

SCoWR Briefing: The Universal Credit (Managed Migration) Regulations 2018

The Scottish Campaign on Welfare Reform (SCoWR) is a broad coalition of voluntary sector organisations, trade unions, faith groups and others established in 2006 out of a shared concern about the direction of ‘welfare reform’. Members have developed a shared vision for a new approach to social security, set out in the five principles of the SCoWR Manifesto for Change.¹ Central to this vision is the belief that human rights, dignity, and respect should be the cornerstone of social security.

Summary

Whilst we recognise the announcement of a pilot scheme, there are still fundamental issues with Universal Credit and we have serious concerns for those who already receive it and are experiencing financial hardship. Those who will be naturally migrated to Universal Credit through a change of circumstance may also be considerably worse off, as there is no transitional protection. We would therefore urge the government to take this opportunity to suspend natural migration in order to address the shortcomings that we outline below.

Members of SCoWR appreciate that moving two million households to a new benefits system is a complex process. SCoWR members are concerned, however, that the process set out in these regulations places the most risk on the shoulders of those who are least able to bear it. This risk must be reduced and could be achieved through the following improvements:

- Regulations must guarantee that no claimants will see their payments stop until they have successfully claimed universal credit (whether through a process of the government creating claims for all claimants going through managed migration, or a legal backstop to protect those who fail to claim by their deadline day).
- SCoWR members understand that further revisions to the regulations could delay when managed migration begins. This creates a risk that more people will move to universal credit due to changes of circumstances (‘natural migration’) rather than through managed migration, therefore missing out on eligibility for transitional protection. To avoid this, all new claims to universal credit (including natural migrations), should be suspended until a safe managed migration process is in place. This would allow the DWP to address the issue that people who naturally migrate cannot get transitional protection as the regulations are currently drafted. As the process of managed migration is not due to start at full pace until 2020, improvements to the regulations and associated system design can and should take place.
- Equivalent protections to those offered to people receiving the severe disability premium should be extended to those disabled children who stand to lose out under universal credit. There should also be protection against the loss of transitional protection when a family has a new child, or when a universal credit claimant who is part of a couple becomes a single parent.

SCoWR members highlight that an administrative power to suspend the natural migration to universal credit already exists, in regulation 4 of the Universal Credit (Transitional Provisions) Regulations 2014 (‘Transitional Regulations’ below). So even if these regulations are not agreed, it would be possible to protect people getting a severe disability premium from natural migration to UC, without the need for legislation to achieve this. SCoWR members share a number of other key concerns including:

¹ <http://www.cpag.org.uk/sites/default/files/SCoWR%20manifesto%202013.pdf>

Risks for benefit claimants created by the proposed regulations

Our concerns centre on two fundamental aspects of the managed migration process set out in these regulations:

- The requirement that people currently receiving other benefits must make a new claim to universal credit by a 'deadline day', of which they will be informed in a notification from the Department for Work and Pensions (DWP) (see the proposed regulation 44); and
- The provision that if people have not claimed by their deadline day, their other benefits will be terminated (proposed regulation 46). For people who are not working, this could mean a complete loss of income which would push them into destitution and debt. This proposal is particularly dangerous for women with children, as mothers have a lower employment rate than fathers where the household receives universal credit.²

Groups who may struggle to make a successful claim without significant support include:

- people with learning disabilities who may not understand what is required of them or may be unable to manage the claim process;
- people with severe mental or physical illness who may be unable to cope with the requirement to claim;
- people with physical disabilities which make reading letters or using a computer difficult;
- people without digital literacy or with no computer/internet access at home, especially those living in remote areas far from libraries and advice services; *and*
- people dealing with overwhelming personal circumstances such as domestic abuse.

These groups are all disproportionately represented among the population claiming benefits. The process of claiming universal credit is not quick and simple, rather it requires completion of a lengthy online form and (usually) at least one appointment at the jobcentre. Currently, one in five universal credit claims fails due to difficulties people have with the process of claiming.³ If the same proportion struggle during managed migration, around 400,000 people across the UK will be at risk of losing critical benefit income. We also have concerns about DWP's ability to identify and support claimants who need it, as outlined below.

We recognise the UK government's commitment to fund the Citizens Advice network in Scotland (alongside Citizens Advice England and Wales) to deliver a support service helping people to make a Universal Credit claim. However, we do not understand why, given the stated commitment to move all claimants across safely, no backstop has been introduced into the regulations to prevent people's benefits being terminated before they have successfully claimed universal credit (or confirmed to the DWP that they do not wish to claim as they have other sources of income, e.g. they have found well-paid employment). Indeed the regulations as drafted currently *require* benefits to be terminated on the deadline day.

Alternative approaches

The department could adopt an approach of creating universal credit claims itself, using existing benefit information, and moving people across. This would prevent any claimant seeing their income

² <https://www.resolutionfoundation.org/app/uploads/2015/06/UC-FINAL-REPORT2.pdf>

³ Data released under the Freedom of Information Act. For more information:

<https://www.theguardian.com/society/2018/may/12/one-in-five--turned-down-for-universal-credit-rules-too-complex>

terminated and could achieve the 100 per cent safe transfer which the government aims for. The proposed regulations set out a requirement on the department to calculate an indicative universal credit award for all people going through the managed migration, in order to calculate the level of transitional protection they will receive (as set out in the proposed regulation 54). There is no reason that this amount could not be made as a first payment while the department collects further information to update the claim, fill in any gaps in information and ensures that the data it is using is accurate.

We understand that any claims set up in this way would be estimates, and that the department is opposed to this approach because it wishes to ensure that information used in universal credit claims is fully accurate and up to date. However this information could be collected from claimants without the need to stop their existing benefits. Current proposals expect all claimants to eventually engage with the DWP by making a new universal credit claim; in our view any claimants who engage in this way will be equally likely to engage by providing any additional information required to bring their information up to date. It is also our view that the risk of any under-payments arising through this process (which has been one of the arguments levelled against it by the government) is far less of a risk for claimants than the risk that thousands of people will simply see their benefits stopped.

Should the government not wish to adopt this approach for all claimants, the regulations could still have been designed to require (or at least permit) them to do so in cases where no universal credit claim has been made by the deadline day – i.e. where all the department's best efforts to support people through the process have failed. Instead the proposed regulations exclude the possibility of the DWP creating claims. There is no reason that the regulations could not still provide a backstop for people who reach their deadline day without having successfully claimed universal credit, while allowing the DWP the flexibility to offer different forms of support before the deadline.

DWP's ability to identify and support vulnerable claimants

DWP officials have told stakeholders that they intend to carefully identify and support vulnerable claimants through the managed migration process. However, the DWP's failure to appropriately identify and respond to vulnerability in its dealings with claimants has been raised a number of times in DWP Peer Reviews which are carried out after a serious incident or death.⁴ The Equality Impact Assessment carried out for universal credit also did not sufficiently examine the impacts of migration for women's incomes despite the wealth of evidence that now exists that aspects of universal credit disproportionately affect women, such as conditionality for parents and incentives for second earners.

Proposed arrangements to identify vulnerable claimants and ensure that they receive appropriate support to claim have not been published to date so cannot be scrutinised. Once developed they will be included in guidance without the force of law. Protections need to be enshrined in law to be meaningful and effective, which is why we are calling for a backstop provision in the regulations if people are not supported to claim universal credit in practice.

⁴ See documents 1, 6, 14, 15, 26, 27, 32, 36, 38, and 48 in redacted peer reviews <https://www.gov.uk/government/publications/dwp-foi-releases-for-may-2016>

The National Audit Office in its report on universal credit in June 2018 also noted that the department currently ‘lacks the ability to monitor the treatment of vulnerable claimants nationally’ and that ‘some staff found it difficult to support claimants’.⁵

We are particularly worried about people with fluctuating levels of vulnerability (e.g. fluctuating illnesses), those who have not disclosed highly personal information to the department (e.g. about domestic violence or mental illness) meaning their vulnerable circumstances would be missed in any assessment of their need for additional help to claim universal credit, and people who claim jobseeker’s allowance - so might not be regarded as disabled - but who have disabilities.

Transitional protection and transitional payments

Finally, we are concerned about some aspects of the transitional protection provisions and the transitional payments set out in the proposed regulations.

Firstly, the government has stated that everybody moving on to universal credit through managed migration will have their awards protected. However this is not the case for claimants affected by the benefit cap. In universal credit some families will have their income reduced further by the benefit cap than they would have in legacy benefits (because in the legacy system only housing benefit can be reduced by the cap, while in universal credit the whole award can be reduced). This group will not have their existing benefit receipt protected (see proposed regulation 53 (11)).

Secondly, while we welcome the decision to make transitional payments to people eligible for the severe disability premium in legacy benefits who have already migrated on to universal credit (and to suspend natural migration for this group), the amount proposed is inadequate for people not receiving the limited capability for work-related activity element, who are the most severely disabled group (just £80 a month, compared with a loss in the move to universal credit of £183.48 a month for some claimants). This is against the spirit of the decision to award this group transitional protection as their losses are not fully compensated (see the proposed Schedule 2).

We also note with concern that no equivalent protections and transitional payments are being made available for those families with disabled children who naturally migrate to universal credit. These families stand to be systematically worse off on universal credit by approximately £30 a week. We do not understand the logic for compensating disabled adults for financial losses, while allowing disabled children to go unprotected. This has significant consequences for family resources.

Finally we are concerned about the ways in which transitional protection can be easily lost due to commonplace changes of circumstances, and eroded by increases in costs (such as the birth of a child). For example, people who go through a separation or who are widowed, and find themselves single parents for the first time, will lose their transitional protection precisely at the time they need it most. This has particularly acute gender impact as around 90% of single parents are women. The regulations provide no protection to prevent people in this situation losing all their transitional protection, even if they face serious hardship as a result or if they face extremely difficult circumstances such as having fled domestic abuse or having to care for a disabled child on their own.

⁵ See sections 2.5 – 2.7 of ‘Rolling out Universal Credit’, NAO, June 2018.

<https://www.nao.org.uk/report/rolling-out-universal-credit/>

Conclusion

Urgent action is needed improve these shortcomings. The regulations as currently drafted create a real risk that many people from our most vulnerable communities will have the benefits that they depend upon stopped. As these communities are often least able to bear a financial shock the result will be destitution and debt.

- Regulations must guarantee that no claimants will see their payments stop until they have successfully claimed universal credit (whether through a process of the government creating claims for all claimants going through managed migration, or a legal backstop to protect those who fail to claim by their deadline day).
- SCoWR members understand that further revisions to the regulations could delay when managed migration begins. This creates a risk that more people will move to universal credit due to changes of circumstances ('natural migration') rather than through managed migration, therefore missing out on eligibility for transitional protection. To avoid this, all new claims to universal credit (including natural migrations), should be suspended until a safe managed migration process is in place. This would allow the DWP to address the issue that people who naturally migrate cannot get transitional protection as the regulations are currently drafted. As the process of managed migration is not due to start at full pace until 2020, improvements to the regulations and associated system design can and should take place.
- There are a number of aspects of the transitional protection provisions and the transitional payments set out in the proposed regulations that are concerning. Equivalent protections to those offered to people receiving the severe disability premium should be extended to those disabled children who stand to lose out under universal credit. There should also be protection against the loss of transitional protection when a family has a new child, or when a universal credit claimant who is part of a couple becomes a single parent.

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