



House of Commons  
Work and Pensions Committee

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**Universal Credit:  
natural migration:  
Government Response  
to the Committee's  
Twenty Seventh Report  
of Session 2017–19**

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**First Special Report of Session  
2021–22**

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## Work and Pensions Committee

The Work and Pensions Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Work and Pensions and its associated public bodies.

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### Committee staff

The current staff of the Committee are Morenike Alamu (Committee Operations Officer), Henry Ayi-Hyde (Committee Operations Officer), David Betteley (Committee Specialist), Harrison Card (Assistant Policy Analyst), Oliver Florence (Senior Media and Communications Officer), Anne-Marie Griffiths (Clerk), Edward Hamill (Committee Operations Manager), Ailish McAllister-Fisher (Second Clerk), Dr Libby McEnhill and James Mirza Davies (Senior Committee Specialists).

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# First Special Report

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On 23 July 2019, the Work and Pensions Committee published its Twenty Seventh Report of Session 2017–19, [Universal Credit: natural migration](#) (HC 1884). On 17 May 2021 we received the Government Response to the Report, which is appended below.

## Appendix: Government Response

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The Government thanks the committee for its twenty-seventh Report of Session 2017–19, Universal Credit: Natural Migration.

The Universal Credit (UC) roll out was completed in December 2018. Parliament voted to make UC the social security system in the UK, and it is clear that legacy benefits will be stopped.

Natural migration to Universal Credit is required when a person needs to make a new claim for support because of a change of circumstances. It has always been the case that changes of circumstance can require claimants to make claims to a different benefit or have their current entitlement revised.

Claimants on legacy benefits can also choose to make a claim for Universal Credit. Claimants on legacy benefits considering making a claim for UC should check carefully their eligibility and entitlements under UC before applying, as legacy benefits will end when claimants submit their claim and they will not be able to return to them in the future. For this reason, prospective claimants are signposted to independent benefits calculators on GOV.UK. They can also get help through the government funded Help to Claim scheme via Citizens Advice and Citizens Advice Scotland. In Northern Ireland, the benefit system is entirely devolved and the Department for Communities is the responsible department in the Northern Ireland Executive.

UC covers in and out of work support and is fundamentally different from legacy benefits. Where there has been a change in circumstance, it is right that the claimant's entitlement is calculated under the rules of UC, as is the case with all other new claims to it where the claimant had not previously been receiving any legacy benefit. The change in circumstance would affect the calculation of benefit and, therefore, a like-for-like comparison cannot be made between UC and legacy awards. Claimants who naturally migrate to UC may have the same level of entitlement as their previous legacy benefit entitlement, they may see a reduction in their entitlement, or, as the report acknowledges, they may see an increase in their entitlement.

In addition, UC provides more comprehensive support than the legacy benefits it replaces. Examples of this include more generous support for childcare, tailored support that helps claimants find work and a tapering system that incentivises work, as opposed to legacy benefits where some welfare payments ended almost immediately.

The Government has noted all of the Committee's recommendations and responded to them in turn below.

### **Recommendation 1:**

***We recommend that the Department makes an ongoing payment to meet any shortfall in income for:***

- ***All households that lose out compared to the legacy system as a result of moving home outside of their local authority; and***
- ***These should include back-payments where claimants in these circumstances have already moved to UC and lost out as a result.*** (Paragraph 23)

The Government does not accept this recommendation.

All of the changes of circumstance that prompt a natural migration to UC, including moving to a new home in a different Local Authority area, are changes that would have resulted in a new claim for a legacy benefit. We think it is right that a claimant's entitlement is reassessed when a significant change has happened. Although the report states that 'witnesses raised concerns that some of the many changes which can lead to a natural migration might not seem significant to many people',<sup>1</sup> the reason that the change is deemed to be significant is that the change has a material effect on a claimant's benefit entitlement.

### **Recommendation 2:**

***We recommend that the Government withdraws the draft Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 and replaces them with:***

- ***An instrument subject to negative resolution, to make provision for people previously entitled to a severe disability premium; and***
- ***An instrument subject to affirmative resolution, with the provisions for the pilot of managed migration.*** (Paragraph 31)

### **Recommendation 3:**

***The Department should ensure that the provisions for people previously entitled to the SDP should take into account the High Court's recent ruling and it should lay the regulations as soon as possible.*** (Paragraph 32)

The Government notes these recommendations, and took appropriate legislative action in July 2019.

The Government responded to the High Court's ruling and laid regulations, allowing the Department to begin making the Severe Disability Premium (SDP) transitional payments, on 22 July 2019.<sup>2</sup> Provisions in the regulations, which came into force on 24 July 2019, allowed the Department to start making the SDP transitional payments for former SDP recipients who had already moved to UC immediately. The first of these payments was made the day that the regulations came into force.

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1 House of Commons Work and Pensions Committee, 'Universal Credit: natural migration, Twenty-seventh Report of Session 2017–19', (HC 1884), published 17 July 2019, p. 13: <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/1884/1884.pdf>

2 <http://www.legislation.gov.uk/ukSI/2019/1152/made>

By September 2020, the Department had paid the SDP transitional payment to more than 16,000 claimants. The Department worked at pace to consider eligible claimants and make these vital payments as quickly as possible.

The removal of a provision relating to appeal rights for the issuing, extension and cancellation of a migration notice meant that the new regulations were no longer subject to affirmative resolution. The Government's view is that this was not necessary for this clarifying provision during the pilot phase.

We did not separate the regulations as Recommendation 2 suggests because the SDP transitional payments are fundamentally part of the wider transitional protection framework, and are therefore an essential part of the regulations that introduced transitional protection for managed migration.

These SDP transitional payments were not calculated in the same way as those who receive transitional protection as part of the managed migration process. Former SDP recipients who are eligible for SDP transitional payments received a flat rate payment that broadly reflected their previous SDP entitlement. It would be untenable to introduce SDP transitional payments that cannot erode or cease, and so from 8th October 2020 these payments have been converted to a transitional SDP element and paid as part of an individual's UC award. As a consequence, this element is now subject to the associated erosion and cessation rules.

The Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 which were laid on 22 July 2019 set out the removal of the SDP gateway on 27 January 2021. From this date, those entitled to SDP as part of a qualifying legacy benefit are able to make a new claim to UC and can be awarded a transitional SDP element.

The rationale of transitional protection is that it is a temporary measure that allows claimants who are moved by the Department from one benefit to another to adjust to the new benefit rules, but it is not intended to carry on ad infinitum. It should erode and cease in order that claimants who move to UC with transitional protection eventually gain parity with new claimants, who are subject to the benefit rules and rates from the beginning.

#### **Recommendation 4:**

***We recommend that the Department makes an ongoing payment to meet any shortfall in income for all households with any level of disability, including children with disabilities, who lose out when they move to UC. This should include making back-payments to claimants in these circumstances who have already moved to UC and lost out as a result.*** (Paragraph 39)

The Government recognises the issues the committee raises but does not accept this recommendation.

The Government is committed to supporting those with disabilities through UC and has focused support for those with the greatest need.

From 24 July 2019, claimants who were entitled to the SDP have been considered for backdated payments covering the period since they moved to UC, as well as an ongoing transitional payment.

The Enhanced Disability Premium (EDP) is a different premium with different qualifying conditions. Although it is not replicated in UC, EDP-only recipients are likely to gain when they migrate to UC as the ‘Limited Capability for Work Related Activity’ rate (LCWRA) is more generous than the ESA Support Group rate.

There are currently two different rates of disabled child addition (DCA) available in UC, payable depending on the level of Disability Living Allowance to which the child is entitled. This has been the design from the outset, which the Department believes strikes the right balance to help meet the varying financial needs placed upon families with disabled children. Also, whilst simplifying the provisions in the system, the Government took the opportunity to refocus vital resources on the most severely disabled children and adults as well as extending the eligibility for the higher rate of DCA to children who are certified blind.

### **Recommendation 5:**

***We recommend that the Department should allow people on legacy benefits to remain on legacy benefits for a grace period of one year after the death of their partner, so that they do not need to immediately apply for UC. (Paragraph 44) When claimants move to UC because of the death of their partner, the Department should provide them with transitional protection for their housing element for twelve months, as was the case in the legacy system. (Paragraph 46)***

The Government does not accept this recommendation.

The Government understands how difficult the death of a partner can be. As the Committee has highlighted, a claimant may have to make a new UC claim when their partner dies in order to secure their entitlement as a single person.

It is important to note that the death of a partner does not always mean a claimant will have to make a new claim to UC and, if UC did not exist, a claimant with the same circumstances may still have had to make a new claim to one or more of the legacy benefits that UC replaces as well. The fact that a single claim to UC can now be made simplifies the process of claiming support, thus reducing the burden on the claimant during this difficult period.

The report mentions the protection available for housing costs under UC in the event of a bereavement is ‘only available for 3 months’, rather than the 12 months under Housing Benefit.<sup>3</sup> It is important to understand that the 3-month protection is not limited to the housing element only, but covers every other additional payment that the couple received; the entire amount runs on for 3 months. This includes any elements to which only the deceased partner was solely entitled. Depending on a claimant’s circumstances, this support is potentially far more generous than 12 months of Housing Benefit alone. In all cases, it focuses support to the 3 months immediately following a bereavement, which are likely to be the most difficult for the claimant.

In addition, the bereavement run-on in UC not only covers the death of a partner, but also where a child or a cared for person dies. In these situations, it is more generous than legacy

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3 House of Commons Work and Pensions Committee, ‘UC: natural migration, Twenty-seventh Report of Session 2017–19’, (HC 1884), published 17 July 2019, p. 20: <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/1884/1884.pdf>

benefits—it lasts for longer than the 8 weeks available in some legacy benefits, covers every benefit payment being received and eligibility has also been extended to cover the death of non-dependants.

As regards claimants with housing costs, since 2011 the government has provided over £1 billion in Discretionary Housing Payments (DHP) to local authorities in England and Wales to help support vulnerable people affected by welfare reforms. DHPs can be paid to those entitled to Housing Benefit or the housing element of UC who face a shortfall in meeting their housing costs.

There is no limit to the length of time over which a DHP award may be made. It may be awarded for a short period to give a claimant time to deal with their financial circumstances or for an indefinite period until their circumstances change. The start and end dates are decided by local authorities on a case-by-case basis.

**Recommendation 6:**

*We recommend that the Department should look at practical options to eliminate the five-week wait. This could, for example, involve the Department making advance payments to claimants non-repayable. It could adjust for any differences in the estimate on which a claimant’s advance is calculated and the calculation of their final award through additions or deductions to the claimant’s future UC payments.* (Paragraph 55)

**Recommendation 7:**

*In the meantime, while the five-week wait remains, we recommend that the Department bring the run-on of all legacy benefits forward to Autumn 2019, so that people moving now through natural migration and those moving later have the same amount of help while they wait for their first UC payment. If the Department cannot automate this process in time, it could for example:*

- *calculate these amounts manually; or*
- *achieve a similar result by reducing the proportion of an advance that claimants who naturally migrate have to pay back to the Department.* (Paragraph 56)

The Government does not accept these recommendations.

Nobody has to wait for a payment in UC. Advance payments are available to claimants in need of urgent financial help to support them through to their first Universal Credit payment. Previously, claimants who required an advance had their UC award spread across thirteen payments in a year rather than twelve. As announced in the Spring Budget, we have now given claimants additional flexibility by providing the option to spread twenty-five payments over twenty-four months for New Claim or Benefit Transfer Advances issued from 12 April 2021. For claimants who find themselves in unexpected hardship, the impact of taking an advance on the spreading of UC payments can be deferred for up to 3 months.

In addition, in July 2020, the Department successfully introduced a non-repayable two-week run-on for Jobseeker’s Allowance (Income Based), Employment and Support Allowance (Income Related) and Income Support where a UC claim stops the award. This is in addition to the Transition to UC Housing Payment, a non-repayable two-week extension of Housing Benefit where a UC claim stops the award.

**Recommendation 8:**

*We also recommend that the Department provide the Committee with a list of the policy changes in the Department’s development schedule. This should also include:*

- *a timeframe for the completion of each change;*
- *the number of hours work each change is expected to take; and*
- *a time-frame and the number of hours’ work involved in implementing the system changes required for the benefit run-ons.* (Paragraph 57)

The Government in part accepts this recommendation.

The policy changes in the programme’s development schedule are ones that have been announced via fiscal events, spending reviews or other separate announcements. The Department will update the Committee when policy changes have been incorporated into the UC service and are fully live.

It is not possible to provide the Committee with a breakdown of timeframe and man hours for specific changes, as no change to the UC service is implemented in isolation. As noted in the then Secretary of State’s letter to the Committee dated 31 January 2019, the Department utilises an iterative agile development process to develop the UC service. This ongoing process is not time-limited and means the service—and each policy change within it—is being continuously developed. Once a change is introduced, it then requires constant refresh and update when subsequent changes are made.

**Recommendation 9:**

*We recommend that the Department should tell claimants about natural migration as part of its ongoing communications about UC. This should include stating explicitly that some people may lose out financially as a result of a move to UC. This information should be added to the UC claim homepage along with a link to the benefit calculation websites such as entitled to and the Citizens Advice website. The Department should signpost claimants to organisations able to give accurate independent advice. It could for example, include this in the Citizens Advice “Help to Claim” offer, which provides help to claimants with aspects of making a claim through to first payment. However, it must ensure this is adequately funded.* (Paragraph 75)

**Recommendation 10:**

*We recommend that the Department work with stakeholders to develop clearer and comprehensive guidance on when claimants need to move to UC and how this can affect different claimant groups. It should make this guidance publicly available. In addition, the Department should publish a comprehensive list of the changes in a claimant’s circumstances which could lead to them needing to claim UC.* (Paragraph 77)

The Government does not accept these recommendations.

Neither this Department nor HMRC can advise individual claimants whether they would be better off moving to UC or remaining on legacy benefits. While Natural migration to UC is required when a person needs to claim new support because of a change of



circumstances, claimants on legacy benefits can voluntarily make a claim for UC if they believe that they will be better off even if there is no change in circumstances. Parliament has voted to bring an end to legacy benefits in Great Britain and move to UC as its benefits system, so it is not appropriate for claimants to pick and choose between UC and parts of the legacy benefits system.

The Department encourages claimants thinking of claiming UC to read the information about it available on GOV.UK and to use the links to independent benefit calculators to check carefully their eligibility.

Once a claimant has made a claim to UC, the Department will inform them at the earliest opportunity the level of financial support they are expected to receive. We will continue to review and update our guidance to ensure this is the case and also that we outline all additional discretionary support that may be available.

The Department regularly updates gov.uk pages, including the publication of the “*understandinguniversalcredit*”<sup>4</sup> microsite. This information was also supported by already published signposts to independent benefit calculators so that prospective claimants could find out about potential entitlement, and information about the government-funded Help to Claim service provided by Citizens Advice and Citizens Advice Scotland on the “How to claim UC: step by step” page on gov.uk.

Particularly during the course of the pandemic, the Department has also used the DWP Twitter and Facebook channels to share messages with citizens, and also used paid media to ensure we reached millions of people.

The Department has also added a ‘check-through’ box that must be navigated through before beginning an online UC claim. This is intended to ensure that the claimant understands that legacy benefit payments will end and that they will not be able to return to them in the future, even if the claimant is not entitled to UC.

#### **Recommendation 11:**

***We recommend that the Government review these triggers for natural migration and consider whether it is appropriate that these changes of circumstance should require a new claim for Universal Credit. If it believes that they are appropriate, it should clearly explain why.*** (Paragraph 79)

The Government does not accept this recommendation.

The triggers for natural migration are the same as those circumstances that would have required a new claim to be made for a legacy benefit. Parliament has voted to make UC the social security system in the UK replacing the legacy benefits. Claiming UC instead is therefore in line with the decisions Parliament has made.

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4 <https://www.understandinguniversalcredit.gov.uk/>

**Recommendation 12:**

*We recommend that the Department provides full compensation to all claimants who have lost out financially because they have moved to UC prematurely, despite their circumstances remaining the same. This could be done separately from the Department's maladministration process. Payments should compensate for the additional amount they were previously receiving in the legacy system and should apply regardless of whether the move is a result of the claimant's own misunderstanding or mis-advice from DWP staff or other organisations.* (Paragraph 84)

The Government does not accept this recommendation. The existing maladministration process is sufficient.

Where a claimant suffers a loss of statutory benefit entitlement solely due to the Department's maladministration or service failure, and it is not possible to restore the lost benefit entitlement, the Department can already make special payments of the equivalent amount to restore the claimant to the position they would have been in without our maladministration.

Providing special payments in circumstances where the Department is not at fault would not be a responsible use of taxpayer funds.

**Recommendation 13:**

*We recommend that the Department allows claimants who have an ongoing legacy benefit appeal to remain on legacy benefits until their application has been processed, where the legacy benefit allows them to receive money they would be entitled to under JSA. For instance, claimants awaiting an ESA appeal decision should be able to remain on the assessment phase of ESA. Where this is not possible, the Department should pay claimants who win their appeal transitional payments, which should equate to the difference between their entitlement under UC and the amount they would have received in legacy benefits had the Department not made the wrong decision.* (Paragraph 90)

The Department does not accept that claimants who have an ongoing legacy benefit appeal should be able to remain on legacy benefits until their application [to appeal] has been processed.

When a claimant has their entitlement to a legacy benefit that UC replaces terminated, it is important that they apply for UC to continue receiving support from the benefit system. Allowing claimants to remain on legacy benefits would require legislative change and potentially leave claimants with repayable overpayments should a mandatory reconsideration and any subsequent appeal prove unsuccessful.

The Committee will be aware that the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 already provide transitional payments where a challenge to a legacy decision results in backdated entitlement to a Severe Disability Premium.

The Department is considering its response to the judgment, *R (on the application of TD and others) (AP) (Respondents) v Secretary of State for Work and Pensions (Appellant)* UKSC 2020/0119. The Department will communicate further details in due course.

**Recommendation 14:**

***The Department should review whether all changes in circumstances should trigger EEA nationals to re-take a right to reside test. Where claimants have failed a right to reside test, it should provide clear reasons why this is the case.*** (Paragraph 97)

The Government does not accept this recommendation.

All claimants, regardless of nationality, must demonstrate that they are both legally and habitually resident in the UK in order to access income-related benefits such as UC. The Department assesses this through the Habitual Residence Test (HRT), which has two elements: a legal right to reside test and an objective assessment of factual evidence of habitual residence.

UK and Irish citizens and non-UK nationals who are granted indefinite leave to remain can access UC regardless of whether they are in work or out of work. Under UK immigration law, EEA nationals are not able to access UC until they are exercising an EU Treaty right, e.g., worker or self-employed status, or have been resident in the UK for 5 years and granted settled status (indefinite leave to remain) by the Home Office.

EEA nationals are advised to regularise their immigration status under the EU Settlement Scheme. Those who have lived in the UK for at least 5 years will usually be granted settled status by the Home Office. EEA nationals with settled status will satisfy the HRT and are eligible to access UC once they have demonstrated habitual residence in the UK, on the same basis as comparable UK nationals.

The existing rules will apply for EEA nationals with less than 5 years' residence. EEA nationals with pre-settled status have the same access to benefits as they did prior to the introduction of the EU Settlement Scheme (EUSS). They will satisfy the right to reside element of the HRT and can access benefits if they are exercising a qualifying right to reside, such as a worker or self-employed person, and are habitually resident in the UK.

**Recommendation 15:**

***We also recommend that the Department should conduct a review of its data retention policies. This should look specifically at the impact its policies have on EEA nationals who it has previously assessed as having the right to reside in the UK. It should cease destroying records, where doing so could negatively impact claimants.*** (Paragraph 98)

The Government does not accept this recommendation.

All claimants, regardless of nationality, must demonstrate that they

- a) have a qualifying legal right to reside, and
- b) are habitually resident in Great Britain and Northern Ireland.

Certain categories of claimant, including refugees and EEA “workers” and their family members, are automatically treated as satisfying the HRT.

Whether a claimant meets the necessary conditions to satisfy the HRT is not fixed forever and may change after a claim has been initially determined. Therefore, to protect taxpayer funds, the Government believes it is right that the Department reviews entitlement when

a change of circumstances occurs and the onus is on claimants to demonstrate that they meet the HRT and report all changes in their immigration status. In return, eligible claimants receive the same level of support afforded to UK citizens for as long as their circumstances remain the same.

Should an EEA national fail the HRT, they may choose to start exercising an EU Treaty Right, e.g., worker or self-employed status in order to access UC. Alternatively, and for claimants of any other nationality, they can request a written explanation giving the reasons for the decision, and a Mandatory Reconsideration (MR) if they do not agree with the decision. If claimants do not agree with the subsequent MR decision, they can appeal to an independent tribunal.

The Department regularly reviews data retention policies and its current policies are set with the requirements of General Data Protection Regulation (GDPR) firmly in mind. In practice, this means that the Department does not retain personal information for any longer than there is a business need to do so. As a claimant's right to reside can be fluid, it is the Government's view that keeping such information indefinitely is unnecessary and may not be compliant with GDPR.

In March 2019, the Government introduced a settlement scheme for all EEA nationals. EEA nationals who are not exercising a qualifying right to reside are advised to regularise their immigration status under the EU Settlement Scheme. Those who have lived in the UK for at least 5 years will usually be granted settled status by the Home Office and, therefore, have full access to UC. This will remove any ongoing queries about a claimant's immigration status and make it much easier for claimants to demonstrate their right to reside should they be asked to do so.

**Recommendation 16:**

*We recommend that the Department explore ways to make the carry-over of WCA decisions from legacy benefits to UC a more automated process, to reduce the risk of human error. If this is not possible, the Department should provide the Committee with quarterly reports on the number of cases where this is not happening on time so that we can continue to monitor the issue.* (Paragraph 107)

The Government does not accept this recommendation.

Whilst we have not automated a solution, we have invested in and made significant improvements to the clerical processes. These improvements mean that, on average, we apply the ESA WCA to UC award in the vast majority of cases within the first Assessment Period.