



## Welfare Rights Conference 2024

# The transitional SDP element

**Simon Osborne**  
Welfare Rights Adviser, CPAG



# What are we looking at?

- What is the transitional SDP element?
- A natural or a managed thing?
- Who can get it?
- How much? – in general and additional amounts
- For how long? ‘erosion’ and termination
- The future? - more rules? caselaw - human rights

# What is the transitional SDP element? – a summary

- Compensate for absence of SDP equivalent in UC on migration to UC from legacy
- Fixed-rate – no calculation
- Where the legacy benefit included an SDP for the claimant on migration to UC
- From 14 February 2024, can be increased so as also to compensate for absence of other disability premiums in UC
- Treated in same way as a 'transitional element' – ie part of max UC amount, subject to 'erosion' and termination

# Where did it come from?

- After successful challenges to lack of protection for former SDP-entitlement claimants naturally migrating to UC
- The '*TP and AR*' litigation – income-related ESA claimants who had to claim UC after moving home
- Failure to protect them from being worse off re loss of SDP (and EDP) = breach of human rights
- Transitional SDP 'amount' (now 'element') introduced 24 July 2019
- Rule = *Schedule 2 The Universal Credit (Transitional Provisions) Regulations 2014*

# A natural or a managed thing?

- In theory, can result from either natural *or* managed migration
- But not where claimant has undergone managed migration and been awarded a 'transitional element' (see next slide for why!)
- So *in practice* a natural migration thing in most cases
- *Could* be awarded in managed migration if claimant has not been awarded a transitional element
- But how likely is that...?

# The transitional SDP element and managed migration

*'7. The award is not to include a transitional SDP element where the claim was a qualifying claim and the award is to include a transitional element.'*

*From Schedule 2 to the Universal Credit (Transitional Provisions) Regulations 2014*

# Who can get it?

- The claimant was getting (or was in a couple getting) income-related ESA, IS, or income-based JSA within the month before becoming entitled to UC, *and*
- That legacy benefit award included an SDP for the claimant up to the start of the UC award, *and*
- The claimant has not become a UC claimant after becoming a member of a couple with someone already on UC

*paras 2 and 3 of Schedule 2 to the Universal Credit (Transitional Provisions) Regulations 2014*

# Some things to note

- Awards of HB alone not enough – even if it included the SDP
- Does not matter if the claimant was not the actual IRESA/IS/IBSA claimant
- The SDP must have been in respect of the UC claimant
- Will not matter if SDP rules no longer satisfied after start of the UC award – but beware (eg) CA (or CDP) for a carer backdated to before UC started



# How much? – in general

- 'Basic' amount

*plus*

- From 14/02/04, an 'additional amount' (see next slide!)
- Basic amounts apply 'in the first assessment period' of the claimant's UC award
- Can continue in second AP and after, but are subject to 'erosion' or termination in those periods
- Additional amounts are added to the basic amount = the *whole element* is subject to erosion or termination

# How much? – additional amounts

- From 14/02/04 (SI 2023 No.1238) (following *TP No.3*)
- Entitled to a TSDPE (even if eroded to nil), *and*
- Was entitled (or in a couple entitled) to IRESA, IS, IBSA or CTC within the month before becoming entitled to UC, *and in that award*
- Was entitled to a DP, EDP, *or*
- Was entitled to a CDP or (in CTC) a lower-rate CDE and is entitled to lower rate disabled child addition in UC in the first AP
- Can get an addition for each, eg SDP plus EDP and CDP

Relevant rule: *Schedule 3 to Universal Credit (Transitional Provisions) Regulations 2014*

# How much? – basic amounts (awards *beginning from 8/4/24*)

The amount *in the first assessment period of the award* is:

## **Single claimant**

£140.97 if LCWRA element included (in the UC)

£334.81 if LCWRA element not included

## **Joint claimants**

£475.70 if higher (double) SDP was included

£140.97 if single SDP was included; LCWRA element inc

£334.81 if single SDP was included; LCWRA element not inc

# How much? – additional amounts (from April 2024)

## **Single claimant (per month)**

EDP was included: £89.63

DP was included: £183.52

DCP/low-rate DCE was included: £188.86 per disabled child

## **Joint claimants (per month)**

EDP was included: £128.04

DP was included: £262.48

DCP/low-rate DCE was included: £188.86 per disabled child

# For how long? 'Erosion'

- Element is reduced - 'eroded' - over time, from *second assessment period and following*
- Same rules as for erosion of the transitional element
- By total of increases to UC maximum amounts (standard allowances and most elements – not the childcare element)
- April uprating will always result in erosion of existing awards
- Increase from LCW element to LCWRA element = difference between the two elements

*Main rule = Regulation 55(2) Universal Credit (Transitional Provisions) Regulations 2014*

# Over the 'cliff-edge': erosion and Human Rights

## *SSWP v JA (UC)*

- Claimant getting TSDPE was in specified accommodation – getting HB as well as UC
- Moved into standard rented accommodation
- Lost all HB, got UC housing element
- That *immediately* eroded the TSDPE to *nil* = 'cliff-edge' reduction in benefit income
- On facts, that was discrimination in breach of Article 14 ECHR – remedy = erosion rule to be disapplied in the case

# For how long? Termination

Will 'cease' (terminate) if:

- Originally earning at or above the administrative earnings threshold but now earnings have dropped below it for three consecutive APs, *or*
- Joint claimants cease to be in the same couple, *or*
- Single claimant becomes a member of a couple, *or*
- UC award terminates (if due to income, TSPDE can revive if UC re-awarded within 3 months)

*Main rules: regulations 56 and 57 Universal Credit (Transitional Provisions) Regulations 2014*

# The future...

- Additional amounts before 14/02/2024? DWP remedy to come?
- *FL v SSWP* – failure to compensate for EDP loss before 14/02/204 - unlawful in light of *TP No.3* - Secretary of State to provide a remedy to the claimant
- Additional amounts from 14/02/04 where TSDPE already in payment? - 'in due course' (ADM Memo 01/24)
- After managed migration is complete – in practice, no more natural migration = no new awards of TSDPE



# Help for advisers in Scotland



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