



## Welfare Rights Conference 2024

# Universal credit managed migration – advising on transitional protection

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## **Managed migration: where are we now?**

The move to universal credit from legacy benefits is well underway, with all remaining tax credit awards to be terminated by the end of 2024/25. The UK government's pledge that no one would be worse off at point of transfer has not been the reality for some, while others may find themselves unexpectedly better off on universal credit. This workshop looks at how transitional protection is applied in practice, informed by the latest experiences from advisers through CPAG's Early Warning System. It will explore ways to challenge decisions and protect against potential overpayments.

## **Timetable**

Migration notices are being sent as follows:<sup>1</sup>

- By end March 2024, all tax credits only claimants – the majority of whom are entitled to working tax credit, with or without child tax credit (820,000)
- From April, those claiming tax credits with housing benefit (118,000) and income support claimants with or without tax credits/HB (87,000).
- From June, housing benefit only claimants (95,000)
- From July, employment and support allowance with child tax credit (75,000)
- From July/August, tax credit claimants over state pension age will be asked to apply for either universal credit or pension credit, depending on their circumstances (28,600).
- From September, jobseeker's allowance with or without child tax credit (11,000)
- From September 2024, claimants on ESA only or ESA/HB – to be completed by December 2025 (600,000).

## **Tax credits only claimants**

All tax credits only claimants should have received a migration notice by the end of March 2024. DWP statistics have found that:<sup>2</sup>

- 821,430 migration notices were issued to tax credits only claimants
- 672,540 reminders were sent
- 398,920 UC claims were made (356,300 by original deadline)
- 238,540 are still in progress
- 183,970 claims closed
- 166,130 awarded transitional protection

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<sup>1</sup> [questions-statements.parliament.uk/written-statements/detail/2024-01-25/hcws213](https://questions-statements.parliament.uk/written-statements/detail/2024-01-25/hcws213) & [questions-statements.parliament.uk/written-statements/detail/2024-05-21/hcws485](https://questions-statements.parliament.uk/written-statements/detail/2024-05-21/hcws485)

<sup>2</sup> [gov.uk/government/statistics/move-to-universal-credit-statistics-july-2022-to-march-2024/completing-the-move-to-universal-credit-statistics-related-to-the-move-of-households-claiming-tax-credits-and-dwp-benefits-to-universal-credit-data](https://gov.uk/government/statistics/move-to-universal-credit-statistics-july-2022-to-march-2024/completing-the-move-to-universal-credit-statistics-related-to-the-move-of-households-claiming-tax-credits-and-dwp-benefits-to-universal-credit-data)

This reveals that approximately 32% of those who have passed their final deadline (no longer in progress) had their tax credits terminated and are not entitled to UC.

This is the only group who can qualify for the transitional capital disregard (capital over £16,000 disregarded for 12 assessment periods). HMRC intends to run a sweep of its system in October 2024 to find anyone still receiving tax credits and check with DWP whether migration notices have been sent. Extensions are still possible, but all tax credit awards will terminate by 5 April 2025 and cannot be renewed for 2025/26. Anyone not eligible for managed migration (those with nil awards, and some international cases with children abroad) will be notified that their tax credits will end on 5 April 2025.

### **Tax credits & HB/IS or IS only**

Migration notices were sent to this group in April/May. Tax credits and HB will cover most of the remaining WTC claimants. IS and CTC will include lone parents with a child under 5 and carers for a disabled child or adult. Entitlement to IS is a passport to maximum tax credits, which will usually be CTC only due to the rules on work. Main concerns to look out for in this group include:

- Transitional element should reflect difference between disabled child element (lower rate) in CTC (£347.50 pcm) and UC (£156.11 pcm) = £191.39
- Carer element will be included in indicative UC amount if claimant declares carer status and meets conditions on migration day – but if was not getting a carer premium in IS then arguably it should not be included (or claim CA and request supersession of IS before migration day to include carer premium)
- Those with four or more children may be worse off due to the benefit cap being applied to total legacy amount – even if HB already reduced to minimum 50p a week, or not liable for rent.

### **Housing benefit only claimants**

Claimants with earned income should generally be better off in this group as UC taper 55% is lower than HB taper of 65%. However, claimants with unearned income may be worse off as 100% counts as income for UC compared to 65% for HB. Other points to look out for are:

- Non-dependant deductions in HB range from £19.30 to £124.55 a week (£83.63 to £539.72 pcm) compared to flat rate housing costs contribution of £91.47 a month in UC.
- No non-dependant deduction from HB for full-time students, or for under 25s on UC with no earned income or on IS/i-b JSA/ i-r ESA – but housing costs contribution may be deducted from UC if aged 21+

## Tax credits & ESA claimants

This group is likely to consist of CTC only, not WTC as there is no entitlement to income-related ESA if claimant works 16 hours a week, or partner works 24 hours a week. Entitlement to ir-ESA is a passport to maximum tax credits. The ‘enhanced support journey’ described below should be provided for vulnerable claimants in this group. Claimants who comply with the managed migration process will have limited capability for work or work-related activity carried over from the start of their UC entitlement, including a work allowance and work-related requirements as appropriate. The indicative UC amount must include elements for LCW (pre-3 April 2017) or LCWRA. The transitional element should reflect the loss of enhanced disability premium and severe disability premiums, but if no transitional element is payable, it is still possible for the transitional SDP element to be included instead.

## Pension age tax credits claimants

In effect from 8 June 2024, there are different rules and a slightly amended procedure for tax credit claimants of pension age, who are expected to be subject to managed migration to PC from July 2024, or UC from August 2024.<sup>3</sup>

- **CTC/WTC claimants already on PC: stay on PC**  
Claimants who are currently entitled to CTC or WTC or both, and are already in receipt of pension credit will stay on pension credit, with transitional protection available. They will be sent a “closure notice”, notifying them that their tax credits will end on a specified date, which may be less than three months.
- **Pension age CTC only claimants: move to PC**  
Claimants who are currently in receipt of CTC only and are not eligible for WTC (because they are not working at least 16 hours a week) will be sent a “closure notice”, notifying them that their CTC will end by a specified date and inviting them to claim pension credit, with transitional protection available, including a 52 week disregard of deferred pension income a notional income.
- **Pension age WTC claimants (including WTC/CTC): move to UC**  
Claimants who are currently entitled to WTC (including those who are also entitled to CTC, and those whose WTC has been reduced to nil due to income) will be sent a migration notice, notifying them that their tax credits will end by a specified date and inviting them to claim UC, with transitional protection available. For this group, UC rules will be amended to:
  - waive the basic condition to be under pension age (the waiver will end in any of the circumstances in which transitional protection ends)
  - ignore deferred pension income for 12 months
  - exempt pension age claimants from the benefit cap

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<sup>3</sup> The Social Security (State Pension Age Claimants: Closure of Tax Credits) (Amendment) Regulations 2024

- end transitional protection for pension age claimants if earned income goes below 16 hrs a week at the NLW for three assessment periods in a row.

- **Mixed age couples: move to UC**

Most mixed-age couples who are currently in receipt of CTC or WTC or both, will be sent a migration notice, notifying them that their tax credits, housing benefit and other legacy benefits are ending by a specified date, and inviting them to claim UC, with transitional protection available. For this group, UC rules will be amended to ignore deferred pension income for 12 months.

- **‘Protected’ mixed age couples: move to UC or stay on HB/PC**

Mixed age couples who have been getting pension age HB and/or PC continuously since before 15 May 2019 are referred to as ‘protected’ mixed age couples and can still claim and qualify for PC or HB.<sup>4</sup> If they are getting WTC or WTC/CTC and not already entitled to PC, they will be sent a migration notice, notifying them that their WTC and HB are ending by a specified date, and inviting them to claim UC with transitional protection. They will be able to reclaim HB as follows:

- if they become entitled to UC by claiming before the final deadline, they can reclaim HB within three months of UC ending; or
- if they do not claim UC before their final deadline, or were not entitled to UC, they can reclaim HB within three months of their previous HB award ending.

## **Tax credits & JSA claimants or JSA only**

This group is likely to consist of CTC only, not WTC as there is no entitlement to income-based JSA if claimant works 16 hours a week, or partner works 24 hours a week. Entitlement to ib-JSA is a passport to maximum tax credits.

## **ESA only/ESA & HB claimants**

This is the largest group, who had previously been told that managed migration would not happen before 2028. The government has announced that an ‘enhanced support journey’ will be available for these claimants:<sup>5</sup>

- All households who have yet to make a claim to UC will receive a reminder via letter after 7 weeks (from issue of the Migration Notice). A further reminder is sent after 10 weeks by letter or text.

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<sup>4</sup> [The Welfare Reform Act 2012 \(Commencement No. 31 and Savings and Transitional Provisions\) \(Amendment\) Order 2024](#)

<sup>5</sup> [https://www.rightsnet.org.uk/pdfs/NC\\_March\\_2024\\_LA\\_UC\\_update\\_Final\\_\(002\)\\_1\).pdf](https://www.rightsnet.org.uk/pdfs/NC_March_2024_LA_UC_update_Final_(002)_1).pdf) & [https://www.rightsnet.org.uk/pdfs/3rd\\_Party\\_guide\\_to\\_supporting\\_those\\_moving\\_to\\_UC\\_vApril\\_FINAL\\_\(3\).pdf](https://www.rightsnet.org.uk/pdfs/3rd_Party_guide_to_supporting_those_moving_to_UC_vApril_FINAL_(3).pdf)

- Additional contact will be made for all households who are in receipt of ESA. For households receiving IS, system checks will be undertaken to identify additional support needs.
- Households deemed to require additional support will receive a text at week 12, to advise that DWP will be contacting them by phone. Three attempts will be made to contact the household to offer support.
- Where no contact is made, DWP will refer households for a home visit. Should the visit be unsuccessful, further escalations will be considered on a case-by-case basis.

## Protecting against overpayments

If the claimant's transitional element is higher than expected, there is a risk that the DWP may revise this decision in future on the grounds that the information held on migration day was inaccurate or incomplete due to claimant misrepresentation, failure to disclose or official error.<sup>6</sup> The claimant can confirm circumstances and income have been declared correctly and ask the DWP to confirm that the award in the first assessment period is correct. Arguably, this means there are no grounds for the DWP to revise the decision later, or failing that, leaves the defence of 'legitimate expectation' to argue against recovery of an overpayment.<sup>7</sup>

## Challenging decisions

There is a right of appeal against the decision on entitlement at the end of the first assessment period, including the calculation of the transitional element. Note that the powers under which the transitional provisions are made refer to "the amount of the award is not less than the amount to which the person would have been entitled under the terminated award, or is not less than that amount by more than a prescribed amount."<sup>8</sup> It may be arguable that the transitional provisions are *ultra vires*, as the primary legislation does not allow the claimant to receive less than the legacy amount.

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<sup>6</sup> Reg 62, UC(TP) Regs

<sup>7</sup> [askcpag.org.uk/content/209502/overpayments-legitimate-expectation-human-rights](https://askcpag.org.uk/content/209502/overpayments-legitimate-expectation-human-rights)

<sup>8</sup> Welfare Reform Act 2012, Schedule 6 para 4(3)