HOUSE OF LORDS

Secondary Legislation Scrutiny Committee
(Sub-Committee B)

8th Report of Session 2017–19

Proposed Negative Statutory Instruments under the European Union (Withdrawal) Act 2018

Includes 3 Recommendations

Draft Universal Credit (Managed Migration) Regulations 2018

Includes 3 Information Paragraphs on 5 Instruments

Ordered to be printed 4 December 2018 and published 6 December 2018

Published by the Authority of the House of Lords

HL Paper 244

Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Withdrawal Act 2018.

And, to scrutinise –

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Rt Hon. Lord Cunningham of Felling (Chairman)	Rt Hon. Lord Janvrin	Lord Sherbourne of Didsbury
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Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Sub-Committee's Reports are published on the internet at http://www.parliament.uk/seclegbpublications

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at http://www.legislation.gov.uk/uksi

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Paul Bristow (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

Information and Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

Eighth Report

PROPOSED NEGATIVE STATUTORY INSTRUMENTS UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

Instruments recommended for upgrade to the affirmative resolution procedure

Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018

Date laid: 20 November 2018

Sifting period ends: 5 December 2018

1. The purpose of these draft Regulations, laid by the Department for Environment, Food and Rural Affairs (Defra) as a proposed negative, is to address deficiencies in retained EU legislation in relation to the identification of horses and other equines, including by so-called 'horse passports' and microchips. Defra says that the instrument is needed to ensure that the current system can operate effectively after EU exit, supporting high standards of equine biosecurity, enforcement, food safety, fraud prevention, animal welfare and trade.

2. The Explanatory Memorandum states that the proposed changes will not have any significant impact but refers to a Technical Notice on 'taking horses abroad if there's no Brexit deal' which suggests that there could be further costs to owners who wish to take a horse to the EU, if additional blood tests are required as part of the export certification process. The Technical Notice puts these extra costs at £200 to £500, depending on the third country animal health risk category the UK is placed in after leaving the EU. In addition, the Technical Notice explains that equines entering the EU from the UK would have to pass through a Border Inspection Post in an EU Member State. The Department estimates that these changes would affect about 42,000 equine movements between the UK and the EU per year.

3. While Defra emphasises that the additional costs and administrative requirements would not be a result of the instrument itself but of a 'no deal' withdrawal from the EU, the Committee nevertheless is of the view that the instrument highlights the considerable impact that a 'no deal' withdrawal from the EU could have in this area, and that the House may wish to debate some of these issues. **We therefore recommend that this instrument should be subject to the affirmative resolution procedure.**

International Waste Shipments (Amendment) (EU Exit) Regulations 2018

Date laid: 22 November 2018

Sifting period ends: 10 December 2018

4. Shipments of notified waste[1] between the UK and other EU Member States (of which England exported just under four million tonnes to the EU in 2017)

1 Notified waste comprises hazardous wastes, mixed municipal wastes, mixtures of wastes and wastes which are destined for disposal. Non-notifiable wastes, mainly non-hazardous wastes such as paper or plastic destined for recycling, does not require prior approval from the UK regulators before shipment.

are subject to a procedure of prior notification and consent according to rules set out in EU Regulations.[2] This proposed negative instrument will continue to implement the UK's obligations as a party to the Basel Convention[3] and as a member of the Organisation for Economic Cooperation and Development, and it will also retain the EU control regime for waste shipments on exit day. The Commission has indicated in a notice to stakeholders (published on 8 November 2018) that those notifications, which currently apply past 29 March 2019, will no longer be valid on exit day, but it has set out a process to reapprove existing notifications. The Department for Environment, Food and Rural Affairs has explained that the UK's competent authorities (the Environment Agency, the Scottish Environment Protection Agency, the Northern Ireland Environment Agency and Natural Resources Wales) have written to their counterparts in other Member States to agree that the process of waste shipments would continue as normal after exit. Of the 533 letters written to date, 61 responses have indicated an agreement to roll-over. However, if an EU competent authority does not agree to roll-over an existing notification, new consents will need to be approved for those shipments to continue and, as this may have an impact on the UK's ability to export notifiable waste, the House may expect the opportunity to debate this instrument. **We therefore recommend that this instrument should be subject to the affirmative resolution procedure.**

Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2018

Date laid: 22 November 2018

Sifting period ends: 10 December 2018

5. These draft Regulations, laid as a proposed negative by the Department for Environment, Food and Rural Affairs (Defra), seek to address deficiencies in retained EU legislation in relation to the control and eradication of transmissible spongiform encephalopathies (TSEs), such as BSE, and the use, disposal, placing on market and import of animal by-products.

6. While the Explanatory Memorandum states that the instrument only proposes minor amendments and no policy changes, one of the proposed amendments would have the effect of removing a statutory duty to ensure staff of competent authorities have appropriate education and training in relation to TSE checks. The Department told us that it would not be appropriate to impose such a duty on the relevant national authorities in the UK when current EU funding will no longer be available for this after exit, and that it would be a disproportionate duty, given that there are now only very occasional cases of BSE and the further distance in years since the introduction of the ban on feeding meat and bone meal to ruminants. Defra said that the relevant national authorities would be better placed to decide whether staff training was useful.

7. The control and eradication of TSEs is an important and sensitive policy area. The Committee is of the view that the proposed amendment risks giving the impression that control measures in this area are being weakened, and that this could potentially undermine UK meat exports after exit. Given these

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2 Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, (OJ L 190/1, 12 July 2006)

3 On the Control of transboundary Movements of Hazardous Wastes and Their Disposal.

concerns, the House may expect the opportunity to debate the proposals. **We therefore recommend that this instrument should be subject to the affirmative resolution procedure.**

Proposed Negative Statutory Instruments about which no recommendation to upgrade is made

- Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018
- Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018
- CRC Energy Efficiency Scheme (Amendment) (EU Exit) Regulations 2018
- Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018
- Environmental Impact Assessment (Amendment) (Northern Ireland) (EU Exit) Regulations 2018
- Equine Identification (England) (Amendment) (EU Exit) Regulations 2018
- Marine Environment (Amendment) (EU Exit) Regulations 2018
- Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2018

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Universal Credit (Managed Migration) Regulations 2018

Date laid: 5 November 2018

Parliamentary procedure: affirmative

These Regulations, laid by the Department for Work and Pensions (DWP), provide for the transfer into Universal Credit of the nearly 3 million people who are currently receiving benefits under the "legacy" system of different benefits and tax credits, each of whom will be required to reapply for their benefit. Although the Explanatory Memorandum provides information on the individual regulations, it fails to set out the broader context and timetable in which they will operate. This Report provides additional information and raises questions put by a number of expert organisations: Child Poverty Action Group, Mind, SCOPE and the Trussell Trust. Our correspondence with the Secretary of State is published at Appendix 1.

Although we believe DWP's motives for taking the flexible approach outlined are well-intentioned, there is a wide degree of concern that current plans for the migration process are rather too vague and aspirational. ***It seems therefore that DWP may have acted prematurely in seeking such extensive powers*** *and we suggest that it would be better for DWP just to seek legislative cover for the pilot, which it, in any event, describes as a distinct phase. Information from that exercise could then be used to reassure the House of DWP's operational capacity and the welfare of the transferred claimants, before further powers to migrate the main group are granted.* ***We take the view that the House has been given insufficient detail to make an informed decision on DWP's proposals. The House may wish in particular to press the Minister further for justification of the Secretary of State's assertion that the various elements are "inextricably linked"****.*

The House may also wish to press the Minister on whether DWP may be attempting too many changes at once *by wishing to combine a changeover from fortnightly to monthly payments for some, with a complete reassessment of all claimants' needs and a data cleansing operation. A National Audit Office report has already raised concerns about the DWP's ability to run the programme as it currently stands. The large number of unknowns, and the particular difficulty and risks involved in transferring three quarters of a million very vulnerable claimants to Universal Credit, cause concern about the welfare of this group, particularly if, as it currently appears, they are expected to survive the changeover period on less money than they need. DWP's reliance on repayable advances to bridge any gap does not take account of the long-term hardship subsequent deductions can cause. DWP is initiating these changes but it is the claimant that bears all the risk if their income is interrupted.* ***Transitional arrangements should ensure not just that migrated claimants are paid the correct amount for each benefit week but also that the pattern of payments during the changeover period does not force them into hardship or debt.***

These Regulations are drawn to the special attention of the House on the ground that they may imperfectly achieve their policy objective.

8. These Regulations have been laid by the Department for Work and Pensions (DWP) with an Explanatory Memorandum (EM) and a report from the

Social Security Advisory Committee (SSAC).[4] They enable the Department to move those who are currently receiving benefits under the old "legacy" system of different benefits[5] and tax credits into the new system of Universal Credit, a process described as "managed migration".[6]

9. Although the EM provides information on the effect of individual regulations, it does not set out the broader context, how many people will be affected or any timetable. Additional information was therefore requested from the Secretary of State for Work and Pensions, the Rt Hon. Amber Rudd MP, and her letter of 26 November 2018 is published as an Appendix to this Report (Appendix 1).

10. We have also received submissions from four expert organisations ("the submissions"): the Child Poverty Action Group, Mind, SCOPE and the Trussell Trust. Their submissions are published in full on the Committee's publications webpage.[7] DWP's responses to issues raised in their submissions are set out in this Report and in Appendix 2.

11. No formal Impact Assessment has been provided. Given the numbers of people affected by the Regulations and the costs, we find this disappointing.

The scope and broad plan

12. DWP is approaching the mid-way point in the roll-out of Universal Credit. Since May 2016, Universal Credit "full service" has been rolled out by postcode and by December 2018 will be in every job centre nationwide. From the beginning of 2019, all new benefit claims made should be for Universal Credit. DWP estimates that there were 1.2 million people on Universal Credit in September 2018 due to "natural migration" and that this figure will rise to 2 million by April 2019 at a growth rate of 150,000 a month.

13. DWP estimates that around 2.09 million households involving 2.87 million individuals will be subject to "managed migration", each of whom will be required to reapply for their benefit. Table 1 shows the broad categories:

Table 1: Breakdown of claimants being managed migrated to Universal Credit by existing benefit group

Existing Benefit	Number	Percentage
Job Seekers Allowance (JSA only / JSA & CTC and/or HB)	39,000	2%
Employment and Support Allowance (ESA only/JSA & CTC and/or HB)	745,000	36%

4 Social Security Advisory Committee (SSAC), *The Draft Universal Credit (Managed Migration) Regulations 2018* (5 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753731/print-ready-draft-universal-credit-managed-migration-regulations-2018-report.pdf [accessed 5 December 2018]. The SSAC Report makes a number of recommendations that are referred to in the EM at paras 10.9 to 10.48.

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

6 In contrast, "natural migration" concerns people who make a new claim for universal credit due to a change in circumstances (such as losing a job).

7 SLSC Sub-Committee B publications page: https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee-sub-committee-b/publications/ [accessed 5 December 2018]. .

Existing Benefit	Number	Percentage
Income Support (IS only / JSA & CTC and/or HB)	119,000	6%
Child Tax Credit (CTC only / CTC & HB)	395,000	19%
Working Tax Credit + Child Tax Credit (WTC & CTC only / WTC & CTC &HB)	620,000	30%
Working Tax Credit (WTC only/WTC+HB)	102,000	5%
Housing Benefit (HB only)	72,000	3%
Total	2,092,000	101% (rounded)

Source: Social Security Advisory Committee (SSAC), The Draft Universal Credit (Managed Migration) Regulations 2018

14. Of particular concern, illustrated by examples in the submissions, are the 745,000 Employment and Support Allowance (ESA) claimants, many of whom are especially vulnerable people on long-term benefits who would not otherwise need to make a new claim and may struggle to do so.

15. The Regulations include a safeguard, called Transitional Protection, which may be paid to existing benefit claimants who would otherwise receive less money on migration to Universal Credit than under their existing benefits. DWP estimates that around 900,000 households will be paid Transitional Protection and that it will cost over £3 billion over a period of five years.[8]

16. The Regulations also provide, in most cases, for a two-week "run-on" payment of existing benefits intended to cover the gap between the legacy benefits ending and the first payment of Universal Credit.

Support to claim

17. The submissions we received highlight a number of groups who need significant support in making a benefits claim. These include those with disabilities, full-time carers, those who are illiterate or do not have good English, and those without access to a computer. Home visiting and telephone support from DWP officials is described in the submissions as "patchy and can involve long waiting times", resulting in increased demand for assistance from organisations such as Citizens Advice. We therefore asked what additional resource DWP intends to invest to support claimants.

18. DWP replied:

> "Currently 99% of claims are made online and support is already provided through Universal Support to help people make and manage their claims … On 1 October [2018], the Department announced a new partnership with Citizens Advice to provide Universal Support from April 2019 for those moving to Universal Credit. The support scheme will help claimants through every step of making a Universal Credit claim. It will offer people comprehensive and practical support. In addition, we have also been engaging with a large number of stakeholders on the

8 Secretary of State's response to question 9 in her letter of 26 November 2018 which provides a breakdown of the anticipated spending over the next five years (see Appendix 1).

managed migration process and additional support that would need to be offered to claimants during this process."

19. In her letter, the Secretary of State added: "This pilot is not to test the operational readiness of Universal Credit. The regulations represent fixed Government policy on managed migration. The testing phase, however, will test the processes that support managed migration and what can be adjusted to ensure that claimants are given the right support to be able to claim Universal Credit successfully."[9]

Impact on local authorities and charities

20. In her letter, the Secretary of State asserted: "The Regulations do not impose any additional regulatory burdens, costs and obligations on business, social enterprises, individuals and community groups in the sense of the Better Regulation Framework."[10] We found this surprising.

21. Although the Regulations do not impose direct obligations on local authorities and charities, the submissions and the SSAC Report indicate the significant support those making new claims for Universal Credit need from local authorities and charities, and also concerns about future demand for their services.[11]

22. A National Audit Office (NAO) report ("the NAO Report"), published in June 2018, stated that local organisations which support claimants had reported additional costs and that, since DWP has not systematically collected data on the wider costs, the Department would have no means to assess the full monetary impact of Universal Credit.[12] **The House may wish to press the Minister for more thorough information about the wider effects of implementing Universal Credit.**

Dates and piloting

23. The Regulations have several commencement dates:

- The first, 16 January 2019, puts in place the Severe Disability Premium (SDP) "gateway", which will prevent claimants who are receiving SDP from migrating naturally to Universal Credit. Those claims will be held back to the "managed migration" phase to ensure that they receive Transitional Protection, which will be of financial advantage to them (see Appendix 2).
- From 22 July 2020, the two week "run-on" of legacy benefits will be introduced for the main migration phase.
- From 23 September 2020, there will be a 12-month exemption from the minimum income floor for new claimants (this relates specifically to the self-employed).

24. DWP has separately announced that "managed migration" testing will begin in July 2019, that they will take on larger volumes from 2020 onwards, and complete the process in 2023: "We will begin with small-scale testing to

9 Response to question 2.
10 Response to question 10.
11 See also para 10.8 of the EM.
12 National Audit Office, *Rolling out Universal Credit (HC 1123)* (15 June 2018): https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit-Summary.pdf [accessed 5 December].

ensure that the process works well, before the volume of migration increases. No more than 10,000 people will be migrated in 2019".[13]

25. DWP states that the Regulations provide the framework for the managed migration process, but that there is flexibility on how this is to be delivered. A key feature of the piloting phase will be working with stakeholders. The EM sets out the four initial work streams that DWP will be focusing on:[14]

> "(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."

26. We welcome DWP's stated intention to continue discussions with stakeholders and to pilot the arrangements before migrating the bulk of the existing claimants. **It is not clear to us, however, whether DWP should be seeking provision to enable implementation of the whole of the "managed migration" programme when so many practicalities appear to be unresolved. The House may wish to invite the Minister to provide further justification.**

Capacity

27. Not only is the "managed migration" a significant undertaking in its own right, but it will happen alongside natural migration and the routine running of Universal Credit for millions of existing claimants. We note that the Regulations include a contingency provision to defer the start date of Universal Credit for up to a month from the day the claim is made so that DWP can manage its own staff resources.[15] In supplementary material to the Committee, DWP has stated that this will be used sparingly.

28. The NAO Report, published in June, had already raised questions about DWP's capacity to manage the roll-out of Universal Credit. This was before the addition of the "managed migration" programme. The NAO Report said: "The Department must now ensure that the programme does not expand before business-as-usual operations can deal with higher claimant volumes, and must learn from the experiences of claimants and third parties". **The House may wish to press the Minister for reassurance about DWP's capacity to undertake this major extension of the programme.**

Issues raised by submissions

The "hard stop"

29. The submissions express concern about "the hard stop", that is the potential for existing benefit payments to be stopped if a new claim for Universal Credit is not made by the allotted deadline. Regulation 44 makes provision

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13 Social Security Advisory Committee, *The Draft Universal Credit (Managed Migration) Regulations 2018*, p 113.

14 Para 10.56 of the EM.

15 Para 7.12 of the EM.

for the issue of a Migration Notice that requires a claimant on legacy benefits or tax credits to make a new Universal Credit claim by a specified day. Regulation 46 states that if this is not done within three months all benefits will terminate automatically.

30. We asked DWP why the Department had not chosen to use current provision that enabled it to convert existing claims for legacy benefits automatically into Universal Credit, rather than putting claimants at risk of receiving no money at all. The Secretary of State responded:

> "There are a number of reasons why we are not automatically transferring claims:
>
> - Universal Credit is a digital service. We must ensure that claimants can start using the digital service from day one. This should also help claimants understand that they are on a new benefit with a different regime. This is particularly important for vulnerable claimants.
> - We need better quality of data than on legacy. It must be accurate and up-to-date to avoid transferring errors from legacy benefits. There is also more data that we need, which legacy does not hold. The best way to ensure that we have all the right data is by producing our own.
> - We know claimants are currently not getting all the entitlements they are eligible for on legacy. Requiring claimants to make a new Universal Credit claim will ensure that people will not miss out on any entitlements (£2.4bn additional going to 700,000 families who currently don't take up their full entitlement).
> - When we have done this before, we got it wrong. We pre-populated benefit systems as part of the IB to ESA conversion and have been criticised since for missing claimants' entitlements. We are not going to do that again.
>
> Nevertheless, we have said that we will use existing decisions or verification to make aspects of the process easier. For example, if a claimant has an existing Work Capability Assessment decision, they will not be required to have another assessment in order to get the disability additions of Universal Credit. Where a Tax Credit claimant has already verified their identity, in order to make and maintain their Tax Credit claim, we may be able to reuse this digital registration to the benefit of the claimant. Also, for claimants who do not have any work-related requirements, we already operate a digital claimant commitment acceptance process and we will carry that forward as part of the managed migration process. This will mean a significant number of claimants will not need to attend a face-to-face interview."[16]

31. The submissions welcome the modifications that DWP has made following consultation, including taking a discretionary power to grant an extension to prevent a claimant's benefits being stopped "where there is good reason to do so" (Regulation 45). They question, however, how that power will work in practice. There is concern that DWP staff may be unable to identify someone with an "invisible problem", such as a mental health condition,

16 Response to question 4.

who is struggling to engage with the process, and that vulnerable people will lose their benefits as a result.

32. In her letter, the Secretary of State explains the Department's intention to include a four to six month warm-up period to advise claimants on preparations that they should make prior to the notification period.[17] The testing period will also include extensive stakeholder engagement on how they will support claimants within the three month window to claim Universal Credit.

33. The groups that have written to us are experienced in this field and their submissions warn that there will be a significant number of those with health problems or disabilities who will only notice when the money has stopped. **The House may wish to seek assurance from the Minister that there will be adequate emergency help and additional resource available to assist this particularly vulnerable group through the migration process.**

Run-on support

34. The Committee asked why, if the pilot process starts in July 2019, the two-week run-on payment does not come into effect until July 2020. DWP explains that it is because the process will need to be automated, as manual administrative processes could not cope with the volume of claims. In her letter, the Secretary of State states: "our confidence in our ability to deliver the run-on is indicated in the fact that we have given a definite coming into force date in the regulations".[18] Given the DWP's past record with IT programmes this confidence may not be well-founded. **The House may wish to ask the Minister whether DWP is seeking to commence "managed migration" before the necessary computer software is available to support it.**

35. Instead of a run-on payment, for the 10,000 claimants in the testing phase there is a provision for a non-recoverable Discretionary Hardship payment to be made available to all those "who appear to be in hardship" as a consequence of "managed migration".[19] Because the hardship payment is discretionary, it appears to us that there is a risk that some individuals in need will be missed. **It is not clear why claimants in the testing phase cannot be routinely given a transitional payment in the same way as claimants migrating in the later phases, and the House may wish to press the Minister for a fuller explanation.**

Transitional arrangements

36. DWP is required to calculate an indicative Universal Credit award for all people going through "managed migration" so the level of Transitional Protection can be assessed (Regulation 54). This is to cushion those who would otherwise receive less benefit following their transfer to Universal Credit. The Child Poverty Action Group asked why the amount of Transitional Protection could not be paid as an interim payment while DWP collects further information to update the claim and check the accuracy of data. DWP responded:[20]

17 Response to question 8.
18 Response to question 11.
19 Regulation 65, see also responses to questions 8 and 12.
20 See also responses to questions 5 and 6.

"Universal Credit is paid monthly in arrears, and so this would not resolve the need for claimants to adjust to a different payment frequency. **For example, if someone claimed Universal Credit on 14th July 2019, so the first payment date would be [20th] August 2019.**[21] If that claimant was paid the first payment on the 21st July, then the second payment would not be until 21st September. This would mean that the claimant would have a two-month gap between payments. By far the best option for claimants to adjust to the different payment frequency is the two-week Transitional Housing payment, which has already been introduced for natural migration and will likewise be available for managed migration claimants, and the two-week income-related benefit run on, which will be available from July 2020. **Claimants are still able to access up to 100% advances, which are currently repayable over 12 months**. In addition, while claimants are awaiting their first payments, they are also likely to receive final payments from legacy benefits during this period; this is very much governed by individual circumstances." [emphasis added]

37. It appears that DWP's objective is to fit all claimants into its standard Universal Credit payment schedule from the start. In her letter, the Secretary of State emphasises that "one of the key principles of Universal Credit is that it should prepare claimants for work, which is why the benefit is paid monthly".[22] She added: "for people who are struggling to adjust to monthly payments, Alternative Payment arrangements are available on Universal Credit". This again suggests that the claimant has to struggle before relief is available to them. **Because a significant proportion of the 745,000 ESA claimants being transferred in this group have limited or no capability for work, and in consequence are entirely dependent on benefits, the House may feel that some greater flexibility should be applied to them in the changeover period.**

The Gap

38. The example provided by the DWP and set out in paragraph 36 above indicates that someone making a new claim for Universal Credit will receive their first payment over five weeks later. Residual money from legacy benefit will be paid up to the date of the new claim, but even with the two-week benefit run-on payment, it appears that many in the fortnightly-paid ESA group would have to live for the over five week changeover period on a maximum of just four weeks' money. If they claim Universal Credit mid-ESA-cycle they will have less than two weeks' legacy benefit money to add to their run-on. **The House may wish to ask the Minister what steps will be taken to ensure that this group have sufficient money to cover the changeover period.**

39. The example also assumes that DWP will finish processing every new Universal Credit claim within the four week assessment period. The NAO Report states, however, that in March 2018 21% of new claimants did not receive their full entitlement on time, with 13% receiving no payment. The

21 DWP made the following amendment: "With respect to the original example provided to the Committee we quoted 21st August as the first payment date. The first assessment period would run from 14th July to 13th August with the first payment due 20th August. This has now been corrected in the letter".

22 Response to question 6.

NAO estimates that in 2018 between 270,000 and 338,000 new claimants will not be paid in full at the end of their first assessment period.

40. In her letter, the Secretary of State says: "The Department's solution for the period until first award is received is to allow all claimants to receive an advance of up to 100% of their total Universal Credit entitlement. It should be made clear that the advance means that claimants receive the same amount of money over the first twelve months in thirteen payments, rather than twelve".[23]

41. Again, it appears to us that DWP is failing to consider the impact of this policy from the claimant's perspective. Although he or she will ultimately receive all the benefit due to them, the timing of those payments in the changeover period is as crucial for their welfare as the amount. A repayable advance can cause long-term difficulties, because, due to the deductions to offset that sum, claimants will have to live on less than the sum which the DWP has assessed that their household needs to get by. The NAO states that in 2017 average new claim advance repayments were around £43 per month or around 8% of the average monthly payment.

42. Delays in payment also increase the risk that a claimant might fall into arrears with rent in this period causing "knock-on" administrative and cash-flow problems for local authorities and private landlords.

43. **DWP has initiated "managed migration". The system should, therefore, ensure that a claimant is not forced into debt because they have been given insufficient funds to match their calculated needs for the transfer period. The House may wish to press the Minister for assurance on this point.**

Success criteria

44. The Trussell Trust, and the other submissions, asked for better information on what DWP aims to achieve and by when. In response to the SSAC Report, the DWP said that success criteria will be in place in 2020 for the large-scale "managed migration" but that none have been defined for the initial "test and learn" phase. We also asked whether DWP's evaluation of the system's readiness to scale up for the main phase of "managed migration" will be published for external scrutiny.

45. In her letter, the Secretary of State said:

> "The testing phase will help us determine how best we should increase the numbers of claimants we will take through the managed migration process. We have committed to publishing a report following the testing phase, along with the criteria we will use to judge whether the Programme plans are mature enough to support large numbers moving through managed migration. We will also present our assessment of our operational readiness to the Independent Infrastructure Projects Authority to evaluate and will publish both reports in 2020 before we move to increase numbers in line with the new timetable."[24]

46. That there will be a degree of external oversight is welcome, but once these Regulations are agreed there will be no scope for Parliament to influence

23 Response to question 7.
24 Response to question 3.

the programme. **Although we believe DWP's motives for taking this flexible approach are well-intentioned, there is a wide degree of concern that current plans for the migration process are vague and aspirational. The House may wish to ask the Minister about how success at the initial stage will be defined.**

Conclusion

47. DWP has claimed that these Regulations need to be passed urgently to enable claimants in receipt of Severe Disability Payments (SDP) to be removed from natural migration so that they will benefit from Transitional Protection.[25] In our letter to the Secretary of State, we asked why that provision could not be made by separate regulations. **The Secretary of State told us that the provisions of the gateway for SDP claimants and the development of the "managed migration" programme "are inextricably linked". The House may wish to press the Minster for further justification of that assertion**.[26] The SSAC believes that a segmented approach, recognising the distinct needs of different groups, might provide for a better claimant experience. The pilot phase is in any case described as a distinct stage in the Department's plans. **Splitting the regulations should not require any significant delay to the DWP's programme; it would simply create a pause in 2020 to allow the results of the pilot to be evaluated** before Parliament gives its agreement for the remainder to be migrated.

48. **The House may wish to press the Minister on whether DWP may be attempting to make too many changes at once** by wishing to combine a changeover from fortnightly to monthly payments for some, with a complete reassessment of all claimants' needs and a data cleansing operation. The NAO report has already raised concerns about the DWP's ability to run the programme as it currently stands. **We take the view that the House has been given insufficient detail to make an informed decision about DWP's proposals.** Given the large number of unknowns, and the particular difficulty and risks involved in transferring three quarters of a million very vulnerable claimants to Universal Credit, **it seems that DWP may have acted prematurely in seeking such extensive powers.** We welcome the Department's intention to consult representative groups in formulating their arrangements, but consider that those plans should be far more developed before Regulations permitting the full conversion to Universal Credit are put before the House.

25 See Appendix 2.
26 Response to question 1.

INSTRUMENTS OF INTEREST

Draft Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2019

Draft Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019

Draft Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019

49. These instruments are intended to ensure that after exit day, the current regulatory framework for the quality and safety of organs for transportation and tissues and cells (including reproductive cells) for human use is maintained so that UK establishments will continue to work to the same safety standards as they did prior to exit. For organ donation and transplantation, the NHS Blood and Transplant (NHSBT) (as the organisation responsible for organ donation and transplantation in the UK) and the Human Tissue Authority (HTA) (as the UK regulator for organs, tissues and cells other than reproductive tissues and cells) are working to ensure that written agreements are in place with EU organisations to allow organ exchange to continue post exit. NHSBT will be able to accept organs from EU countries from exit day provided that such organs can be traced from donor to recipient and meet quality and safety standards equivalent to that required in UK law. For tissues and cells, UK organisations (such as hospitals, stem cell laboratories, tissue banks and fertility clinics) which undertake licensable activities[27] are regulated by the HTA and the Human Fertilisation and Embryology Authority (which regulates reproductive tissues and cells). At present, licences are only required for imports and exports with non-EU countries. In the event of 'no deal' with the EU, the EU and the UK would consider each other to be "third countries" and these Regulations will amend existing licences to allow imports and exports with EU countries. The Department of Health and Social Care (DHSC) has explained that "no current establishments will need to apply for an import/export licence, so there will be no additional burden."[28] However, UK organisations would need written agreements with the relevant EU licensed establishments to continue importing or exporting. DHSC estimates that "12 establishments (non-reproductive cells) will need to do this, mostly privately operated small businesses. And that each one will need between 1 and 5 new agreements." It estimates that "for reproductive cells, 60-120 new agreements may be needed but can't say how many establishments this would be." The Regulations set out that UK establishments will have a transitional period of six months to comply "to allow UK licensed establishments that import tissues and cells from EEA states to put in place new agreements or amend existing ones, to comply with the requirements in the legislation."

Draft Interchange Fee (Amendment) (EU Exit) Regulations 2018

50. The EU Interchange Fee Regulation (IFR) of 2015[29] set caps on the level of consumer card payment interchange fees (fees paid by a merchant's

27 Such as procurement, testing, processing, storage, distribution, import and export.

28 However, future new establishments that intend to import or export that do not already hold a HTA or HFEA licence will need to apply for one.

29 Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123/1, 19 May 2015).

acquirer[30] to a card issuer[31] every time a consumer debit or credit card is used to purchase a good or a service) and imposed a number of business rules on card schemes, card issuers, acquirers and merchants. In the Explanatory Memorandum (EM) to these draft Regulations, HM Treasury (HMT) says that, as regards the interchange fee for domestic debit card transactions, the cap is set at 0.2% of the value of the transaction; and for credit card transaction fees, at 0.3% of the value of the transaction.

51. The Regulations propose amendments to ensure that the IFR continues to operate effectively within the UK after the UK leaves the EU, mainly by reducing the scope of application of the IFR in UK legislation from the EEA to the UK. This would mean that transactions which took place solely within the UK (where acquirer and card issuer are both located in the UK) would continue to be covered by the IFR, but cross-border card payments between the UK and the EU would no longer be within scope of either the retained UK Regulation or the EU IFR.

52. We sought information from HMT about the additional costs that might result to businesses and consumers from reducing the scope of the Regulation to the UK only: we are publishing HMT's response as Appendix 3. HMT has also told us that it intends to revise section 12 of the EM on impact: in line with Better Regulation guidance, it considers that the net impact on businesses will be less than £5 million a year and has carried out a *de minimis* assessment, but will not publish a full Impact Assessment. **We find it disappointing that HM Treasury provides so little detail about the financial impact of the changes proposed.**

Nursing and Midwifery Council (Fees) (Amendment) Rules Order of Council 2018 (SI 2018/1198)

53. From 28 January 2019, the Nursing and Midwifery Council (NMC) will be able to register Nursing Associates (NA) whose role has been developed as a bridge between healthcare assistants and registered nurses. It will act as a stand-alone profession, as well as a new route to becoming a registered nurse. Health Education England (HEE) established two pilot groups in January 2017 (approximately 1,000 students) and April 2017 (approximately 1,000 students) of NA trainees, who are due to complete their training in early 2019. In October 2017, plans were announced for up to 5,000 additional NAs to commence training on HEE pilot cohorts through the apprenticeship route in 2018, with up to 7,500 a year thereafter. The NMC will regulate this new group, who will be required to have the right standards of proficiency, keep their skills and knowledge up to date, and be accountable for their standards of practice and behaviour. Any questions over their fitness to practise will be considered by the NMC in the normal way. The fee structure for NAs mirrors the registration fee structure for nurses and midwives: £120 to join the register with a renewal fee of £120 per year.

30 That is, the Payment Service Provider which enables the merchant to accept card payments.
31 That is, the Payment Service Provider which issued the cardholder's card.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

	Justification Decision Power (Amendment) (EU Exit) Regulations 2018
	Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2019
	Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019
	Interchange Fee (Amendment) (EU Exit) Regulations 2018
	Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019

Instruments subject to annulment

SI 2018/1193	Non-Domestic Rating (Alteration of Lists) and Business Rate Supplements (Transfers to Revenue Accounts) (Amendment etc.) (England) Regulations 2018
SI 2018/1198	Nursing and Midwifery Council (Fees) (Amendment) Rules Order of Council 2018
SI 2018/1202	Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) (EU Exit) Regulations 2018
SI 2018/1206	Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration (Amendment) (EU Exit) Regulations 2018

APPENDIX 1: CORRESPONDENCE ON DRAFT UNIVERSAL CREDIT (MANAGED MIGRATION) REGULATIONS 2018

Letter from the Rt Hon. Lord Cunningham of Felling, Chairman of the Secondary Legislation Scrutiny Committee (Sub-Committee B), to the Rt Hon. Amber Rudd MP, Secretary of State for Work and Pensions

We welcome the Department for Work and Pensions' (DWP) intention to talk with interested groups in developing the arrangements for migrating existing claimants to Universal Credit, and note that those groups acknowledge that DWP has already made some concessions to address their concerns. When scrutinising these proposals, however, we have in mind that around three quarters of a million people currently on Employment and Support Allowance may have particular difficulties in the transition.

We are considering drawing these Regulations to the special attention of the House and, before deciding to do so, would like to have further clarification on the questions set out below:

Timing:

Q1: DWP has claimed that these Regulations need to be passed urgently to enable claimants in receipt of Severe Disability Premium to be removed from natural migration by 16 January 2019 so that they will benefit from Transitional Protection. Why can that provision not be made by separate regulations and allow the House sufficient time to scrutinise the regulations for the main migration properly?

Q2: DWP has announced that managed migration will begin in July 2019 with a small-scale test involving no more than 10,000 people. Why are the current Regulations not limited to enabling that pilot? What is the rationale for seeking the House's authority to migrate nearly 3 million people to Universal Credit before the outcome of the pilot phase has been evaluated and DWP is in a position to reassure the House of its operational readiness to complete the migration?

Q3: We are grateful for the comprehensive information in the Explanatory Memorandum(EM) about how each individual provision is intended to operate, but it offers no information on DWP's wider plans for undertaking this phased migration. Could you provide us with a clearer indication of how and when these powers will be used?

The "Hard stop":

Q4: Regulation 46 says if a fresh claim for Universal Credit is not made within three months all benefits will terminate automatically. These changes are being made for DWP's administrative convenience and not because the claimants' entitlement to benefit is in question. Why is DWP putting those claimants, who, for a variety of reasons, may struggle with the new claim, at risk of receiving no money at all?

Q5: One submission we received suggested that, as DWP is required to calculate the Transitional Element in any case, it could pay that figure to the claimant while their Universal Credit claim is reassessed and data is cleansed, rather than risking claimants' benefits being stopped altogether because they struggle to engage with the process. Is that possible? Why has DWP not chosen to follow that route?

Changeover:

Q6: For those currently receiving Employment and Support Allowance (ESA), changing from fortnightly payments to monthly payments will require claimants to make adjustments that many will find complicated and stressful. Why can that change not be made separately within their existing benefits regime before transferring them over to Universal Credit, so they do not have to cope with too many changes at once? What is the rationale for not treating this group differently from those who are already paid monthly, say, the Tax Credits group?

Q7: We were given the following example: an existing claimant who initiated their claim for Universal Credit on 14 July would receive their first payment of Universal Credit on 21 August. Although they will eventually be paid for every day claimed, in the interim they would be paid their existing benefits up to their date of new claim, plus a two-week "run on". For ESA claimants who are paid fortnightly, that appears to us to require the claimant to survive the five and a half week changeover period on a maximum of four weeks' money, less if the claim for Universal Credit is made mid-cycle. Is that correct? If so, how does DWP justify putting the claimant into hardship and debt during the changeover period?

Q8: What guarantee can DWP give that the reassessment and data cleansing of each new claim to Universal Credit will be completed within the projected deadline to enable prompt payment? What emergency provisions has DWP put in place to assist claimants whose assessment takes longer than that, and who are at risk of having no income until that assessment is done?

Impact:

Q9: The EM estimates that about 900,000 households will receive Transitional Protection, and most will receive a two-week ex gratia "run-on" payment. Given the huge numbers of people and sums of money involved we are disappointed that no more recent Impact Assessment than 2012 has been provided to inform Parliament's consideration. Please can you provide us with estimates of the anticipated cost of the transition that these Regulations would enable?

Q10: Considering the extensive engagement described in the EM to provide insight into the issues landlords and local authorities face and "to protect their financial position" we were surprised that paragraph 12.1 claims that there is no impact on business, civil society organisations or the public sector from these Regulations. Does that mean DWP is contemplating some form of compensation to redress the "new burden"? Can you please describe what measures are being taken to ease the knock-on effects of the migration on these groups?

Capacity:

Q11: The Committee did not initially understand why, if the pilot process starts in July 2019, the two-week "run on" payment does not come into effect until July 2020. We were told that is "because it has to be automated". What reassurance can you give us that the necessary computer software will be ready in time?

Q12: Several of the powers sought in these Regulations are discretionary, for example the power under regulation 45 to prevent someone's benefits being stopped "where there is good reason to do so", or, in the first year, to make an additional run on payment "if the applicant appears to be in hardship". Given that it is DWP that is initiating the disruption to the claim, why are these provisions not automatic? Why does the legislation allow for individuals to receive different treatment at different points in the transitional period?

21 November 2018

Letter from Amber Rudd MP to Lord Cunningham of Felling

Thank you for your letter of 21 November regarding the Universal Credit (Managed Migration) Regulations 2018. Please see my responses to your questions set out below.

Timing

Q1: DWP has claimed that these Regulations need to be passed urgently to enable claimants in receipt of Severe Disability Premium to be removed from natural migration by 16 January 2019 so that they will benefit from Transitional Protection. Why can that provision not be made by separate regulations and allow the House sufficient time to scrutinise the regulations for the main migration properly?

A1: We have made and now honoured, a number of commitments to make the draft regulations subject to the affirmative procedure so that both Houses will have the opportunity to scrutinise, debate and approve them before they come into force.

There has also already been a great deal of public scrutiny of our proposals and draft regulations to support managed migration. The draft regulations were sent for scrutiny to the independent Social Security Advisory Committee who submitted them for a formal public consultation. The Committee received over 450 responses to this consultation and presented their report on their findings to the Secretary of State with a number of recommendations for the regulations and the introduction of the managed migration. The former Secretary of State provided her response to that report when laying the draft regulations on 5 November 2018. This response accepted, in whole or in part, all but one of the Committee's recommendations.

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

We have commenced a programme of engagement with relevant stakeholders and will be looking to co-design our processes with claimants, charities, experts and other stakeholders, making sure that it works for everyone.

These regulations will introduce an integrated overall package for the introduction of managed migration and support for those moving to Universal Credit. The provisions for the Universal Credit gateway for Severe Disability Premium (SDP) claimants and the transitional payment for former claimants are inextricably linked with managed migration and transitional protection. Its ongoing award and maintenance will be dependent on the framework in these draft Universal Credit (Managed Migration) Regulations 2018, which is applicable to all groups that are managed migrated.

There is a significant amount of preparation needed for managed migration, so while managed migration is not due to begin until July 2019, the Department needs legislative certainty in order to make the appropriate arrangements. This is especially important for preparation with HMRC and Local Authorities, as well as other stakeholders.

Similarly, the Department needs to have legislative certainty to allow the award of the new two-week run on for Employment and Support Allowance, Income Support and Jobseeker's Allowance so that we can get on redesigning our IT systems ready to start paying the run on from July 2020.

Q2: DWP has announced that managed migration will begin in July 2019 with a small-scale test involving no more than 10,000 people. Why are the current Regulations not limited to enabling that pilot? What is the rationale for seeking the House's authority to migrate nearly 3 million people to Universal Credit before the outcome of the pilot phase has been evaluated and DWP is in a position to reassure the House of its operational readiness to complete the migration?

A2: This pilot is not to test the operational readiness of Universal Credit. As explained in the information we provided to the Committee earlier this month, by December 2018, Universal Credit will be live in every jobcentre in the country and the number of people on Universal Credit rose to 1.2 million in September 2018. By April, we estimate that there will be 2 million claimants on Universal Credit, which will be growing at a rate of 150,000 a month.

The regulations represent fixed Government policy on managed migration. The testing phase, however, will test the processes that support managed migration and what can be adjusted to ensure that claimants are given the right support to be able to claim Universal Credit successfully.

When the testing is complete, we will use the information gathered to clarify the criteria for successful processes, and confirm them through Universal Credit Programme governance. This will take into account a number of factors including operational readiness, efficiency of the service, key functionality being in place and ensuring we have processes in place to support vulnerable claimants. We agreed with the Social Security Advisory Committee when responding to their report on the need for setting the correct criteria and expect to set those in 2020 in line with the new timetable and before we undertake an assessment. This assessment, once complete, will be published.

Q3: We are grateful for the comprehensive information in the Explanatory Memorandum (EM) about how each individual provision is intended to operate, but it offers no information on DWP's wider plans for undertaking this phased migration. Could you provide us with a clearer indication of how and when these powers will be used?

A3: The powers in the regulations will allow us to initiate the process for the management migration of claimants from existing benefits to Universal Credit and allow for the termination of a claimant's existing benefit. To initiate a claimant's managed migration the Secretary of State will inform them to tell them that they need to make a new Universal Credit claim by a specific day if they wish to continue to receive welfare support. The regulations also provide that all claimants must be given a minimum of three months in which to make their claim to Universal Credit. But they do allow a longer time period to be given if considered appropriate and also for an extension to the period given if required. The claimant's existing benefits will be terminated from the day before they have made a claim to Universal Credit, or from the end of the period in which they have been given to claim Universal Credit if no claim has been made.

The powers will also allow all Universal Credit managed migration claimants who miss the deadline to access backdating, if they make a claim within a month of the deadline day passing. This also means that anyone who misses their deadline day, but claims within a month of it will be eligible for transitional protection, the transitional housing payment and DWP legacy benefit transitional payment, where appropriate.

We will begin to use the powers to allow the managed migration from July 2019 when we start to migrate no more than 10,000 claimants as part of the testing phase. We will not increase those numbers until we are sure that we have the right processes in place. The testing phase will help us determine how best we should increase the numbers of claimants we will take through the managed migration process. We have committed to publishing a report following the testing phase, along with the criteria we will use to judge whether the Programme plans are mature enough to support large numbers moving through managed migration. We will also present our assessment of our operational readiness to the Independent Infrastructure Projects Authority to evaluate and will publish both reports in 2020 before we move to increase numbers in line with the new timetable.

Q4: Regulation 46 says if a fresh claim for Universal Credit is not made within three months all benefits will terminate automatically. These changes are being made for DWP's administrative convenience and not because the claimants' entitlement to benefit is in question. Why is DWP putting those claimants, who, for a variety of reasons may struggle with the new claim, at risk of receiving no money at all?

A4: We are not manage migrating existing benefit claimants to Universal Credit for administrative convenience.

There are £2.4bn of unclaimed benefits not going to the people who need them, because they do not know about them. These regulations are vital to ensure that people missing out on benefits in the legacy system will receive them. When migration is complete, 700,000 more people will get paid their full entitlement because of Universal Credit, a million disabled people will be better off, and everyone that is managed migrated onto Universal Credit will be eligible for transitional protection. When it is fully rolled out we expect Universal Credit will boost employment by 200,000, lifting people out of poverty and generating £8bn in economic benefits every year.

There are a number of reasons why we are not automatically transferring claimants to Universal Credit:

- Universal Credit is a digital service. We must ensure that claimants can start using the digital service from day one. This should also help claimants understand that they are on a new benefit with a different regime. This is particularly important for vulnerable claimants.

- We need better quality of data than on legacy. It must be accurate and up-to-date to avoid transferring errors from legacy benefits. There is also more data that we need, which legacy does not hold. The best way to ensure that we have all the right data is by producing our own based on updated information from claimants.

- We know claimants are currently not getting all they are entitled to on legacy. Requiring claimants to make a new Universal Credit claim will ensure that people will not miss out on any entitlements (£2.4bn additional going to 700,000 families who currently don't take up their full entitlement).

- When we have done this before, we got it wrong. In the early 2000's we tried this approach with child support reform and it went on to cause a huge IT disaster. We also pre-populated benefit systems as part of the Incapacity Benefit to Employment and Support Allowance conversion

> and have been criticised since for missing claimants' entitlements. We are not going to do that again.

Nevertheless, we have said that we will use existing decisions or verification to make aspects of the process easier. For example, if a claimant has an existing Work Capability Assessment decision, they will not be required to have another assessment in order to get the disability additions of Universal Credit. Where a Tax Credit claimant has already verified their identity, in order to make and maintain their Tax Credit claim, we may be able to reuse this digital registration to the benefit of the claimant. Also, for claimants who do not have any work-related requirements, we already operate a digital claimant commitment acceptance process and we will carry that forward as part of the managed migration. This will mean a significant number of claimants will not need to attend a face-to-face interview.

Q5: One submission we received suggested that DWP is required to calculate the Transitional Element in any case, it could pay that figure to the claimant while their Universal Credit claim is reassessed and data is cleansed, rather than risking claimants' benefits being stopped altogether because they struggle to engage with the process. Is that possible? Why has DWP not chosen to follow that route?

A5: We do not believe that this would resolve the issue of adapting to Universal Credit's monthly assessment periods. If an award of Universal Credit was made at the beginning of the claim then the next award would not be due until the end of the second Assessment Period which would be approximately two months after the first payment. So all this would do is move the issue from Universal Credit's first Assessment Period on until the second one without the scope to make advance payments.

Indeed, it would create an even longer period between their first and second payment of Universal Credit than there is currently now between their last payment of their existing benefit and the first payment of Universal Credit.

The following example demonstrates that using the Universal Credit Indicative amount as the first payment would create a two-month gap between the first and second payment.

> "[i]f someone claimed Universal Credit on 14 July 2019, the first payment date would be 20 August 2019. If that claimant was paid the first payment on the 20 July, then the second payment would not be until 20 September. This would mean that the claimant would have a two-month gap between payments."

To further illustrate this, we have compared DWP's migration journey with the scenario of using the Universal Credit indicative amount as the first payment diagrammatically which I have included as Annex A.

We believe that the best option to help claimants to adjust to the different payment frequency is the two-week Transitional Housing payment, which has already been introduced for all those who move to Universal Credit, and the newly announced two-week DWP income-related benefit run on, which will be available, as previously discussed, from July 2020. Claimants are also able to access up to 100% advances, which are currently repayable over twelve months.

Q6: For those currently receiving Employment and Support Allowance (ESA), changing from fortnightly payments to monthly payments will require claimants to make adjustments *that many will find complicated and stressful. Why can that change not be made separately within their existing benefits regime before transferring them over to Universal Credit, so they do not have to cope with too many changes at once? What is the rationale for not treating this group differently from those who are already paid monthly, say, the Tax Credits group?*

A6: There are already claimants who are moving from Employment and Support Allowance to Universal Credit and adjusting to monthly payments. Benefit Transfer Advances are available to all those moving from existing benefits to Universal Credit to ensure that they are supported financially.

One of the key principles of Universal Credit is that it should prepare claimants for work, which is why the benefit is paid monthly. For people who are struggling to adjust to monthly payments, Alternative Payment Arrangements are available on Universal Credit.

Changing ESA payments to a monthly payment would mean that any issues that arise from claimants having to adapt to a new periodicity of payment would arise earlier whilst the claimant was still on Employment and Support Allowance. There are no inbuilt mechanisms in Employment and Support Allowance to help claimants adjust to this change as there are for Universal Credit such as the Benefit Transfer Advance and the two-week Transitional Housing payment. There would be no benefit to run on.

Q7: We were given the following example: an existing claimant who initiated their claim for Universal Credit on 14 July would receive their first payment of Universal Credit on 21 August. Although they will eventually be paid for every day claimed, in the interim they would be paid their existing benefits up to their date of new claim, plus a two-week "run on". For ESA claimants who are paid fortnightly, that appears to us to require the claimant to survive the five and a half week changeover period on a maximum of four weeks' money, less if the claim for Universal Credit is made mid-cycle. Is this correct? If so, how does DWP justify putting the claimant into hardship and debt during the changeover period?

A7: For clarification, the example was to demonstrate that the suggestion (raised in question 5) is not workable, as it creates a two-month hiatus between the first and second UC payment and, consequently, would create further hardship for the claimant.

The question here relates to the funds to which a claimant has access during the five-week period from the point at which they make a Universal Credit claim and the first payment date. Claimants will receive whatever remaining entitlement that they are due from legacy benefits when they make their Universal Credit claim; how much this payment will be and when it is received will depend on individual circumstances. Claimants will also be able to access additional funds through the out-of-work DWP benefit run on, which will be available from July 2020, and the Transitional Housing payment, where appropriate, which is already available for claimants moving from existing benefits to Universal Credit. The run-ons and Transitional Housing payment provide a stepping stone for claimants, where they receive an additional two weeks' legacy payment before the first Universal Credit payment for the whole period of entitlement arrives.

The Department's solution for the period until first award is received is to allow all claimants to receive an advance of up to 100% of their total Universal Credit entitlement. It should be made clear that the advance means that claimants receive the same amount of money over the first twelve months in thirteen payments, rather than twelve.

Q8: What guarantee can DWP give that the reassessment and data cleansing of each new claim to Universal Credit will be completed within the projected deadline to enable prompt payment? What emergency provisions has DWP put in place to assist claimants whose assessment takes longer than that, and who are at risk of having no income until that assessment is done?

A8: The Government is committed to ensuring that people do not fall through the gaps owing to gaps in the delivery process. Claimants will be called to claim through a migration notice. Claimants will be given a minimum of three months to make their claim to Universal Credit, although longer periods can be given if considered necessary and the period originally given can be extended as appropriate. This means that the Department has the flexibility to manage the flow of households migrated to Universal Credit, which means that we have the discretion not to issue a migration notice until we are sure that the claimant is prepared for the claim process. This will ensure that DWP will be able to move claims across promptly and within the deadline. We have already committed to a four-six month warm up period and are working closely with stakeholders and delivery partners to understand the best way to contact claimants and support them through the process to successful completion of a Universal Credit claim. The inclusion of the Discretionary Hardship payment in the regulations allows the Department the flexibility to provide additional support where it deems the claimant is in hardship owing to managed migration.

Impact

Q9: The EM estimates that about 900,000 households will receive Transitional Protection, and most will receive a two-week ex gratia "run on" payment. Given the huge numbers of people and sums of money involved we are disappointed that no more recent Impact Assessment than 2012 has been provided to inform Parliament's consideration. Please can you provide us with estimates of the anticipated cost of the transition that these Regulations would enable?

A9: These measures have no direct impact on business and therefore a mandatory Regulatory Impact Assessment is not required. The regulations give effect to managed migration which is a core part of the design of Universal Credit and the impacts discussed in the Universal Credit Programme Full Business Case, which was published in June 2018.[32] We will be spending over £3bn on transitional protection. In addition, they give effect to the transitional measures (Severe Disability Premium claimants, the DWP out-of-work benefit run on and extension of the MIF start-up period) set out at Budget 2018 which will involves extra spending of:

	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
£m (spending)	35	90	170	255	240	205

Source: HM Treasury, Budget 2018: policy costings, (October 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752208/Budget_2018_policy_costings_PDF.pdf

32 Department for Work and Pensions, *Universal Credit programme full Business Case summary* (7 June 2018): https://www.gov.uk/government/publications/universal-credit-programme-full-business-case-summary

These benefits for claimants will not be realised if the regulations are not approved by Parliament.

For clarification, the run on will not be an ex gratia payment. It will be a run on of a claimant's existing entitlement and would be fully supported legislatively by the introduction of these provisions.

Q10: Considering the extensive engagement described in the EM to provide insight into the issue landlords and local authorities face and "to protect their financial position" we were surprised that paragraph 12.1 claims that there is no impact on business, civil society organisations or the public sector from these regulations. Does that mean that DWP is contemplating some form of compensation to redress the "new burden"? Can you please describe what measures are being taken to ease the knock-on effects of the migration on these groups?

A10: A Regulatory Impact Assessment relates to the consideration of any additional direct costs and obligations that the regulations legally impose on business, including, where appropriate, landlords and local authorities. These regulations allow for the introduction and support of existing claimants to Universal Credit, including the consideration and award of Transitional Protection where appropriate; and protection for claimants who are in receipt of the Severe Disability Premium or have already moved to Universal Credit having been in receipt of the Severe Disability Premium

The regulations do not impose any additional regulatory burdens costs and obligations on business, social enterprises, individuals and community groups in the sense of the Better Regulation Framework. We attempted to address the broader impact in the remainder of Section 12 of the Explanatory Memorandum. We take the point, however, about the clarity of language, and will remember it for future Memorandums.

Capacity

Q11: The Committee did not initially understand why, if the pilot process starts in July 2019, the two-week "run on" payment does not come into effect until July 2020. We were told that this is "because it has to be automated". What reassurance can you give us that the necessary computer software will be ready in time?

A11: The Universal Credit System is currently not designed to support the issue of a two-week run of either Employment and Support Allowance, Income Support or Jobseeker's Allowance from the existing benefit computer system. Re-designing these systems will take some time. If payments of the run-on were to be introduced before we have automated their payment then this could only be made by a manual administrative process. Manual administrative process are slow and can be resource intensive which would draw necessary resource away from other parts of our benefit delivery.

We have considered the implementation requirements of the run on and timeline carefully. Our confidence in our ability to deliver the run on is indicated in the fact that we have given a definite coming into force date in the regulations.

The up to 10,000 claimants who will be managed migrated before July 2020 will have access to Discretionary Hardship Payments where they experience hardship as a consequence of their move to Universal Credit.

Q12: Several of the powers sought in these regulations are discretionary, for example the power under regulation 45 to prevent someone's benefits being stopped "where there is good reason to do so", or, in the first year, to make an additional run on payment "if the applicant appears to be in hardship". Given that it is DWP that is initiating the disruption to the claim, why are these provisions not automatic? Why does the legislation allow for individuals to receive different treatment at different points in the transitional protection?

A12: The powers under regulation 45 give the Department additional flexibilities to extend or cancel the migration notice, if there is a good reason to do so. DWP has provisions in existing legislation that are contingent on good reason[33]; this is a well-established practice, which ensures that claimant needs can be met, rather than constraining the Department's ability to act in the favour of the claimant.

With regard to the run on (regulation 4 and 5), this is not a discretionary power. The power for Discretionary Hardship payments is broad but the Department intends to use it to pay the 10,000 claimants who will be managed migrated as part of the testing phase the equivalent of their two-week legacy run on, where there may be hardship, so that they also benefit from this additional support. We will also have the discretion to make payments if any other issues related to managed migration have resulted in hardship. We will keep this under review throughout the test period.

There is already a Discretionary Housing payment, administered by local authorities, which provides support for claimants where there is a housing costs shortfall. Again, the discretionary power ensures that claimant support is driven by an assessment of individual needs, rather than legislating for particular groups and constraining the Department's ability to act in the favour of the claimant.

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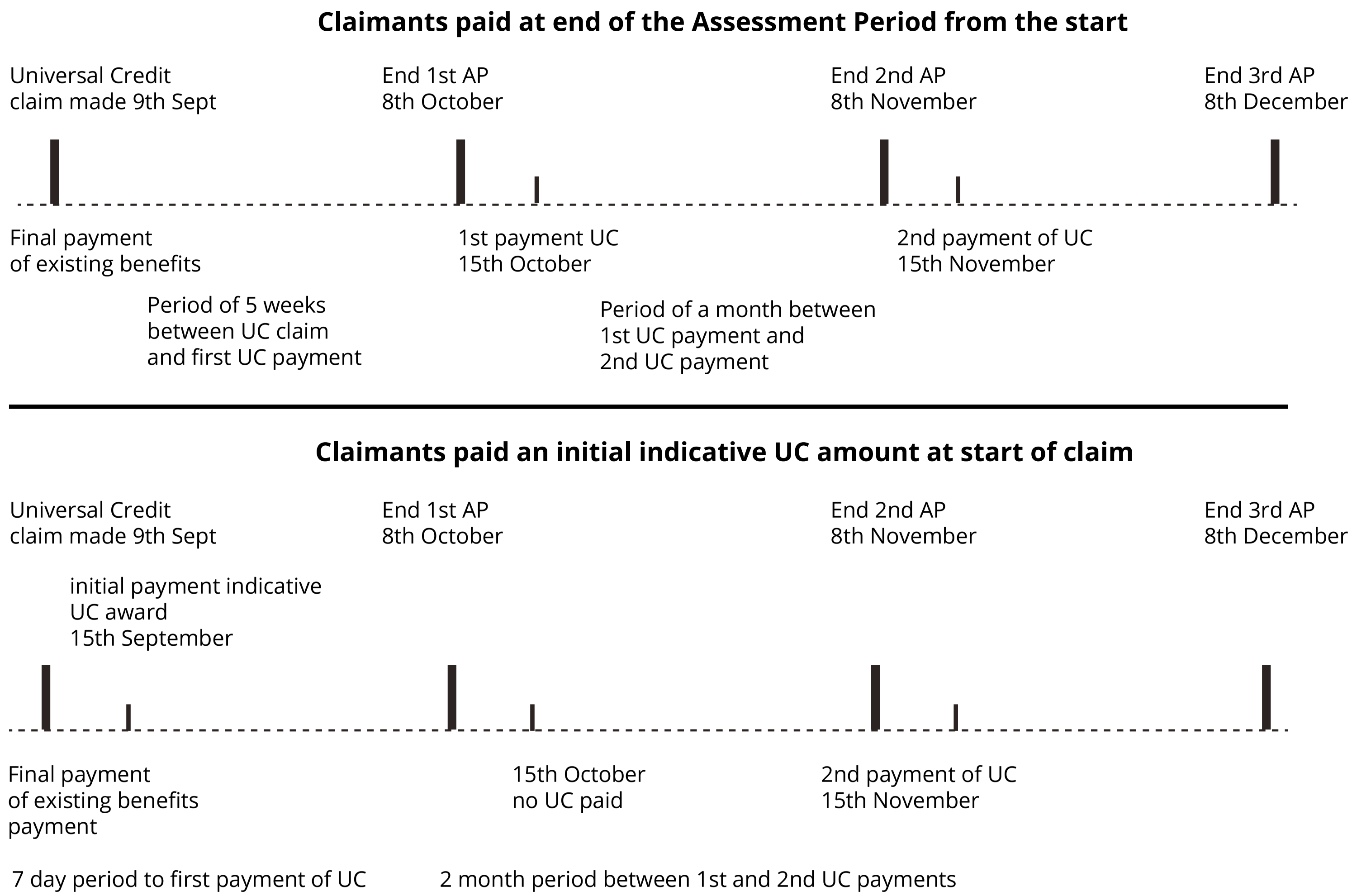
33 For example, in the ESA Regulations 2008 – regulations 22, 23, 24, 37, 38, 39 use good reason when assessing LCW and LCWRA.

Annex A: Diagram comparing DWP's migration journey with the scenario of using the Universal Credit indicative amount as the first payment



APPENDIX 2: DRAFT UNIVERSAL CREDIT (MANAGED MIGRATION) REGULATIONS 2018

Other issues raised with DWP

Severe Disability

Regulation 64 and Schedule 2, make provision for around half a million claimants currently in receipt of the Severe Disability Premium (SDP) to be held back until managed migration begins to ensure that they receive Transitional Protection. SCOPE asked why the same protection is not offered to those in receipt of Enhanced Disability Premium and Disability Premium, both of which are unavailable under Universal Credit.

DWP responded:

> "In designing Universal Credit, one of the key aims was to simplify the existing system. For people with health conditions and disabilities, a conscious choice was made not to replicate every aspect of disability provision in the current system, which contains seven different disability payments. Instead, the right levels of support can be provided through two rates of payments, reflecting the current Employment and Support Allowance components.
>
> Savings from this simplification are reinvested to increase the level of financial support available in Universal Credit for severely disabled claimants. As part of their Universal Credit award, claimants who have limited capability for work and work related activity are entitled to an additional £328.32 per calendar month. The rate in Universal Credit for these claimants of £328.32 per month is substantially higher than the equivalent rate of £163.15 per month in Employment and Support Allowance.
>
> The purpose of these transitional payments is not to mirror transitional protection. Rather it is to provide a level of targeted support for former SDP recipients that is broadly in line with the value of the SDP and that can be delivered in a straightforward and timely manner. The monthly SDP transitional payment rates are not directly aligned to the existing Severe Disability Premium rates, as the amounts that we will be providing reflect the extra financial support that has been provided through Universal Credit's more generous limited capability for work and work-related activity addition where that is in payment."

The Child Poverty Action Group also enquired why the provisions in regulation 64 and Schedule 2 do not appear to make equivalent protections or transitional payments for families with disabled children "who stand to lose about £30 per week in the changeover". DWP responded that the Government made a commitment that no one on existing benefits whose circumstances remain unchanged and has entitlement to the same support will lose out in cash terms as a direct result of managed migration.

Change in circumstances

Although Transitional Protection is provided to maintain income levels for those migrated to Universal Credit, Child Poverty Action Group says it can be easily eroded or lost due to commonplace changes of circumstances, such as rent increases, or the birth of a child. We asked whether there is any provision to prevent people losing their Transitional Protection when there is a change in their circumstances that requires a revised claim.

DWP responded:

> "The Government made a commitment that no one on existing benefits whose circumstances remain unchanged and has entitlement to the same support will lose out in cash terms as a direct result of managed migration. …Transitional Protection, however, is not supposed to continue ad infinitum. It is designed to protect the level of a household's award at the point of transfer. It is designed to offer financial parity with the claimants' household incomes at the point of their migration, while, at the same time, it will allow for managed migrated Universal Credit claimants to reach parity with new Universal Credit claimants in similar circumstances. … However, transitional protection will erode or end when the claimants' circumstances underlying the award are no longer recognisable to those on which the benefit 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."

Treatment of the claimants' savings

The amount of savings a claimant is allowed in Universal Credit, £6,000, is lower than the £16,000 allowed in some of the legacy benefits. The transitional arrangements are described in paragraph 7.32 of the EM but we did not fully understand the assumption that "every £250 over the £6,000 ceiling will yield an income of £4.35 pounds a month". [emphasis added]. DWP explained:

> "The formula for calculating the deductions from benefit is not intended to represent any rate of return that could be obtained from investing capital. It provides a simple method of calculating the weekly contribution which people with capital in excess of £6,000 are expected to make from those resources to help meet their normal living expenses. As there is no link with actual market rates, deductions remained unaltered throughout the period of rising interest rates, just as they have done more recently, when interest rates have been lower."

APPENDIX 3: DRAFT INTERCHANGE FEE (AMENDMENT) (EU EXIT) REGULATIONS 2018

Additional Information from HM Treasury

Q1: What data does HM Treasury have on the volume of purchases currently made by consumers using a UK-issued card from an EEA-based merchant acquirer? What estimate has HMT made of the possible additional costs that would result to consumers using a UK-issued card?

A1: You requested further data on the value of card transactions currently made between UK card issuers and EEA merchant acquirers, and potential estimates of the costs that consumers might face as a result of this SI. Data on card transactions is not routinely held by HM Treasury. The Payment Service Regulator collects sensitive data from card issuers for compliance purposes. This data includes the value of transactions where the issuers and point of sale are based in the UK but the acquirer is in an EEA territory that is not the UK (a cross border transaction as defined in Article 2(8) IFR), but is not available at the aggregate level. In the past, the interchange fee has been higher than the current caps for debit and credit cards. The potential impacts on consumers as a result of interchange fee caps not applying to cross border transactions, in the unlikely event of leaving the EU in a no-deal scenario, would be both indirect and result from the commercial decisions of businesses to adjust interchange fees.

Q2: At 12.4 of the EM, you say that a full Impact Assessment will be published when an opinion from the Regulatory Policy Committee has been received. You may know that, in debates in this House, members have criticised the absence of Impact Assessments from HMT statutory instruments being debated. At 12.2, you also say: "Businesses [and presumably consumers] may face more significant costs as a result of the scope of the regulations reducing to UK-only, but this is a function of the UK leaving the EU, as opposed to the onshoring approach taken in this instrument [words in square brackets added]." Neither the committee nor the House may agree with the view that any costs resulting specifically from the changes proposed in these Regulations were in fact generally attributable to Brexit.

A2: You asked about the impacts on businesses and consumers as a result of the scope of the regulation reducing to the UK only. The most significant effect of this reduction in scope is that the interchange fee caps on transactions between EEA and UK payment service providers would no longer apply, any decision to adjust interchange fees thereafter would be commercial decisions. We deem that any impacts resulting from this would be as a result of EU Exit, rather than as a result of the SI. We outline our reasoning below.

In the unlikely event of no deal, the UK would automatically be outside the scope of the EU Interchange Fee Regulation. Therefore EEA card issuers would be permitted to charge higher interchange fees to UK acquirers, as the caps set in the EU IFR would no longer apply to UK-EEA card transactions.

It is technically possible that in the IFR SI the UK could mandate interchange fee caps that apply to the interchange fees that UK card issuers would be permitted to charge to international transactions. However, this would place asymmetrical obligations on UK businesses vis-à-vis third countries, whereas the current situation provides symmetry with EEA countries. Our default onshoring approach to fixing deficiencies relating to the scope, is to reduce the scope of the regulations to UK-only, rather than extending the scope worldwide.

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APPENDIX 4: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 4 December 2018, Members declared the following interests:

Nursing and Midwifery Council (Fees) (Amendment) Rules Order of Council 2018 (SI 2018/1198)

Baroness Watkins of Tavistock

Nurse Adviser, BUPA Medical Advisory Panel and Global Quality Committee

Registered Nurse (non-practising)

Visiting Professor of Nursing, King's College London

Attendance:

The meeting was attended by Lord Cunningham of Felling, Baroness Donaghy, Lord Goddard of Stockport, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury, Baroness Redfern, Lord Rooker and Baroness Watkins of Tavistock.