value of 16 hours per week employment at the national minimum wage converted to a monthly amount and will apply to both employed and self-employed earnings. This aligns with the minimum hours requirement for entitlement to Working Tax Credit that would have applied to these pensioner households prior to migration.
- 5.15 If earnings drop below this threshold for three consecutive months, the pensioner will no longer be considered to be working. This will terminate transitional protection and the UC award. They may then be eligible for PC and if they are in rented accommodation, pension-age Housing Benefit (PAHB). There will be a 12-month “grace period” before entitlement could be affected, meaning that only earnings in month 10 onwards will count towards the three month “test”. This aligns the treatment of self-employed pensioners with working-age self-employed claimants who migrate to UC, who are not subject to the MIF for the first 12 months.

Exemption from the benefit cap

- 5.16 The benefit cap is a limit on the total amount in welfare benefits a working-age household can receive and is applied through UC and working-age Housing Benefit. As it is intended to incentivise work, it does not apply if household earnings in the assessment period equal or exceed a set threshold.¹³ Exemptions also apply to households receiving certain disability benefits or benefits for carers.

¹¹ An assessment period is a period of one month starting on the day of the month on which the UC award began.

¹² £11.44 per hour for a person aged 21 or over, from 1 April 2024.

¹³ £793 a month from 1 April 2024.

- 5.17 The cap does not ordinarily apply to people over State Pension age as they are not subject to work-related requirements, so it does not apply in Pension Credit (PC) or pension-age Housing Benefit (PAHB). Whilst Universal Credit (UC) is the more appropriate benefit for working pensioners moving from tax credits, they will not have work-related conditions applied to them, in line with the no conditionality principle in place for other people of the same age. These pensioner households will therefore be exempt from the cap.
- 5.18 The benefit cap will still apply to pensioners in a mixed-age couple claiming UC unless otherwise exempt, whether as part of the migration cohort or not, as work-related conditionality applies to the working-age partner. In practice, the effect will be limited as State Pension does not count towards the benefit total.

Disregard of notional income from unclaimed pension

- 5.19 Unlike in tax credits, in UC and PC where a claimant has reached State Pension age but has not applied for their state or non-state pension, the unclaimed pension is deducted as notional income in the calculation of the award. Applying the existing rules at the point of migration from tax credits would force pensioners in this position to make a decision about when to take their pension earlier than they may have planned and any award, including any transitional protection, would be reduced, potentially to nil, soon after migration.
- 5.20 In order to smooth the transition and allow time to make considered financial decisions, the notional income rule will not be applied for 12 months from the start of the UC award. This is consistent with the 12-month disregard of capital over £16,000 for claimants migrated from tax credits (where capital is also ignored) who would otherwise be excluded from UC and access to transitional protection. If the pensioner claims their pension before the end of the 12 months, it will be taken into account as normal. If the UC award ends after less than 12 months due to a temporary increase in earnings and the claimant then requalifies for UC within three months, any remaining months of the disregard period will apply from the start of the repeat claim. This aligns with the way the 12-month capital disregard rule applies.
- 5.21 The rules that prevent a pensioner from building up an increase to their State Pension or a lump-sum payment while drawing another social security benefit will still apply. As a consequence of pensioners moving to UC, amendments are needed to the regulations¹⁴¹⁵ that deal with deferral for people who reached State Pension age before 6 April 2016. The amendments close a gap that would otherwise enable a single pensioner deferring their pre-2016 State Pension to build a deferral “reward” whilst claiming UC. Legislation already prevents this for couples deferring pre-2016 State Pension and for both single pensioners and couples deferring State Pension for those who reached State Pension age on or after 6 April 2016¹⁶. This ensures deferred State Pension is treated the same way for all pensioners migrated from tax credits.

“Protected” mixed-age couples

- 5.22 From 15 May 2019, both members of a couple must have reached State Pension age to be eligible for PC or PAHB. The only exception to this rule applies to mixed-age couples (MACs) who were entitled to PC or PAHB on 14 May 2019 and who have at all times remained entitled to one or other benefit since then (“protected” MACs). For consistency with the overall policy, protected MACs who are currently receiving

¹⁴ <https://www.legislation.gov.uk/ukxi/1979/642/contents>

¹⁵ <https://www.legislation.gov.uk/ukxi/2005/453/contents>

¹⁶ See regulation 11 of <https://www.legislation.gov.uk/ukxi/2015/173/contents>

Working Tax Credit (WTC) and pension-age Housing Benefit (PAHB) will be sent a migration notice to apply for Universal Credit (UC) if they are not already in receipt of Pension Credit (PC). This will end the PAHB award, either on claiming UC or when the deadline day is reached without a claim, so the provisions that exempt mixed-age couples from the 2019 change¹⁷ are amended by separate instrument (see section 6) to enable them to re-apply for PAHB and apply for PC following the end of the UC or PAHB award.

Pensioner tax credit households moving to, or in receipt of, Pension Credit

- 5.23 The provisions introduced by these regulations for the issuing of notices, closure of the tax credit award and the calculation, erosion and termination of transitional protection largely mirror the provisions that apply to claimants who move to UC, except where differences between the destination benefits require a different approach. As with the changes to accommodate pensioner households on UC, the aim has been to avoid major re-design of PC for this very small group of claimants.

Notices and closure of tax credit awards

- 5.24 These regulations amend The Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019¹⁸ (the “2019 Order”) to provide for tax credit closure notices and the closure of tax credit awards.
- 5.25 The new provisions define which pensioners can be sent a tax credit closure notice. These are pensioner households entitled to Child Tax Credit (CTC) only; “protected” mixed-age couples entitled to PAHB and CTC only who are eligible to claim PC; and pensioners entitled to any tax credit who are already in receipt of PC. The tax credit closure notice will be a requirement for entitlement to transitional protection in PC.
- 5.26 Provisions corresponding to those that apply in respect of migration notices for UC (see paragraphs 5.9 and 5.10) will also apply, as will the flexibility to treat a tax credit closure notice issued in error to a claimant entitled to WTC as if it was a migration notice.
- 5.27 For claimants already in receipt of PC, the notice period may be for less than three months to take account of the fact that the transition will be more straightforward because they will not need to apply for a new benefit. The intention is that they should be given not less than two months’ notice of the closure of their tax credit awards, and this will be reflected in guidance for staff.
- 5.28 The tax credit award will end on the day before the person claims PC if they do so on or before the deadline day specified in the notice, or otherwise on the day before the deadline day. This aligns with when tax credit awards terminate for those who are sent a migration notice for UC. For those already entitled to PC it also will end on the day before the deadline day.
- 5.29 As amended, the 2019 Order will also enable His Majesty’s Revenue and Customs to finalise the tax credit award after it has been terminated instead of waiting until the end of the tax year as would normally be the case. This will mean any under or overpayments in respect of the award for the period from the start of the tax year up to when the award is ended can be determined without delay.

¹⁷ <https://www.legislation.gov.uk/uksi/2019/37>

¹⁸ <https://www.legislation.gov.uk/uksi/2019/167>

Disregard of notional income from unclaimed pension

- 5.30 These regulations amend the State Pension Credit Regulations 2002¹⁹ (the “SPC Regulations”) to disregard notional income from an unclaimed state or non-state pension where a person moves from tax credits to Pension Credit (PC), in line with the equivalent provision for Universal Credit (UC) (see paragraph 5.20). As PC is a weekly benefit, the disregard will apply for the first 52 weeks of the award following migration, or until that award ends or the pension income is claimed, if sooner.

Transitional protection in Pension Credit

- 5.31 These regulations insert new provisions in the SPC Regulations to provide for transitional protection. These provisions largely correspond to the provisions for transitional protection in UC. The main exception is in relation to the treatment of capital. In UC, capital over the normal £16,000 upper limit for entitlement to UC is ignored for 12 months for claimants managed-migrated to UC to enable them to qualify for transitional protection. This is not needed in PC as there is no fixed upper limit. Instead, capital over £10,000 is assumed to provide an income of £1 for every £500 above that amount. This income will be taken into account in calculating entitlement to any transitional protection.
- 5.32 To be eligible for transitional protection, the person must have been issued with a tax credit closure notice. They must also be entitled to Child Tax Credit (CTC) on their “migration day” – i.e. the day before the day on which the tax credit award ends (see paragraph 5.28). Existing PC claimants who are in receipt of Working Tax Credit (WTC) will not need to be considered for transitional protection as the termination of the WTC, which is taken into account as income in PC, will be offset by an equivalent increase in the PC award.
- 5.33 Claimants not already entitled to PC must also have claimed PC by no later than the last day of the month starting on the deadline day in their notice.
- 5.34 Transitional protection will not be considered if the claimant’s status as a single person or member of a couple is not the same for PC purposes when they make their claim as it was for tax credit purposes when the notice was issued. Where this is because a single person has become a member of a couple or a couple are no longer a couple, this would be a change that would end the tax credit award so transitional protection on moving to PC would not be applicable. Where the difference in status is due to a difference in the rules (for example, in relation to when a couple living apart can still be treated as a couple) transitional protection will not apply because it would not be possible to make a meaningful comparison between the tax credit award and the PC award.
- 5.35 Transitional protection will be based on a comparison between the representative weekly amount of the CTC award as it stands on the last day of that award, and an indicative weekly PC amount based on the person’s circumstances on the same day. For pensioners already claiming PC, the comparison will be between the tax credit award plus their current PC award and the indicative PC amount.
- 5.36 The indicative PC amount will be based on the assumption that the person is responsible for any children or young persons included in the CTC award and on the amount of any earned income used to calculate that award, adjusted for tax and National Insurance where applicable, to provide a like-for-like comparison. This is

¹⁹ <https://www.legislation.gov.uk/uksi/2002/1792>

needed as some claimants entitled to Child Tax Credit (CTC) could be working but below the minimum weekly hours requirement for Working Tax Credit (WTC).

- 5.37 Unlike in CTC, in Pension Credit (PC) the number of children that may be included in an award is not limited to two. If the two-child limit has been applied in CTC, the indicative calculation will include an amount for those children or young persons, plus (in line with normal PC rules) amounts for any additional children or young persons for whom the claimant is treated as responsible. Where the tax credit award is in respect of a child or young person for whom the claimant would not be treated as responsible under normal PC rules, a child addition will be included in the indicative calculation to give a like-for-like comparison for the purposes of calculating any transitional protection, but not in the actual award. This prevents PC being payable for a child in circumstances in which, for any other claimant, no amount would be awarded, such as the child or young person living abroad or in local authority care.
- 5.38 If there is a shortfall between the indicative PC amount and the CTC amount (plus existing PC award if applicable), transitional protection, in the form of an extra amount called a Transitional Additional Amount (TAA), will be included in the PC award.
- 5.39 Where there is a shortfall, it is likely to be due to the level of the claimant's income, as a claimant may have gross annual income of almost £20,000 (equivalent to around £356 a week after tax) before CTC starts to be reduced. In comparison, net weekly income of around £295 would remove entitlement to PC for a pensioner entitled only to the standard rate for a single claimant and the rate for a child born before 6 April 2017, based on April 2024 rates. However, it could also arise where the tax credit award includes an amount for a disabled child. This is because the addition for a disabled child in PC is around £44 per week less than the corresponding CTC element. This difference may be offset if the claimant qualifies for the carer addition (which has no equivalent in tax credits) when they move to PC. The carer addition (£45.60 a week) may apply if the child or young person is entitled to a qualifying disability benefit and the claimant is providing care for 35 hours a week or more and qualifies for a carer benefit.²⁰
- 5.40 The TAA will be reduced by the amount of any increase (such as at annual up-rating) in any of the other components that make up the total PC award before income is deducted. If the person becomes entitled to another component, for example, a carer addition, it will be reduced by the amount of that component. Once it has been reduced to nil the TAA cannot be reinstated.
- 5.41 The TAA will also no longer apply if a couple separates or one partner dies, or a single person becomes a member of a couple, as this would mean their circumstances were now significantly different from when they moved to PC and their tax credit award, had it continued, would also have ended. As transitional protection in PC will only apply in respect of the former CTC award, the TAA will also end once the person ceases to be treated as responsible for all children or young persons for whom they were receiving CTC at the time of migration.
- 5.42 The purpose of the transitional protection is to smooth the transition to the new benefit rather than permanently protect the pre-migration position; accordingly, if entitlement to PC ends before the TAA has been reduced to nil or withdrawn, it will not be

²⁰ Qualifying disability benefits are the middle or highest care rate of Disability Living Allowance or Child Disability Payment, or, for young persons aged 16 or over, the daily living component of Personal Independence Payment or Adult Disability Payment. Benefits for carers are Carer's Allowance or Carer Support Payment.

reinstated on a subsequent claim. The only exception will be where the original award ends solely because the claimant has moved from Northern Ireland (NI) to Great Britain (GB). Provision for this already exists for claimants entitled to transitional protection in Universal Credit (UC) through regulations which provide for reciprocal arrangements for claimants moving between NI and GB.²¹

- 5.43 The Transitional Additional Amount and the Pension Credit (PC) award can be redetermined if, following migration, it is subsequently found that the representative rate of the Child Tax Credit (CTC) award was incorrect because of misrepresentation or non-disclosure of information by the claimant, official error, or where a change affecting the rate of CTC had been notified to His Majesty's Revenue and Customs before the migration day but was not processed until afterwards.

Time for claiming and part-week payments

- 5.44 In PC, a claim may be backdated for up to three months, provided the claimant would be entitled from the earlier date. When a claimant in the migration cohort claims PC, the tax credit award will be closed. As it cannot be closed retrospectively, backdating would create an overlap between the PC claim and tax credit award, requiring double-handling to first determine whether there is PC entitlement for the overlap period, then a further assessment to calculate transitional protection and a revised award. To avoid the additional processing time and complexity this would entail, claimants moving from tax credits to PC will not be able to backdate the start of their PC claim. This means a claim for PC will not start until the tax credit award has ended, in line with UC where the tax credit award ends on the day before the UC claim starts. Potentially, some claimants could miss out on up to three months' PC if they would have been eligible before their tax credit award ended and transitional protection became available. However, they will have had the opportunity to claim at any point prior to migration. In April 2022, the Government launched a campaign to raise awareness of PC and encourage take-up and has continued to run an extensive communication campaign to promote PC.
- 5.45 As PC is normally only payable from the first complete benefit week following the date on which the claim is made, these regulations also provide for part-week payments to bridge any gap between the end of the tax credit award and the start of the first benefit week.

Removal of the two-child limit in pension age Housing Benefit

- 5.46 As noted at paragraph 5.37, the two-child limit does not apply in PC, but it does apply in pension-age Housing Benefit (PAHB) and CTC. Claimants entitled to the Guarantee Credit part of PC²² qualify for maximum eligible Housing Benefit less deductions for any adult non-dependants in the household, so this only affects claimants who are not in receipt of Guarantee Credit. In practice, there are very few PAHB claimants who currently see a reduction in their benefit as a result of the policy. Once those in receipt of CTC are moved to PC the policy will become largely redundant. Accordingly, these regulations remove the two-child limit, which, as well as removing provisions which are mainly redundant, will ensure parity between PAHB and PC.

²¹ <https://www.legislation.gov.uk/ukxi/2020/677/contents/made>

²² The Guarantee Credit is the core part of PC which provides an income top-up where a person's other income is below the level specified in the PC regulations for their circumstances. For people who reached State Pension age before 6 April 2016 PC can also include "Savings Credit" if their income is above a certain amount. Savings Credit may be payable with Guarantee Credit or on its own.

What was the previous policy, how is this different?

- 5.47 The overarching policy to close tax credits along with the other legacy benefits and replace them with Universal Credit (UC) has been in place since 2012. It was always the intention that pensioners on tax credits would be asked to move from tax credits to a Department for Work and Pensions benefit once the migration of working-age claimants to UC was nearing completion. These regulations implement that policy.
- 5.48 In relation to the amendment of the pension-age Housing Benefit (PAHB) regulations, previously, the policy was to apply the same restrictions on the number of children that could be included in the calculation of an award of housing benefit for pensioners as applied in Child Tax Credit (CTC). While in practice the previous policy had only a limited effect, the closure of tax credits also meant the policy needed to be reviewed. Under the current policy, all children or young persons for whom the claimant is responsible and who live with the claimant are included in the assessment for PAHB, ensuring a consistent approach across both the pensioner benefits (Pension Credit (PC), where no such restriction applies, and PAHB).

6. Legislative and Legal Context

How has the law changed?

- 6.1 The Welfare Reform Act 2012²³ provided for the introduction of UC and the abolition of legacy benefits, including tax credits. The Universal Credit (Transitional Provisions) Regulations 2014²⁴ provide for the transition to UC, including the closure of legacy benefit awards. Regulation 2 of this instrument amends those regulations to enable those provisions, with modifications, to extend to Working Tax Credit claimants over State Pension age (see paragraphs 5.8 to 5.21).
- 6.2 Regulation 3 amends The Welfare Reform Act (Commencement No. 32 and Transitional Provisions) Order²⁵ which abolished tax credits from 1 February 2019 apart from awards for existing claimants, to provide for the issue of tax credit closure notices and the closure of the tax credit awards for those moving to, or in receipt of, PC (see paragraphs 5.24 to 5.29). Regulation 4 amends The State Pension Credit Regulations 2002²⁶ to provide for transitional protection, where applicable, for these claimants, and modify the rules on the treatment of unclaimed pension income for those moving to PC (see paragraphs 5.30 to 5.43).
- 6.3 Regulation 5 modifies the rules on the time limit for claiming PC and when payment on a new claim begins, to restrict backdating and allow part-week payments for claimants who move to PC (see paragraphs 5.44 and 5.45).
- 6.4 Regulations 6 and 7 amend, respectively, The Housing Benefit (Persons who have reached the qualifying age for state pension credit) Regulations 2006²⁷ to remove the two-child limit (see paragraph 5.46), and The Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979²⁸ and The Social Security (Deferral of Retirement Pension) Regulations 2005²⁹ to ensure the existing policy preventing a person from being able to build up State Pension deferral benefits while claiming

²³ <https://www.legislation.gov.uk/ukpga/2012/5/contents>

²⁴ <https://www.legislation.gov.uk/uksi/2014/1230/contents>

²⁵ <https://www.legislation.gov.uk/uksi/2019/167>

²⁶ <https://www.legislation.gov.uk/uksi/2002/1792>

²⁷ <https://www.legislation.gov.uk/uksi/2006/214/contents>

²⁸ <https://www.legislation.gov.uk/uksi/1979/642/contents>

²⁹ <https://www.legislation.gov.uk/uksi/2005/453/contents>

another benefit is maintained in respect of single pensioners who move to Universal Credit (UC) (see paragraph 5.21).

- 6.5 As a consequence of changes made by these regulations, The Welfare Reform Act 2012 (Commencement No. 31 and Savings and Transitional Provisions and Commencement No. 21 and 23 and Transitional and Transitory Provisions (Amendment)) Order 2019³⁰ which implemented the rule change for mixed-age couples (see paragraph 5.22) is amended by The Welfare Reform Act 2012 (Commencement No. 31 and Savings and Transitional Provisions) (Amendment) Order 2024³¹ to allow the exemption from the change to continue to apply to mixed-age couples whose entitlement to pension-age Housing Benefit (PAHB) ends on moving to UC. The amendments also enable PAHB to be re-claimed where the award is terminated in line with normal UC processes because no claim for UC has been made by the deadline day specified in the migration notice.

Why was this approach taken to change the law?

- 6.6 With the exception of the change made by regulation 5, the changes made by this instrument are made by way of amendments to existing legislation as they modify or supplement existing provisions, and, in the case of the amendments made by regulations 2, 4, 6 and 7, will have ongoing effect. Regulation 5, which deals with the time limit for claiming Pension Credit (PC) and the initial payment following a claim by a person moving to PC, is a freestanding regulation rather than an amendment to the principal regulations because it applies to a finite number of claims during the 2024-25 tax year only.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 Formal consultation on the measures relating to the transfer of pensioners claiming tax credits to a Department for Work and Pensions benefit has not been undertaken as they form part of the overall exercise to close and replace tax credits, which has been the subject of extensive consultation and testing. The Department however held informal discussions on the proposals with a range of external advice organisations, representatives of the social rental sector and local authorities. The Department continues to engage with these organisations through its regular stakeholder forums in order to address any issues that arise. An information pack that will include details of the operational processes for transferring these pensioner households to UC or PC will also be provided to stakeholders.
- 7.2 The Department presented the draft Regulations to the Social Security Advisory Committee on 13 March 2024. The Committee did not take the regulations on formal reference.
- 7.3 The Department has a statutory duty to consult on amendments to Housing Benefit regulations with the Local Authority Associations (LAAs). The LAAs had no comments on the proposed amendments.

³⁰ <https://www.legislation.gov.uk/ukxi/2019/37/made>

³¹ S.I. 2024/604 (C. 38)

8. Applicable Guidance

- 8.1 Guidance for staff and decision makers in the Department for Work and Pensions^{32 33} (DWP) and for local authority staff administering Housing Benefit, will be updated both internally and on gov.uk as these regulations come into force.
- 8.2 Information for advice organisations and stakeholders will also be made available at the same time, as part of the Department’s communications activity.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because these Regulations have no, or no significant impact on the private, voluntary or public sector.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector because the transfer to DWP benefits of the pension-age tax credit caseload will be undertaken by the Department utilising established processes and within existing resources.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 There are no plans to formally review the impacts of these regulations and the instrument does not include a statutory review provision. The Department will continue to assess how the measures are delivered and take action as required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).

³² <https://www.gov.uk/government/collections/decision-makers-guide-staff-guide>

³³ <https://www.gov.uk/government/publications/advice-for-decision-making-staff-guide>