

HOUSING SYSTEMS: BRIEFING

02/2018:

Universal Credit & the loss of SDP: Protection for Some

Key facts

- The government has announced that UC claimants who move/have moved onto UC through natural migration and who are worse off because of the loss of the Severe Disability Premium will receive protection.
- The rules on which UC claimants will get compensated for the loss of the Severe Disability Premium are quite complicated and when you look closer at the proposed Regulations you'll see that **MANY CLAIMANTS WILL NOT BE ENTITLED** to the protection and therefore not get any compensation.
- This means that **CARE MUST BE TAKEN NOW** to ensure claimants do not lose this protection, and that they understand the implications of moving on to Universal Credit* ahead of managed migration (due to start next year).
- **TRANSITIONAL PROTECTION WILL ONLY BE AVAILABLE FOR SOME CLAIMANTS** already on UC who were getting the Severe Disability Premium in their legacy benefits before moving onto UC and are worse off as a result of claiming UC. - ie. those who continuously remain entitled both to UC and the SDP.
- A backdated payment will only be given to *some* claimants still on UC who were made worse off - paid at a set rate - to compensate for the benefit lost since moving onto UC.
- *From a date in the future - still to be announced - the Government are introducing a new 'Gateway Condition' into the Full UC Service Regulations. This will mean that there will be no new claims for Universal Credit from anyone who has the Severe Disability Premium in their current legacy benefit awards (or has had within the previous month) until the claimant is manage-migrated onto UC.

Note: The Social Security Advisory Committee has launched a consultation on these regulations and is keen to hear from organisations and individuals by 10am on Monday 20th August 2018. So it is unlikely that anything will happen before 20th August 2018 and these draft regulations are subject to change.

Introduction

Following the government's announcement that they intend to protect those who have already lost out, and will lose out, financially due to the loss of the Severe Disability Premium (SDP), we now have the detail of the proposals - given in draft regulations.

The draft regulations introduce a 'Transitional SDP Payment' into the UC Regulations, which will be for *some* claimants who have moved onto UC - from a legacy benefit that included the Severe Disability Premium (SDP) and who have lost out financially (ignoring deductions) as a result.

Whilst these regulations are draft and being consulted on, and therefore subject to change, if they come into effect as written many claimants could lose out. So we need to be aware of the potential risks and highlight these to claimants.

IMPORTANT

As the Regulations are currently written, not everyone who has lost out will be entitled to protection. The draft regulations state that unless the claimant meets certain criteria on a date in the future they will receive no compensation – not even for the period during which they did meet those criteria (see examples on page 4)

Care **MUST** therefore be taken by both claimants and advisers to ensure that those entitled don't lose out if the draft regulations come into effect as currently proposed.

A UC claimant could lose all the protection they are entitled to if:

- There is a gap of a month or more between their legacy benefit ending and their UC award starting.
- A carer starts claiming Carers Allowance or a UC Carer Element for looking after them.
- They are not still entitled to the disability benefit that gave rise to the award of SDP on a date in the future – the 'one off check' date (see page 3).

And to safeguard their entitlement to the compensation a claimant should:

- Highlight their case to the DWP on or asap after the 'one off check' date.
- If they were awaiting the outcome of an appeal on PIP/DLA/AFIP/AA on the 'one off check' date and therefore not entitled to the protection – and they then go on to win that appeal – highlight this to the DWP so that they can be awarded their Transitional SDP Payment.

Transitional SDP Payment

The extra 'Transitional SDP Payment' will be added to UC awards for those:

- Who have already moved onto UC through 'natural migration', and
- Who lost out financially due to the loss of their Severe Disability Premium, and
- Whose UC award has remained continuous from the day they moved onto UC to the date the DWP look into whether they qualify for the Transitional SDP Payment (the 'one-off check' date), and
- Who have not taken on a partner or separated since moving onto UC, and
- Who, as at the 'one-off check' date, would still be entitled to the SDP if they had remained on the legacy benefit system.

The draft regulations state that this 'one-off check' date will be on or after the date the Regulations come into force and will be different for different claimants.

What is the 'one off check date'?

It is the date the DWP look to see whether the claimant is someone who is entitled to receive a Transitional SDP Payment.

It does not appear that the DWP are going to do a trawl of claimants when the regulations come into force*. So the 'one off check date' will be the date:

- When the DWP themselves are looking at an award of UC to see if a Transitional SDP Payment should be made - perhaps triggered by the claimant notifying a change in their circumstances, or
- When the claimant themselves requests the DWP to look at their case to see if they are someone entitled to a Transitional SDP payment.

Note: the draft regulations do not refer to a 'one off check date' - but the guidance on the regulations does.

*There is no mention of a trawl in the explanatory memorandum

Who will get this 'Transitional SDP Payment' ?

This payment will be for those who:

- If the new Gateway Condition (as described on page 8) had been in place at the time they moved onto UC, would have been prevented from claiming UC, and
- Remain entitled to UC and are on UC as at the 'one-off check date' ie it cannot be paid for UC awards which have terminated before this date because the claimant ceased to meet the entitlement rules, and
- Have not taken on a partner or separated from their partner since moving onto UC, and
- Are still entitled to the disability benefit which would have made them eligible for the SDP (ie. the daily living component of PIP, middle or high care component of DLA, Armed Forces Independence Payment, Attendance Allowance, Constant Attendance Allowance or Exceptionally Severe Disablement Allowance) and
- Whose carer has not started to receive Carer's Allowance or a Carer Element in their own UC for looking after them.

Examples

Example 1:

Delia was getting Income-Related ESA, but had to claim Universal Credit in December 2017 when her husband died as he had been the HB claimant. At that time she was getting Constant Attendance Allowance paid as part of her Industrial Injuries Disablement Benefit. But she had not been getting the Severe Disability Premium as part of their IR-ESA award (ie her husband had not also been on a 'qualifying benefit' and was not registered blind).

Even though Delia would now be entitled to the Severe Disability premium if she had been able to remain on Income-Related ESA, she is not entitled to the Transitional SDP Payment, as she was not on a legacy benefit that included a Severe Disability Premium at the point of claiming, or within the month of claiming, Universal Credit.

Example 2:

Rob was getting Income-Related ESA, but had to claim Universal Credit in March 2018 when he moved into rented accommodation in a different Local Authority area. At the time Rob was getting PIP Daily Living and his award of Income-Related ESA included the Severe Disability Premium.

In June 2018 his PIP award was reviewed and he no longer qualified for PIP.

As Rob's entitlement to PIP DL ended before the introduction of the Transitional SDP Payment (ie before the draft regulations take effect) he will not receive a Transitional SDP Payment in his UC award.

NOTE: If Rob appeals the PIP decision and wins, he can then ask the DWP to review his entitlement to the Transitional SDP Payment and - assuming there is no break in his PIP DL award - he would be entitled.

Example 3:

Sheila was working part-time and getting Working Tax Credit as a disabled worker, partial HB that included the Severe Disability Premium, and PIP Daily Living.

She finished work in July 2018 due to her health. As she was living in a Full UC Service area she made a claim for UC.

She had problems with her initial UC claim, which was subsequently cancelled, and she went on to make a further claim which was put into payment. The start of this claim was dated 6 weeks after the end of her HB award.

As there was more than a month between the date of her UC award and the legacy benefit that included the SDP Sheila would not have been someone who met the new 'Gateway Condition' rules - she is therefore not entitled to the Transitional SDP Payment.

NOTE: Sheila should be advised to look into the reason why her initial UC claim was terminated as she may have grounds to ask for it to be re-opened. We are aware that UC claims have sometimes been 'made defective' by the DWP even though they have not followed the correct procedures - [click here](#). If she was successful in getting the initial claim re-opened and awarded then she would be entitled to the Transitional SDP Payment.

Example 4:

Steve was getting Income-Based JSA, but had to claim Universal Credit in May 2018 when his health took a turn for the worse. At the time Steve was getting PIP Daily Living and his award of Income-Based JSA included the Severe Disability Premium.

His daughter, Jade, who spent a lot of time caring for Steve, had always been against claiming Carers Allowance for herself as she knew it would affect her dad's benefits - and she didn't really need the extra money as her partner worked full time and they got Tax Credits.

But when Steve moved onto UC and lost the SDP, they decided that Jade should make a claim - and an advice worker confirmed that it would have no effect on Steve's benefits.

But because Jade has become a recognised carer for Steve - ie by making a claim for and receiving Carers Allowance - he will not be entitled to the Transitional SDP Payment.

Example 5:

Irene and Jack were claiming Support Group Income-Related ESA in April 2018 when they moved to a rented bungalow in a different local authority area - an area where the Full/Digital UC service had already started. Their ESA had included two Severe Disability Premiums - as they were both getting DL PIP.

They had to make a claim for UC - which included a LCWRA element for Jack, but they were left £336 per month worse off.

Sadly, in early September 2018 Jack dies. This ends their UC claim, but Irene is treated as having made a new claim for UC, so payments continue - albeit based on her new circumstances - without her having to do anything.

She will not be eligible for the Transitional SDP Payment - not even for a backdated payment for the period from April to September 2018. This is because their UC award terminated before the DWP make their one-off check (we are not expecting the Regulations for the Transitional SDP Payment to be introduced until after September 2018).

NOTE: If Jack had died after the one off check date (lets say he dies in Feb 2019 and their one **off** check date is in December 2018) - then they would have been entitled a backdated Transitional SDP Payment from April - December 2018, as well as an on-going monthly payment up to the beginning of the UC Monthly Assessment Period in which he dies.

When will those qualifying for the Transitional SDP Payment receive it?

No-one will be able to receive the Transitional SDP Payment before the 'one off check date' - which is a date on or after the draft regulations come into force. But we do not know yet when this will be - what we do know is that it will not be until after the consultation period on the draft regulations closes ie not until after 20th August 2018 - and therefore not until parliament starts again after the summer recess.

And, at the moment, it would appear that the plan is that the DWP will not do a trawl of those who have missed out - but will deal with cases as they arise.

So a claimant who has missed out could get their Transitional SDP Payment as early as the 'one off check date' or at any point after that ie when the DWP become aware that they are someone who has missed out because of the loss of the SDP.

IMPORTANT

It is in the claimant's interests to highlight their case to the DWP as soon as possible.

This is for two reasons:

- They then get the additional payment sooner, but also
- The later their one-off check date, the greater the risk of losing out on a Transitional SDP Payment. If, by the time the DWP assess their case to see if they are entitled to the Transitional SDP payment, they have separated from their partner, become a member of a couple, lost their PIP DL award, or their carer has started claiming Carers Allowance, they will not be entitled to the Transitional SDP Payment - and therefore not entitled to any backdate either - see below.

What about the period between the date they moved onto UC and the date they start to receive the Transitional SDP Payment - will any arrears be paid?

Yes, those entitled to the 'Transitional SDP Payment' on or after the 'one off check' date, will also be entitled to a backdate.

However those who aren't entitled to the 'Transitional SDP Payment' at the point the DWP consider their case will not be entitled to receive any compensation - even though they may have spent several months on UC and lost out during this period. In other words the Transitional SDP Payment can be backdated - but there will be no 'one off' payments to compensate for a period of loss in the past.

For those claimants who are entitled to the Transitional SDP, the DWP will need to work out how much Transitional SDP Payment they are owed for the period since they moved onto UC - see below.

Arrears will be paid as a lump sum and will be disregarded as capital for the period the arrears covered, or 12 months, whichever is longer. For example, if a claimant receives an arrears payment for 14 months, the lump sum will be disregarded for a 14 month period. If a claimant receives an arrears payment for 9 months, the lump sum will be disregarded for 12 months.

Will everyone who lost out receive a backdate of the Transitional SDP Payment?

No. To receive a backdated payment, the claimant must be receiving Universal Credit and must be entitled to a Transitional SDP Payment - see above.

How much is the Transitional SDP Payment?

The Transitional SDP Payment is a set amount, depending on the current circumstances of the claimant when the DWP become aware that they are a claimant who was entitled to it. It is an additional amount paid on top of their normal UC award at the following proposed monthly amounts:

	Not getting UC LCWRA element	Getting LCWRA element
Single People	£280.00	£80.00*
Couples where one member of the couple qualified for SDP in their legacy benefit	£280.00	£80.00*
Couples where both qualified for SDPs in their legacy benefit	£360.00	£360.00

Why are there two rates?

The LCWRA element in UC was set at a more generous rate - partly to compensate for the loss of the disability premiums which exist within the legacy benefits; therefore those with LCWRA element included in their UC award will not have felt the same drop in income when moving onto UC, compared with those who don't have the LCWRA element. This is why the Transitional SDP Payment is lower for those with a LCWRA element.

The Transitional SDP Payment will be lost if:

- They were claiming as a couple when they migrated onto UC, but they separate,
- They were claiming as a single claimant when they migrated onto UC, but take on a partner, or
- The UC award terminates, or
- The disability benefit which would have qualified them for the SDP (eg. PIP Daily Living) ends, or
- Their carer starts to receive Carer's Allowance or a Carer Element in their own UC award.

Will the amount of the Transitional SDP Payment change?

This set amount will be added to the UC award from the Monthly Assessment Period during which the claimant's circumstances are checked and the DWP work out how much Transitional SDP Payment the claimant is entitled to.

The amount can change in the following circumstances:

where a single claimant, or a couple where one of them had qualified for the SDP in their legacy benefit, was not entitled to the LCWRA element at the time the check was done, (and therefore they qualified for the £280 Transitional SDP Payment) but subsequently becomes eligible for the LCWRA element; their Transitional SDP Payment will reduce to £80 from the monthly assessment period in

which they become entitled to the LCWRA element, until the 'conversion day'.

Otherwise, the set amount will remain as an additional payment on top of the normal UC award until the 'conversion day'.

What is the 'conversion day'?

The 'conversion day' will be decided by the DWP – it will be some time during the 'managed migration' period – ie between July 2019 and 2023. It is the day from when the claimant is treated as though they have been 'manage-migrated', and subsequently the Transitional SDP Payment will be treated as if it is a normal Transitional Element.

What happens after the 'conversion day'?

Because the Transitional SDP Payment is treated as if it is a normal Transitional Element, it will be subject to 'erosion' just like any other Transitional Element will be when introduced for UC claimants who are 'manage-migrated'.

For the Monthly Assessment Period which begins after the assessment period during which the 'conversion day' falls, the Transitional SDP Payment remains at the same amount and is treated as though it is the initial amount of the Transitional Element. In subsequent Monthly Assessment Periods the Transitional SDP Payment will be eroded by increases in other elements (apart from the childcare costs element).

Protection from having to claim UC

A new 'Gateway Condition' will be introduced into the UC rules that will prevent anyone getting the Severe Disability Premium (SDP) in their current legacy benefit, or who has been in the month before trying to make the claim for UC, from making a new Universal Credit (UC) claim. This 'Gateway Condition' will last until the claimant is selected for Managed Migration (ie some time from July 2019 up to 2023).

This will mean that even if the claimant has a change in circumstances that would normally trigger the need to claim UC before Managed Migration starts (ie what the DWP call Natural Migration), they will not be able to claim it.

For example, where someone in receipt of a legacy benefit - that includes the SDP as part of the assessment -
takes on liability for rent for the first time in a Full/Digital UC area,
or moves from one rented property to another in a different Local Authority area which is under the Full/Digital UC Service,
or has their ESA ended because they have been found fit for work -
then instead of having to claim UC, they will be able to remain on legacy benefits instead, and those legacy benefits will include the Severe Disability Premium in the assessment where appropriate.

As long as their legacy benefit/s retain the Severe Disability Premium, they then will stay on the legacy benefit system until they are 'manage-migrated' onto UC - and then a Transitional Element will be available to compensate them for the loss in benefit due to the fact that UC does not have a SDP. [Click here](#) for more on the Transitional Element.

Who will be entitled to the protection from claiming Universal Credit?

In the draft regulations it is Regulation 63 that introduces the new 'Gateway Condition'.

The proposed rules are that for this protection to apply at the point where someone would normally be making a new claim for UC the claimant (or joint claimant):

- Must be receiving a legacy benefit that includes the Severe Disability Premium, or
- Has, within the past month, been receiving a legacy benefit that includes the Severe Disability Premium and has continued to satisfy the eligibility criteria for the SDP throughout that period ie between the legacy benefit ending and the potential UC award starting,
and
- Has not already been issued with a Managed Migration notice (these are not due to be sent out until July 2019 at the earliest).

Example

Joe lives alone and receives the standard rate daily living component of Personal Independence Payment, Income-Related ESA - which includes the SDP, Housing Benefit, and Council Tax Support. (ESA includes the SDP because he lives alone, gets PIP Daily Living (DL) and nobody receives Carer's Allowance or a Carer Element in UC for looking after him).

Joe has a review of his ESA Work Capability Assessment and is found fit for work, so his IR-ESA terminates.

Joe has been entitled to the SDP in the last month and he still fits the eligibility criteria for the SDP (he lives alone, gets PIP DL and nobody receives extra benefit for being his carer). Therefore, Joe does not have to claim UC (yet!). He can make a claim for Income-Based Jobseeker's Allowance – which will include the SDP (and the disability premium too!).

If he successfully appeals the 'fit for work decision', his IR-ESA can be reinstated.

From what date will this 'Gateway Condition' apply??

This 'Gateway Condition' will apply from the date the Regulations come into force. We do not have a date for this yet - but we do know that this will not be until after the consultation period on the draft regulations closes ie not until after 20th August 2018 - and therefore not until Parliament starts again after the summer recess.)

Will everyone who has been getting the SDP in a legacy benefit before they have to make a claim for UC be protected?

No. Where the claimant becomes a couple with someone already on Universal Credit, their legacy benefits will end and they will have to make a couple claim for Universal Credit without any Transitional Protection. This is because even if they had stayed on legacy benefits they would (in the majority of cases) have lost the SDP.