



Department  
for Work &  
Pensions

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Minister for Welfare Delivery  
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Rt Hon Stephen Timms MP  
Chair  
Work and Pensions Committee  
House of Commons  
London  
SW1A 0AA

15<sup>th</sup> September 2021

Dear Stephen,

Thank you for your letter of 21<sup>st</sup> July. Please accept my apologies for the delay in replying.

Please find a detailed response to your questions below.

**1. The relevant judgement was given in February 2020, and the memo was issued in December 2020. It is now July 2021. When does the Department plan to update the Regulations and ADM guidance?**

Instructions have been issued to all DWP decision makers informing them that no Genuine Prospect of Work (GPoW) assessment interviews should be taking place in line with the judgment. Memo 31/20 was published at the end of last year, following the usual internal process for the publication of guidance within DWP. Decision Makers (DMs) are advised that information in memos supersedes information in the guidance paragraph which the memo is annotated against, which follows our business as usual processes and is a long established way of working. This has been a successful method of working, and we have received no indication that this has not been the case for this change of policy.

**a. What does the Department consider to be a reasonable timeframe for updating guidance and Regulations to ensure they accurately reflect the law as interpreted by the courts?**

We endeavour to carry out revisions to our guidance and any regulations as needed as soon as it is practically possible after revisions are required to be made. In this case, GPoW tests were suspended and DWP has published a memo to all decision makers with the current advice and the reasons for this. Given the exceptional additional pressures faced by the Department due to the COVID-19 pandemic, this has unfortunately delayed some business as usual processes including guidance

updates, however, given the existence of the memo as explained above, decision makers should be aware of the updated position from the judgment.

The relevant regulations in this case are not owned by DWP but are with the Home Office (HO) and the necessary amendments were made by the HO within two statutory instruments, namely the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (1309/2020) at Schedule 3, para 6(1) (e) and also in The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, a link to which can be found here <https://www.legislation.gov.uk/ukxi/2020/1209/contents/made>

A link to the regulations can be found here [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukxi/2020/1209/contents/made)

**2. Has the attached Universal Credit decision letter been updated since April 2021, so that it contains correct information?**

**a. If not, when does the Department intend to do this?**

Universal Credit decision letters no longer reference the requirement to demonstrate a genuine prospect of work.

**3. The Department's immediate fix is to link to the memo once, in the opening section of the relevant ADM chapter. While we await the updated Regulations and ADM, would you consider linking the memo to each section to which it is relevant, to help ensure that Decision Makers see it?**

While the main body of the Advice for Decision Makers (ADM) is currently at odds with Memo 31/20, DMs are advised to be guided by information held in memos. This information supersedes any information held in the paragraph to which a memo is attached. Currently, a link to Memo 31/20 is displayed in the ADM area covering guidance on GPoW, as well as that on 'retaining worker status'.

Although the link to Memo 31/20 has been placed in prominent sections of the ADM, our Decision Making and Appeals Team will conduct a review of any other relevant parts. This will ensure no individual errors are made by the incorrect application of a suspended GPoW. Information that is held within the memo will be incorporated into the main body of the ADM within the next 4-6 weeks. The Regulations have been updated, as discussed above.

**4. Has the Department received any other indications that this might be causing a problem, for example through stakeholder meetings?**

We have not received any other indication of any issues relating to the suspension of GPoW tests. Following our correspondence with Child Poverty Action Group (CPAG) we reiterated to DMs and benefit leads our current position in respect of the GPoW

test, namely that they are no longer being conducted and have not been since April 2020, and provided a link to the memo. This was not in relation to specific complaints received, but as a response to the correspondence we had received from CPAG. The Department did make clear in correspondence with CPAG that it would welcome further information about the cases referred to which were raising a concern of possible wrong decision making, however, no further details have been provided in this regard.

**5. What is the Department doing to identify and ensure that those who might have been denied benefits due to this issue get the support that they are entitled to?**

Claimants have an opportunity to both write a letter of complaint and challenge a decision made through our mandatory reconsideration process. This well-established process within DWP allows for original decisions made incorrectly to be overturned. We have no knowledge of any cases in relation to this particular policy that have gone to a statutory appeal, suggesting that any issues have been picked up and rectified before this stage.

Your sincerely,

A handwritten signature in black ink, appearing to read 'Will Quince', written in a cursive style.

**Will Quince MP**  
**Minister for Welfare Delivery**



## Work and Pensions Committee

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Will Quince MP  
Minister for Welfare Delivery  
Department for Work and Pensions

21 July 2021

Dear Will

I am writing about the guidance that the Department issues to its Decision Makers, to assist them in deciding whether EEA nationals with “retained worker” status are eligible to receive benefits.

In 2014, the Department introduced “Genuine Prospect of Work” tests (GPoW) for EEA workers with “retained” worker status who were unemployed and had been looking for work for at least 91 days, or six months in some cases. Satisfying the GPoW test was necessary for EEA workers who were jobseeking to keep their “retained worker” status and satisfy the Habitual Residency Test, which entitled them to receive or continue receiving benefits.

In February 2020, the use of GPoW was successfully challenged in court for people with “retained worker” status.<sup>1</sup> This means that the GPoW test is not permitted under EU law for retained workers.

It has been brought to the Committee’s attention that the Department has not yet updated either its Advice to Decision Makers (ADM) or the 2006 and 2016 Immigration (EEA) Regulations to reflect this ruling. Instead, the Department issued a memo in December 2020 stating that:

[Decision Makers] should no longer carry out GPOW tests on claimants retaining their status as a worker (or self-employed) due to involuntary unemployment.<sup>2</sup>

This means that the Regulations and the ADM are incorrect, as interpreted by the courts. The memo contains the only correct version of the law out of the three documents. The Department is advising that this takes primacy over the ADM and, perhaps more surprisingly, the Regulations themselves.

Additionally, the memo is only linked to in the introductory section of the relevant chapter. Any Decision Maker who navigates directly to a section (which would not be unusual, given the length and complexity of the ADM) will not see it, or the instruction

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<sup>1</sup> “Worker” status can be retained if an EEA jobseeker is involuntarily unemployed. The retention applies for six months if the individual would

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/950776/adm3\\_1-20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950776/adm3_1-20.pdf)

not to use GPoW tests in these cases – but they will see extensive, detailed and incorrect guidance on GPoW tests, which the memo theoretically replaces.

There is some evidence that this is affecting the way that decisions are made. For example, the attached, redacted Universal Credit outcome letter from April 2021 refers to the need for involuntarily unemployed workers to prove GPoW if they are to retain worker status and pass the Habitual Residency Test. As set out above, this is incorrect, and had been for almost 18 months at that point. At the very least, this may have led to confusion among claimants and the organisations supporting them about how and why a decision has been made, and at worst it could mean claimants are being denied benefits that they are entitled to.

I understand that this issue has already been raised with the Department by the Child Poverty Action Group and academics at the University of York. The Department said in response to them that it is aware that the guidance is incorrect as it currently stands, and that it intends to fix this “at a later date”. As outlined, the Department’s immediate fix has been to advise Decision Makers to privilege supplementary guidance over legislation. This seems unusual.

I would be very grateful if you would answer the following questions.

- 1. The relevant judgement was given in February 2020, and the memo was issued in December 2020. It is now July 2021. When does the Department plan to update the Regulations and ADM guidance?**
  - a. What does the Department consider to be a reasonable timeframe for updating guidance and Regulations to ensure they accurately reflect the law as interpreted by the courts?**
- 2. Has the attached Universal Credit decision letter been updated since April 2021, so that it contains correct information?**
  - a. If not, when does the Department intend to do this?**
- 3. The Department’s immediate fix is to link to the memo once, in the opening section of the relevant ADM chapter. While we await the updated Regulations and ADM, would you consider linking the memo to each section to which it is relevant, to help ensure that Decision Makers see it?**
- 4. Has the Department received any other indications that this might be causing a problem, for example through stakeholder meetings?**
- 5. What is the Department doing to identify and ensure that those who might have been denied benefits due to this issue get the support that they are entitled to?**

Yours sincerely,

A handwritten signature in black ink that reads "Stephen Timms". The signature is written in a cursive style with a horizontal line above the name.

**Rt Hon Stephen Timms MP**  
Chair, Work and Pensions Committee