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# Managed Migration



## The Transitional Element & Tax Credit-only Claimants

Managed Migration is the final phase of the roll out of Universal Credit. The DWP will invite remaining legacy benefit claimants to claim UC. During the tax year 2023/24, they will be focusing on Tax Credit-only claimants (i.e., those who are not also receiving Housing Benefit, Income-Related ESA, Income Support or Income-Based JSA). Selected claimants will be sent a Migration Notice giving them a deadline by which they must make their claim for Universal Credit. Whether they claim UC or not, their legacy benefits will end.

The DWP have said that those worse off on Universal Credit will be entitled to Transitional Protection – a Transitional Element will be included in their first UC award.

This Briefing investigates how this Transitional Element is being worked out for Tax Credit-only claimants.

### The Information in this Briefing

The information in this briefing is based on our understanding of the Regulations, DWP guidance that has been released through FOIs, and conversations with the DWP.

The UC (Transitional Provisions) Regulations 2014 govern this assessment, however whilst they are quite prescriptive in some areas, they are less so in others. So far, the DWP have not been overly transparent about how the Transitional Element is being calculated for Tax Credit-only claimants. We have spent the last few months seeking clarification on the rules from the DWP. We are not 100% there yet, but wanted share with you what we (and others) have learnt so far.

This briefing is, therefore, based on our current understanding of how the process works. Where we are unsure and are seeking clarification, we will make this clear. If our understanding changes, we will update our website, this briefing and announce this in our newsletter (to subscribe to our newsletter please email [info@housingsystems.co.uk](mailto:info@housingsystems.co.uk)).

#### **Do you know a claimant who has been awarded a Managed Migration Transitional Element?**

The best way for us to understand what the DWP are doing in practise is to see real-life examples! If you know of a claimant who receives a Managed Migration Transitional Element, we would appreciate it if you could send us information about their circumstances and the value of their Transitional Element in their **first** Monthly Assessment Period (and details of how their Transitional Element was assessed if you have this).

Please email [rachel@ucnotes.co.uk](mailto:rachel@ucnotes.co.uk) with any examples.

**IMPORTANT: This Briefing was published on 8<sup>th</sup> December 2023 based on the Guidance and information available at that time and is subject to change.**

# The Transitional Element and Tax Credit-only Claimants

## Key Points:

### Entitlement

Not all Tax Credit-only claimants worse off on UC will be entitled to a Transitional Element. This is because of the strict entitlement rules (see page 4), and due to specific circumstances (see page 15).

### Not a simple comparison

Calculating the Transitional Element is not as simple as comparing the claimant's legacy benefit amount to their UC entitlement. Instead, the DWP will look at the claimant's 'Total Legacy Amount' and compare this to their 'Indicative UC Amount'.

The Total Legacy Amount is the monthly equivalent of their legacy entitlement. For Tax Credit-only claimants this will be based on the information being used by HMRC to assess their Tax Credit award on the day before their UC award begins – their 'migration day'. (See page 7)

The Indicative UC Amount is an imaginary award based on the claimant's circumstances on their 'migration day'. For Tax Credit-only claimants it will be based on information held by HMRC supplemented with information from the Customer Information System and the claimant's UC declaration. This calculation is not linked to their actual UC entitlement. For example, for Tax Credit-only claimants their Indicative UC Amount will not include a Housing Costs Element even if they are liable to pay rent. (See page 8.)

### Checking the amount of the Transitional Element

Due to the current lack of information available about how the Transitional Element is worked out, checking whether any Transitional Element given is correct will be a challenge. This is made harder by the fact that the DWP will not automatically be providing a breakdown of how it has been assessed. The claimant will need to request this on their UC account (and even then, there could be some reluctance).

### Erosion and Loss

The Transitional Element is not a 'normal' Element and can be lost due to certain changes in the claimant's circumstances. Additionally, the Transitional Element is 'eroded' by increases to the claimant's Maximum UC Amount (apart from increases to the Childcare Costs Element). So claimants need to be aware that their UC may not increase when they expect it to (e.g., when they have a child or the annual uprating of benefits). (See page 17.)

### Timing of the claim

Finally, some claimants may be able to maximise their entitlement to Universal Credit (and the Transitional Element) by thinking about the timing of their UC claim. They have between the Migration Notice being issued and their 'deadline day' to make their claim for UC. (See page 22)

## IMPORTANT

The most important thing when a claimant receives a Migration Notice is that they get advice from a Benefits Adviser who can help them understand how the move to UC will affect them.

In particular: when to claim, how to make a successful claim, what they will be required to do whilst on UC and what, if any, Transitional Protection they might be entitled to – including the amount of any Transitional Element.

# Introduction

A key part of the Managed Migration process is the Transitional Protections that the DWP have put in place to ensure that claimants who claim UC through the Managed Migration process are not made immediately worse off by the move.

This protection takes three forms:

- The Transitional Savings Disregard
- Protection for some full-time students
- The Transitional Element

The first two protections ensure that claimants who would not normally be able to claim UC are still able to do so if they are selected for Managed Migration (see the Housing Systems website for more information).

The Transitional Element is available for some people moving onto UC through the Managed Migration process. It is an additional element that is included when a claimant's UC award is assessed. It is calculated by comparing the claimant's legacy benefits with an 'imaginary' UC amount. But this is not as simple as looking at the legacy benefits the claimant has been receiving and comparing this to their first UC award. The calculation is more complicated than this – see page 6. It can produce some unexpected results. This is particularly true for Tax Credit-only claimants.

## The Managed Migration Process

When someone is selected for Managed Migration, they are sent a **Migration Notice**. This is a letter informing them that their legacy benefits are going to end and if they wish to continue receiving this financial support, they will need to make a claim for Universal Credit. Both members of a couple are sent Migration Notices as they will each need to make claims for Universal Credit and join them together with a 'partner code' like normal.

The Migration Notice will include the claimant's '**deadline day**', this is the day on which their legacy benefits will be brought to an end if they have failed to make a claim for UC by then. If a claimant will be unable to make their UC claim before this date, they can call the Migration Notice helpline (0800 169 0328) and ask to have it **extended**. Guidance<sup>A</sup> gives reasons for extending a deadline including: a domestic emergency, a mental or physical health condition, the claimant not engaging with the process until close to the deadline, or the claimant needing more time to get the information they need / advice before making their claim. Where this briefing refers to a claimant's 'deadline day', it is referring to the date given in the Migration Notice if the claimant has not had it extended, or the date it has been extended to.

If a claimant fails to make a claim for UC by their 'deadline day', their legacy benefit entitlement will be brought to an end on the day before their 'deadline day'<sup>1</sup>. For Tax Credit-only claimants, their award of Tax Credits will end on this day (the other legacy benefits will end two weeks later i.e., a two week run-on will be applied).

However, the claimant has a '**final deadline day**' and if they claim UC before this, their UC claim will be treated as though made on their 'deadline day' meaning there is no gap in their benefit entitlements and they could still be entitled to a Transitional Protection – including a Transitional Element. A claimant's 'final deadline day' is a calendar month after their 'deadline day'<sup>2</sup>.

Entitlement to Transitional Protection is then based on their circumstances on their '**migration day**' – this is the day before their entitlement to UC begins<sup>3</sup>.

To be entitled to a Transitional Element the claimant must meet certain rules including making a 'qualifying claim' for UC and must be on a legacy benefit on their 'migration day'. See page 4 for more details.

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<sup>A</sup> Annex E - [https://www.whatdotheyknow.com/request/updated\\_managed\\_migration\\_guidan#incoming-2349527](https://www.whatdotheyknow.com/request/updated_managed_migration_guidan#incoming-2349527)

# Entitlement to the Transitional Element

Where someone claims Universal Credit through the Managed Migration process, the DWP will consider if they meet the eligibility criteria for the Transitional Element and if they do will go on to work out if a Transitional Element is needed.

The UC (Transitional Provisions) Regulations 2014 outline what's needed for a claimant to receive a Transitional Element. A Transitional Element will be included in a Tax Credit-only claimant's first UC assessment where:

- they made a 'qualifying claim' for Universal Credit, and
- they were in receipt of Tax Credits on their 'migration day', and
- they have claimed UC in the same 'benefit unit' that they received their Migration Notice in, and
- their 'Total Legacy Amount' is higher than their 'Indicative UC Amount'.

## Made a 'qualifying claim' for Universal Credit

To make a 'qualifying claim' for UC, the claimant must make their claim for UC after receiving a Migration Notice\* and before their 'final deadline day' i.e., within a calendar month after their 'deadline day'.

\* If someone makes a claim for UC before receiving their Migration Notice, they will not be entitled to the Transitional Element even if they are worse off on UC (although some claimants may be entitled to the Transitional SDP Element instead).

**EXAMPLE:** The deadline given in Ruby's Migration Notice was 3<sup>rd</sup> October. She did not engage with the process until she received a reminder text a couple of weeks before her 'deadline day', so she called the Migration Notice helpline and her deadline was extended to 31<sup>st</sup> October. Ruby missed this deadline, so her Tax Credit entitlement ended on 30<sup>th</sup> October. She made a successful claim for UC on 17<sup>th</sup> November – as this was before her 'final deadline day' (which would have been 30<sup>th</sup> November), the DWP will treat the claim as if it was made on her 'deadline day'. This means that her UC entitlement began on 31<sup>st</sup> October (her 'deadline day') and she could be entitled to a Transitional Element.

## In receipt of legacy benefits on their 'migration day'

To be entitled to a Transitional Element the claimant must have been getting legacy benefits e.g., Tax Credits on their 'migration day'. A claimant's 'migration day' is the day before their entitlement to UC begins. To ensure that they are in receipt of Tax Credits on their 'migration day' their first claim for UC has to be successful<sup>^</sup>. This means that the claimant does everything they need to do so that the claim for UC goes into payment i.e., they attend any interviews as requested, provide any extra information and evidence within the set time limits, and agree a claimant commitment.

**EXAMPLE:** As Ruby's UC entitlement begins on 31<sup>st</sup> October, her 'migration day' will be 30<sup>th</sup> October. Ruby will only be entitled to Transitional Protection if she was in receipt of one or more legacy benefit/s on that day.

A failed claim for UC still ends a claimant's legacy benefits. For Tax Credit-only claimants their Tax Credits will end from the day before they made that claim for UC. So even if they go on to make a second successful claim for UC before their 'final deadline day', they will not have been receiving Tax Credits on the 'migration day'<sup>^</sup> i.e., the day before this second claim, and so they will not be entitled to Transitional Protection.

<sup>^</sup>unless they get their first claim 'reopened' on MR or appeal – so claimants in this situation should consider challenging the closure of the first claim if possible.

### TOP TIP: Making sure first UC claim goes into payment

To be entitled to Transitional Protection, the claimant needs their first UC claim to be successful. They need to be aware of how to make a successful claim – including attending a New Claim Interview and signing a Claimant Commitment. This especially applies to those who are Tax Credit-only claimants who may never have had any dealings with the DWP or had a Claimant Commitment before.

## Claimed in same benefit unit

To be entitled to a Managed Migration Transitional Element the claimant must make a claim for UC in the same **'benefit unit'** in which they received their Migration Notice(s) (i.e., if they receive their Migration Notice as a single claimant, they make their claim for UC as a single claimant. If they receive their Migration Notices as a couple, they make their claim for UC in that same couple.)<sup>4</sup>

**EXAMPLE:** Ruby was single when she received her Migration Notice. She will only be entitled to a Transitional Element if she makes her claim for UC as a single claimant.

## Total Legacy Amount is higher than their Indicative UC Amount

### IMPORTANT

A claimant's Total Legacy Amount may not be the same as the Tax Credits in payment on the date they made their claim for UC, and the Indicative UC Amount may not be worked out in the same way as their first UC award. This will be discussed in detail in this Briefing.

Rather than comparing the total legacy benefits that a claimant is receiving with their first UC award, the DWP will compare the claimant's **Total Legacy Amount** with their **Indicative UC Amount**, calculated using information about their circumstances on just one day – the claimant's 'migration day'.

The claimant's **Total Legacy Amount** is based on the total legacy benefits that are in payment to the claimant on their 'migration day' (apart from HB if they are living in 'specified' or 'temporary' accommodation). (See page 7.)

A claimant's **Indicative UC Amount** is an 'imaginary' amount of UC - the monthly amount of UC they would be entitled to, based on certain assumptions about their circumstances on their 'migration day'. It is calculated using the information used when assessing their Tax Credit entitlement by HMRC, supplemented by information held on the Customer Information System (CIS) and some of the information in the claimant's declaration (i.e., some of the information given in their UC claim). (See page 8).

If the claimant's Total Legacy Amount is higher than their Indicative UC Amount, they will be entitled to a Transitional Element of the difference. This will be included when their first UC award is assessed. But can be lost or eroded after that – see page 17 for more information.

**EXAMPLE:** The DWP work out Ruby's Total Legacy Amount to be £234.78 more than her Indicative UC Amount and so she is entitled to a Transitional Element of £234.78 in her first UC award.

## Which Tax Credit-only claimants are more likely to be entitled to a Transitional Element?

Each claimant's circumstances are different and there is no way of knowing if a claimant will be entitled to a Transitional Element without doing the maths – but there are certain factors that would increase a claimant's entitlement to the Transitional Element. These include:

- they receive the Disabled Child Element for a child who is NOT receiving high-rate care DLA/CDP, or enhanced Daily Living PIP/ADP
- they have a Disabled Worker or Severe Disability Element included in their Working Tax Credit
- they have a high income.

But, not all Tax Credit-only claimants that are worse off on UC will receive a Transitional Element. (See page 15 for some specific circumstances). And some claimants better off on UC will receive a Transitional Element!

# Steps for calculating the Transitional Element

**NOTE: This Briefing concentrates on how the DWP are working out the Transitional Element for Tax Credit-only claimants.**

Once you have established that a claimant can be entitled to a Transitional Element i.e., they've made a 'qualifying claim' for UC before their 'final deadline day' and were getting Tax Credits on their 'migration day', you can move on to work out how much, if any, Transitional Element they are entitled to. There are three steps to working this out:

1. Calculate the claimant's Total Legacy Amount (i.e., based on Tax Credit information from HMRC)<sup>5</sup>
2. Calculate the claimant's Indicative UC Amount<sup>6</sup>
  - a) Calculate their Indicative Maximum UC Amount (i.e., see what Elements they are entitled to based on their circumstances on their 'migration day')
  - b) Reduce this by their assessable income (i.e., get their income figures from HMRC (and the Customer Information System / claimant's declaration where applicable) apply any applicable work allowance to their earnings, and reduce their Indicative Maximum UC Amount accordingly).
3. Compare the two amounts and calculate the claimant's entitlement to the Transitional Element<sup>7</sup>

We will look at each of these steps in more detail below.

## Migration day

It is a claimant's circumstances on their 'migration day' which matter when calculating the Transitional Element – this is the day before their UC entitlement begins.

Generally<sup>^</sup>, any change in circumstances that occurs after this day will not affect the Transitional Element (but could affect future UC awards).

<sup>^</sup>NOTE: if they change status i.e., go from being single to couple, or couple to single at any point after their 'migration day' they will no longer be entitled to a Transitional Element (see page 19 for more details).

If it is later found that wrong information was used to calculate the Transitional Element (i.e., the information held by HMRC was not accurate), the DWP will only recalculate it in certain circumstances (including where there has been official error, or the claimant failed to report something that means they have been overpaid the Transitional Element). See the 'Retrospective Changes' section on page 20 for more information.

**EXAMPLE:** After making her claim for UC Rita had her second child – as this happened after her 'migration day', it will not affect her entitlement to the Transitional Element. However, her first UC award will include two Child Elements if she reports the change before the end of her first Monthly Assessment Period.

**EXAMPLE:** Val and Charles claimed UC in the same 'benefit unit' before the deadline given in their Migration Notice. They made their claims on 4<sup>th</sup> September so their 'migration day' is 3<sup>rd</sup> September. Their Total Legacy Amount and Indicative UC Amount will be calculated based on the information held about their circumstances on that day. During the finalisation of their Tax Credits, HMRC realise that the projected annual income being used to calculate their Tax Credits was too low due to an unreported pay increase Val had earlier in the tax year. There is no requirement to report in-year pay increases for Tax Credits so the correct information was used to calculate their Transitional Element (i.e., the information held by HMRC on their 'migration day') so it will not be recalculated. However, as normal, HMRC will finalise their Tax Credit award based on their actual income, and this could cause a Tax Credit overpayment that can be recovered from their UC awards.

## Step 1: Work out the claimant's Total Legacy Amount

For Tax Credit-only claimants the DWP will use the information given to them by HMRC to calculate the claimant's monthly entitlement to Tax Credits – this will be their Total Legacy Amount.

HMRC will provide DWP with the claimant's daily rate of Tax Credits – to get this figure, HMRC take the claimant's Tax Credit entitlement for the claimant's current 'relevant period' and divide this by the number of days it covers.

To get a good estimate, a Benefits Adviser can look at the claimant's latest Tax Credit award letter. This will show how much Tax Credits the claimant has been awarded for their current 'relevant period' that includes their 'migration day', and how many days this covers. Divide the entitlement by the number of days. A new 'relevant period' is usually triggered when a claimant's maximum Tax Credit Amount changes, becomes entitled to, or loses an Element. Changes in income do not trigger a new 'relevant period' and changes to childcare only trigger a new 'relevant period' if there is a change of more than £10 to their average weekly childcare costs, or they stop paying for childcare.

The DWP will take this daily rate, multiply this by 365 and divide by 12 to give the monthly equivalent (note: the DWP will still multiply by 365 in leap years)<sup>8</sup>.

REMEMBER: The result i.e., the claimant's Total Legacy Amount could be very different to the amount of Tax Credit actually in payment (which could be affected by in-year adjustments and/or repaying overpayments from a previous tax year).

**EXAMPLE:** Shaheen and Rizwan receive Working and Child Tax Credit. The tax year started on 6<sup>th</sup> April. They had their second child on 20<sup>th</sup> July and reported this to HMRC within a month. Rizwan increased his hours from 30 to 35 on 23<sup>rd</sup> November. Their 'migration day' is 10<sup>th</sup> December. The last change that affected the rate of Tax Credits they are entitled to was the addition of a second Child Element so the current 'relevant period' runs from 20<sup>th</sup> July – 10<sup>th</sup> December. As at 'migration day' their entitlement for that 'relevant period' was £2,473. HMRC will divide this by the number of days in the 'relevant period' to give a daily rate of £17.18. The DWP will convert this to a monthly amount and their Total Legacy Amount will be £522.56 – even though they are actually receiving £396 a month due to a previous overpayment.

### What if the claimant could be entitled to another legacy benefit but this is not in payment?

If the claimant could be entitled to a legacy benefit but has no current award running, then that legacy benefit is ignored.

#### **TOP TIP – maximise a claimant's legacy entitlement before they claim UC**

If the claimant is receiving less Tax Credits than they should because they have failed to report an advantageous change (e.g., being awarded enhanced rate PIP/ADP and therefore entitled to the Severe Disability Element), the DWP may not recalculate their Transitional Element if the claimant realises at a later date that they should have been entitled to / entitled to a higher amount of Transitional Element.

See the section on 'Retrospective Changes' on page 20 or on our website.



## Step 2: Work Out the claimant's Indicative UC Amount

To work out a claimant's Indicative UC Amount you will need to work out their Indicative Maximum UC Amount and then reduce this by any Indicative Assessable Income (i.e., any earnings and/or other income).

### **IMPORTANT:**

For Tax Credit-only claimants this calculation can be very different to how their 'actual' UC will be assessed. Their actual UC awards will be calculated as normal using the information given on their UC claim – here we are just looking at the Indicative UC Amount used to calculate their entitlement to the Transitional Element.

### **DON'T PANIC:**

A claimant's Indicative UC Amount could be lower than expected due to the way it is worked out (i.e., lower than their estimated UC entitlement). What this means is that they could receive more Transitional Element than expected. See the Housing Systems website for more details and examples.

## 2A: The Indicative Maximum UC Amount (IMUCA)

A claimant's Indicative Maximum UC Amount will be the total of all the Elements they are entitled to according to the UC (Transitional Provisions) Regulations 2014 – not necessarily the same as under the UC Regulations.

### **'Missing' Elements**

Due to the way the UC (Transitional Provisions) Regulations 2014 work, some Tax Credit-only claimants will appear to be 'missing' one or more Elements from their IMUCA.

### **IMPORTANT:**

The DWP have confirmed beyond doubt that a Housing Costs Element will not be included in the Indicative Maximum UC Amount of Tax Credit-only claimants i.e., where no HB is in payment.

### **DON'T PANIC:**

Although it may seem counterintuitive, missing Elements in a claimant's Indicative UC Amount increases their entitlement to the Transitional Element (because the Indicative UC Amount is lower and the lower it is, the bigger the difference between it and the Total Legacy Amount).

### **Which Elements will be included?**

For Tax Credit-only claimants, the Elements included in their Indicative UC Amount are based on the information held by HMRC, and to some extent information available from the Customer Information System (CIS) and possibly<sup>^</sup> the claimant's declaration.

<sup>^</sup> At the moment it is unclear whether a claimant declaring a child / qualifying young person receives DLA/CDP, PIP/ADP on their claim form will mean a Disabled Child Element in their IMUCA if no Disabled Child Element is being included in their Child Tax Credit award. Although we are awaiting clarification from the DWP on this matter, we feel it is unlikely.

Elements are added as detailed on the following pages.



## Standard Allowance

The rate awarded is based on whether it is a single claimant or couple, and their age(s) on their 'migration day'.

**EXAMPLE:** Sandie is a lone parent with one child. She claims UC after receiving her Migration Notice. On her 'migration day' she is 24 years old. Two weeks later she turns 25. Her Indicative UC Amount will be based on the single Standard Allowance for someone age 24.

## Child Elements

Reg 54 para 2(a) of the UC (Transitional Provisions) Regulations 2014 states that the DWP should assume that: *"if the claimant is entitled to an award of child tax credit, the claimant is responsible for any child or qualifying young person in respect of whom the individual element of child tax credit is payable"*.

This means that the number of Child Elements included in the claimant's IUCA is based on the number of children included in the claimant's Child Tax Credit award on their 'migration day'. If they are receiving the Family Element in their CTC, there will be a High Child Element in their IMUCA i.e., for their eldest dependent child/qualifying young person.

**EXAMPLE:** Nic and Violet are receiving Working and Child Tax Credit and have been sent a Migration Notice. They have three children. Their Tax Credit award includes two Child Elements but not a Family Element. So their Indicative Maximum UC Amount will include two Child Elements of £269.58.

**IMPORTANT:** There are a couple of situations where the claimant may be getting a Child Element in their Child Tax Credit but would not be entitled to a Child Element in their 'actual' UC award for the same child/qualifying young person. Please see page 15 for more details.

## Disabled Child Elements

We are currently assuming that the number of Disabled Child Elements included in a claimant's IMUCA is based on the number included in their Child Tax Credit award on 'migration day' (we are seeking clarification on this). This will be the higher rate of the Disabled Child Element where HMRC has the child / qualifying young person recorded as receiving high-rate care DLA/CDP or enhanced daily living PIP/ADP.

### What if the claimant has failed to notify HMRC of their child's disability benefits?

The DWP often talk of comparing 'like for like' and at the moment we are assuming that if the claimant has not declared to HMRC that they are getting DLA/CDP/PIP/ADP for a child / qualifying young person, there will not be a Disabled Child Element in their Indicative Maximum UC Amount – but we are currently seeking clarification from the DWP.

NOTE: We hope we are correct because if the DWP do include a Disabled Child Element in the claimant's IMUCA when there is no Disabled Child Element in their Tax Credit award, then the amount of any Transitional Element is likely to be lower than expected (because the IMUCA is higher reducing the difference between this and the Total Legacy Amount).

**EXAMPLE:** Nic and Violet are receiving WTC and CTC and have been sent a Migration Notice. Their son was awarded mobility DLA a few months ago but they have not reported this to HMRC. If they claim UC before reporting the DLA, there is a risk that their Transitional Element will be worked out without the Disabled Child Element. If they report the DLA on their UC claim, the DWP will include the DCE in their first UC award, but they may not go back and recalculate their entitlement to the TE, this means they could have missed out on up to £180 a month (i.e., the difference between the DCE in Tax Credits and UC).

**IMPORTANT:** Where a claimant has failed to notify the DWP of a child's / qualifying young person's disability benefit this could mean that they miss out of some Transitional Element (see example above). They should notify HMRC and get the Disabled Child Element included in their Tax Credit award before they claim UC if this is possible. If they are awarded the disability benefit after they made their claim for UC, see the section on 'Retrospective Changes' on page 20 or on our website.

## Childcare Costs Element

Reg 54 para 2(b) of the UC (Transitional Provisions) Regulations 2014 that the DWP should assume that: *“if the claimant is entitled to an award of working tax credit that includes the childcare element, the indicative UC amount includes the childcare costs element...”*.

So, if a claimant's Working Tax Credit award includes a Childcare Element on their 'migration day', then their IMUCA will also include a Childcare Element.

The DWP will take the weekly childcare figure provided by HMRC, convert this to a monthly amount (i.e., multiply it by 52 and divide by 12) and use this to calculate the Childcare Costs Element for the Indicative Maximum UC Amount. Because HMRC use an average childcare costs figure, the amount used to work out the claimant's Indicative Maximum UC Amount could be very different to the amount of childcare costs the claimant is paying at the point of moving onto UC.

**EXAMPLE:** Blessing is a lone parent with two children aged 2 and 5. She gets Tax Credits to top up her wages and help with her childcare costs. She pays more in childcare during the school holidays when her 5-year-old attends an 'out of school' club. It is November and she is making her claim for Universal Credit after receiving a Migration Notice. When working out her IMUCA the DWP will use the figure given to them by HMRC even though she is currently paying less in childcare costs.

**IMPORTANT:** A claimant may be getting a Childcare Costs Element in their Child Tax Credit but would not be entitled to one in their 'actual' UC award. Please see page 15 for more details.

## What if the claimant is no longer paying for childcare?

The Regulations appear quite strict on this – if a claimant is receiving help with their childcare costs from Working Tax Credit, their Indicative Maximum UC Amount will include a Childcare Costs Element.

If a claimant reports to HMRC that their childcare costs have ended, the change is actioned four weeks after the change happened. This means that they still receive help with their childcare costs in WTC for four weeks. If they make a claim for UC during these four weeks, the Childcare Costs Element will be included in both their Total Legacy Amount and their IMUCA. As help with Childcare Costs is more generous under UC this would mean less Transitional Element. Claimants who have reported, or will report in the near future, that their childcare costs have ended, may want to delay claiming UC until after the four-week run-on if possible i.e., if they can still make their claim before their 'deadline day'.

## LCW/LCWRA Element

If a Tax Credit-only claimant is not receiving Contributory / New-Style ESA on their 'migration day', they will not have a LCW / LCWRA Element included in their IMUCA. However, the DWP have confirmed that the LCW / LCWRA Element can be included in a Tax Credit-only claimant's IMUCA if they are receiving that Element in an award of C/NS-ESA on their 'migration day'.

## What if the Tax Credit award includes a Disabled Worker Element or Severe Disability Element?

The only health related elements in UC are the LCW and LCWRA Elements. To be entitled to one of these the claimant must be found to have (or be treated as having) a Limited Capability for Work<sup>^</sup> (LCW) or Limited Capability for Work and Work-Related Activities (LCWRA). To have an LCW/LCWRA Element included from the start of a UC claim, the claimant must have already been found to have (or be treated as having) an LCW/RA, and served a 3 month relevant period if applicable. Tax Credit-only claimants will not have been through the Work Capability Assessment process unless they are also receiving Contributory / New-Style ESA.

<sup>^</sup> and their period of LCW must have started before April 2017.

**EXAMPLE:** Paul is single. He gets Working Tax Credit to top up his part-time wage. His Tax Credit award includes a Disabled Worker Element. Although he is recognised as disabled, he has not been found to have a limited capability for work so when his Indicative Maximum UC Amount is assessed it will only include a Standard Allowance (i.e., no LCW/RA Element).

NOTE: If he is in receipt of PIP, then he can request a Work Capability Assessment once he has claimed UC- he should note his health conditions on his UC declaration and provide fit notes until the WCA has been determined. If he is found to have LCW, he would then be entitled to the work allowance, and if found to have LCWRA, he would be entitled to the LCWRA Element after serving the 3 month 'relevant period'.

### **What if the claimant declares their health condition on their UC declaration and is in one of the groups of claimants that can be treated as having LCWRA?**

There are potentially three issues to be considered here – the LCWRA Element, the Childcare Costs Element and the Work Allowance.

The DWP often talk of comparing 'like for like' and at the moment we are assuming that if the claimant is not getting New-Style or Contributory ESA on their 'migration day', then they cannot be considered to have LCW/RA when their Indicative Maximum UC Amount is worked out (even if they would normally be treated as having an LCW) – and so no associated Childcare Costs Element or work allowance – but we are seeking clarification from the DWP.

If the DWP do include a Childcare Costs Element in the claimant's IMUCA then their Indicative UC Amount will be higher and so they are less likely to be entitled to a Transitional Element.

If the DWP do not include a work allowance when assessing a claimant's Indicative Income Amount, then their Indicative UC Amount will be lower and so they are more likely to be entitled to a Transitional Element.

### **Carers Element**

The DWP often talk of comparing 'like for like'. As Tax Credits do not include an element related to being a carer then we are currently assuming that neither does the Indicative Maximum UC Amount – even if the claimant declares themselves a Carer on their UC declaration (i.e., claim form).

### **What if the claimant is receiving Carers Allowance?**

The DWP have been less clear on what happens when the claimant is in receipt of Carers Allowance on their 'migration day' – so we are awaiting further clarification from them on this. In some cases, the DWP appear to be ignoring Carer's Allowance all together and not including it as an income in the IUCA. If you come across a case where Carers Allowance has not been included as an income, it would be worth requesting a MR of this decision. We would expect this to be successful and therefore result in a Transitional Element / higher Transitional Element.

**EXAMPLE:** Becky gets Tax Credits. She works part-time. She also spends 35 hours+ a week caring for her dad who gets enhanced rate daily living PIP. Although she is a carer, and ticks the 'I am a carer' box on her UC declaration, her Indicative Maximum UC Amount will not include a Carer Element.

### **IMPORTANT:**

The rules outlined above only apply to a claimant's Indicative Maximum UC Amount i.e., when the DWP are assessing how much, if any Transitional Element they are entitled to.

The normal UC rules will apply when the DWP assess the claimant's actual UC award. So, where a claimant has declared themselves as a carer on their UC declaration and meets the entitlement conditions for the Carers Element – then their actual UC award will include a Carer Element.

## **NO Housing Costs Element for Tax Credit-only Claimants**

The DWP have confirmed that where a claimant is not getting any Housing Benefit on their 'migration day' their IMUCA will not include a Housing Costs Element even if they are liable for rent. No HB means no Housing Costs Element.

**EXAMPLE:** Imaan is 32 years old. She is a lone parent and lives with her two children aged 6 and 8 in a rented two-bedroom house. She gets Working and Child Tax Credit to top up her wage. She makes a claim for UC after receiving her Migration Notice.

Imaan's Indicative Maximum UC Amount will not include a Housing Costs Element as she does not receive HB. But her actual award of UC will include a Housing Costs Element.

### **IMPORTANT:**

The rules outlined above only apply to a claimant's Indicative Maximum UC Amount i.e., when the DWP are assessing how much, if any Transitional Element they are entitled to.

The normal UC rules will apply when the DWP assess the claimants' actual UC award. So, where a claimant is liable for rent and is occupying that property as their home – then their actual UC award will include a Housing Costs Element.

## **2B: Reduce the Indicative Maximum UC Amount by the claimant's Indicative Assessable Income**

Once you have worked out the claimant's Indicative Maximum UC Amount, this must be reduced by any Indicative Assessable Earnings and/or other Indicative Assessable Income.

**IMPORTANT:** As, for Tax Credit-only claimants the DWP will use the wages figure reported to them by HMRC to assess a claimant's Indicative UC Amount this may be different to the claimant's current wages.

### **Any Earnings?**

Where the claimant has earned income, HMRC will send the DWP the annual earnings figure that they are using to calculate the claimant's Tax Credit award (i.e., the one used to calculate their Total Legacy Amount)<sup>9</sup>. This is usually their gross income from employment / self-employment\* in the previous tax year. However, where a claimant has reported a significant change in earnings (or other taxable income) expected in the current tax year, HMRC use the current year's expected earnings. We believe that where HMRC are using an updated figure, the figure given to the DWP will be the claimant's expected gross earnings for the current tax year. However, we are seeking clarification on this point.

\*NOTE: The Regulations do not apply the Minimum Income Floor to the Indicative UC Amount, so where HMRC report a low / no income for a self-employed person then it is this figure that the DWP will use.

The DWP will then divide this annual earnings figure by 12 (to give a monthly amount) and apply notional deductions for Income Tax and National Insurance if applicable. Note: no deductions are made for pension contributions even if the claimant is paying them<sup>10</sup>. Once the DWP have this monthly amount, they will work out the claimant's Indicative Assessable Earnings figure by deducting the Work Allowance<sup>^</sup> if applicable and multiplying by the taper rate of 55%.

**^IMPORTANT:** As no Housing Costs Element will be included in the IMUCA for Tax Credit-only claimants, where the claimant is entitled to a work allowance it will be the higher figure i.e., £631, that will be used when working out their Indicative Assessable Earnings.

### Any Benefit Income?

Based on the Guidance<sup>B</sup> seen and information given by the DWP, we believe that the DWP will get information about the benefit income that should reduce the claimant's Indicative Maximum UC Amount from the Customer Information System (i.e., this will not be sent by HMRC). As normal, some benefit income is disregarded, and some reduces their UC award £ for £.

**WARNING:** This appears to be a key area where errors can happen in the calculation of the Transitional Element. If a claimant's IUCA is not reduced by a benefit (e.g., Carer's Allowance), they should challenge this as they could be being underpaid the Transitional Element.

### Any 'Other' Income?

For any other 'unearned income', the DWP will get this information from the claimant's declaration i.e., claim. This will be made up of any other income that the claimant is receiving (e.g., pension income, student income). This is treated as unearned income for the Indicative UC Amount and so reduces it £ for £.

#### What about savings?

Any savings that the claimant has between £6,000 and £16,000 will reduce their Indicative Maximum UC Amount as they would their actual UC awards (i.e., by £4.35 per £250 or part of £250).

**WARNING:** It appears that DWP may not be verifying the information they are using from the claimant's declaration – this could result in errors especially with regards to student income and disregarded savings.

### Reduce the Indicative UC Amount

The DWP will add together the deductions needed for any earned and unearned income. This gives the claimant's 'assessable income figure' and reduces their Indicative UC Amount £ for £.

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<sup>B</sup> Manually calculating [https://www.whatdotheyknow.com/request/calculating\\_transitional\\_element#incoming-2398156](https://www.whatdotheyknow.com/request/calculating_transitional_element#incoming-2398156)

## Step 3: Compare the Claimant's Indicative UC Amount with their Total Legacy Amount

Once the DWP have calculated a claimant's Total Legacy and Indicative UC Amounts, they will compare the two to work out whether the claimant is entitled to a Transitional Element and, if so, how much<sup>11</sup>.

### Indicative UC Amount higher than Total Legacy Amount?

If the claimant's IUCA is higher than their TLA, they will not be entitled to the Transitional Element.

**NOTE:** Although not relevant for Tax Credit-only claimants, where the claimant is entitled to a Severe Disability Premium in an award of Income-Related ESA, Income Support, or Income-Based JSA AND they are not entitled to a Managed Migration Transitional Element, then they could be entitled to the Transitional SDP Element.

**NOTE:** Although not relevant for Tax Credit-only claimants, where the claimant is entitled to a Severe Disability Premium in an award of Income-Related ESA, Income Support, or Income-Based JSA AND they are not entitled to a Managed Migration Transitional Element, then they could be entitled to the Transitional SDP Element<sup>12</sup>.

### Total Legacy Amount higher than Indicative UC Amount?

If the claimant's TLA is higher than their IUCA, they will be entitled to a Transitional Element.

**IUCA above £nil?** Transitional Element = Total Legacy Amount – Indicative UC Amount.

**EXAMPLE:** Donna's Total Legacy Amount is £323, and her Indicative UC Amount is £238 so Donna will be entitled to a Transitional Element of £85 in her first UC award.

**IUCA is £nil?** Transitional Element = Total Legacy Amount + (Indicative Assessable Income – Indicative Max UC Amount).

Special rules apply when working out the Transitional Element for claimants whose Indicative UC Amount is reduced to £nil, as otherwise the Transitional Element would not properly protect them from being worse off even if their income in the first MAP is exactly the same as the income that was used to calculate their IUCA.

In these circumstances, the DWP will add the claimant's Total Legacy Amount to the difference between the claimant's Indicative Assessable Income figure and their Indicative Maximum UC figure.

**EXAMPLE:** Greg and Irene's Total Legacy Amount is £25. Their Indicative Maximum UC Amount is £579 but their Indicative Assessable Income (i.e., the amount by which their income could reduce their IMUCA is £1,026) so their Indicative UC Amount is reduced to £nil. They will be entitled to a Transitional Element of £472 in their first UC award (£25 + (£1026 – £579)). If we assume that their circumstances are exactly the same in their first MAP, their Max UC will be £1,051 which when reduced by their assessable income of £1,026 gives a UC award of £25 (i.e., the amount of Tax Credits they were receiving).

**WARNING:** The Transitional Element is not a normal Element. It can be lost altogether by changes in the claimant's circumstances, and will be 'eroded' (i.e., reduced) over time.

See pages 17 - 19 for more information.

# Still worse off on UC

There are some situations where a claimant could be worse off on UC but not be entitled to a Transitional Element. We have highlighted two of these situations below.

## **‘Extra’ Elements in Indicative Maximum UC Amount**

If a claimant has an Element included in their IMUCA that would not be included in their actual UC award, they could end up worse off on UC – and the Transitional Element will not protect against this.

### **Child Element included in IMUCA but not actual UC amount**

There are a couple of situations where the claimant may be getting a Child Element in their Child Tax Credit but would not be entitled to a Child Element in their actual UC award for the same child/qualifying young person. In these cases, the claimant could receive less UC than they were getting in Tax Credits (due to the loss of the Child Element) but this will not be compensated by a Transitional Element - as both the IMUCA and TLA will include a Child Element for this child/qualifying young person.

The first situation is where a qualifying young person is age 19 and is still in full-time non-advanced education. Child Tax Credit can include a Child Element for them up until their 20<sup>th</sup> birthday. Whereas the UC rules would only include a Child Element for them up until the September after their 19<sup>th</sup> birthday. DWP Guidance suggests these claimants should not be receiving a Migration Notice – and if they do, they should contact the Migration Notice helpline and ask for it to be cancelled. (See the Housing Systems website for more information about cancelling a Migration Notice.)

The second is where the claimant is getting Child Elements in their Child Tax Credit for children that live abroad. The UC rules have no similar provision.

### **Childcare Costs Element included in IMUCA but not actual UC amount**

The Tax Credit rules include a Childcare Costs Element where one member of a couple is working and the other is getting PIP / ADP. Because a Childcare Costs Element is included in their Tax Credit award a Childcare Costs Element will be included in their Indicative Maximum UC Amount.

But to be entitled to a Childcare Costs Element in UC where one member of a couple is working and the other has health issues, the non-working partner must have been found to have (or can be treated as having) a limited capability for work. So, where the non-working partner is getting PIP but has not been found to have (and cannot be treated as having) a limited capability for work, no Childcare Costs Element will be included in their initial actual UC award.

**EXAMPLE:** Joe and Mel receive Working and Child Tax Credit. Mel works 30 hours a week, gross pay £18,000. Joe doesn't work – he gets standard rate DL and Mobility PIP. Their Tax Credit award includes a Childcare Costs Element. They make a claim for UC after receiving their Migration Notice. Because their Tax Credit award includes a Childcare Costs Element, so will their Indicative Maximum UC Amount.

However, because Joe has not been found to have (and does not fall into one of the groups that can be treated as having) a limited capability for work, their actual UC award will not include a Childcare Costs Element.

This means that they will (initially at least<sup>^</sup>) be worse off on UC.

<sup>^</sup>NOTE: Joe can request a Work Capability Assessment - he should note his health conditions on his UC declaration and provide fit notes until the WCA has been determined. If he is found to have LCW, they would then be entitled to the Childcare Costs Element. It is recommended that, from the start of their claim, they report their childcare costs at the end of each Assessment Period so that the DWP have less reason not to reassess their UC entitlement to include the Childcare Costs Element from the start of their UC award.



## Could the claimant have total 'welfare' above their Benefit Cap level?

Although Tax Credit-only claimants cannot be affected by the Benefit Cap\*, if a claimant's total 'welfare'^ is above their Benefit Cap limit, then their Total Legacy Amount will be reduced by any excess above their Benefit Cap limit (minus the amount of the Childcare Costs Element included in their Indicative UC Amount)<sup>13</sup> (i.e., it is treated as though it is affected by the Benefit Cap), even if the claimant has been receiving more than this amount in reality.

\* as they are not in receipt of Housing Benefit, and this is the only legacy benefit that can be reduced by the Benefit Cap.

^ for Tax Credit-only claimants 'welfare' includes: Child Benefit, Child Tax Credit, New-Style / C-ESA (WRAG), New-Style / C-JSA, Maternity Allowance, Widow's Pension, Widowed Mother's Allowance, Widowed Parent's Allowance.

**EXAMPLE:** Ben is a lone parent and lives with his six children (aged 15, 14, 12, 9, 7 and 7) outside of Greater London. He gets Child Benefit of £103.50 a week (i.e., £448.50 a month) and Child Tax Credit.

HMRC have reported his daily Child Tax Credit entitlement as being £54.53. When the DWP convert this to a monthly figure they will get £1,658.62.

But, as Ben's total 'welfare' ie. his CTC and Child Benefit (£1658.62 + £448.50) is above the relevant cap limit of £1835) by £272.12, his Total Legacy Amount will be reduced by this excess.

So, Ben's Total Legacy Amount will be £1386.50 – even though he is receiving the equivalent of £1,658.62 a month from Child Tax Credit. Ben's Indicative UC Amount will also be reduced by the Benefit Cap and will also be £1386.50.

**This means that Ben will not receive a Transitional Element even though he is going to be £272.12 worse off a month.**

**TOP TIP:** A small number of Tax Credit-only claimants will be in receipt of 'welfare' above their Benefit Cap limit. These claimants are likely to be worse off on UC but will not be entitled to a Transitional Element. They should consider whether they can be excluded from the Benefit Cap (e.g., can a member of their claiming family make a claim for a disability benefit?). If not, delaying making the claim for UC until close to their 'deadline day' may be advisable to delay the drop in income.

# Erosion and Loss

If a claimant is entitled to a Transitional Element, it will be included in their ongoing UC awards. However, it can be 'lost' or 'eroded' – see below for more information.

## Erosion

Once the amount of the Transitional Element has been assessed that amount will be included in the claimant's first Monthly Assessment Period (MAP) – it cannot be eroded in MAP 1.

**EXAMPLE:** Will and Audrey receive their first UC award in November it includes a Transitional Element – although Audrey cares for her dad 35 hours a week and meets the criteria for the Carer Element, as she was not in receipt of Carers Allowance on their 'migration day' the calculation of their Transitional Element did not include a Carer Element. However, their first UC award does. As this is included in their first UC award ie in MAP 1 it does not erode their Transitional Element.

However, from the claimant's second MAP it will be 'eroded' when a claimant becomes entitled to a new Element in their Maximum Universal Credit, or where an Element increases. A claimant's Transitional Element is 'eroded' by the amount of the Element that has been added, or the amount it has increased by. Note: the addition of, or an increase to, the Childcare Costs Element does not 'erode' the Transitional Element<sup>14</sup>.

**EXAMPLE:** Jess is 24 and a single parent. She receives her first UC award in January and it includes a Transitional Element of £100. In her second MAP she turns 25, so her Standard Allowance increases, but her Transitional Element is 'eroded' by the increase to £23.37. Two months later the April uprating means the Standard Allowance and Child Elements in her award increase. This 'erodes' her Transitional Element to £nil.

**EXAMPLE:** Jevan and Pav have been on UC for a few months and are receiving a Transitional Element of £320. They are moving to a new flat and their Housing Costs Element will increase by £30. This increase will 'erode' their Transitional Element to £290 and the amount of their Maximum UC does not increase.

**EXAMPLE:** Paul is single. He was getting Working Tax Credit with a Disabled Worker Element. When he claimed UC he was entitled to a Transitional Element of £156. As he gets PIP he was able to request a Work Capability Assessment and has just been found to have LCWRA. The LCWRA Element will be added to his UC award from the MAP after the end of his 'relevant period'. This reduces his Transitional Element to £nil and his Maximum UC Amount only increase by the excess (£234.06).

Changes that will 'erode' a claimant's Transitional Element if they occur after the end of the first Monthly Assessment Period include:

- increasing from the under-25 to 25 or over Standard Allowance
- the addition of a Child Element
- the addition of a Disabled Child Element, or increase from Low to High DCE
- the addition of an LCWRA Element, or increase from a LCW to LCWRA Element<sup>^</sup>
- the addition of a Carer Element
- the addition of, or increase to, the Housing Costs Element (including due to the Bedroom Tax deduction decreasing or a Housing Costs Contribution being removed)
- the annual uprating of benefits.

<sup>^</sup> Note: changing from an LCW to an LCWRA Element is seen as an increase, not a new Element, so the Transitional Element is 'eroded' by the difference between the two<sup>15</sup>.

**TOP TIP:** Claimants who are expecting one of the changes listed above when they receive their Migration Notice may want to wait until the change has occurred, or will occur within their first MAP, to avoid their Transitional Element being 'eroded' but there's a lot to consider – see page 22.

### **Erosion is not made clear on the UC account**

Claimants can see how much Transitional Element is being included in their awards, but they are not explicitly told when and why it has been 'eroded'. This could cause some confusion. Additionally, claimants need to be aware that whilst they are receiving the Transitional Element, they will not see an increase to their Maximum UC until it has been 'eroded' to £nil (unless this is due to an increase to or the addition of the Childcare Costs Element). This could cause financial difficulties if their expenses increase, but their UC award doesn't.

### **Erosion does not look at the net increase**

The Transitional Element will be 'eroded' by the amount of the Element that is added or the amount by which an Element increases (remember – LCW to LCWRA counts as an increase). This can mean that the claimant's Transitional Element is 'eroded' even though their Maximum UC decreases where the Carer Element replaces an LCW Element or an LCWRA Element replaces a Carer Element (both cannot be paid in respect of the same claimant so they will receive whichever is higher).

**EXAMPLE:** David has been claiming UC with a Carer Element for the last six months. It also includes a Transitional Element of £415. He had a Work Capability Assessment and was found to have a Limited Capability for Work and Work-Related Activities so will have an LCWRA Element added to his Maximum UC. This will 'erode' his Transitional Element to £24.94 (i.e., by the value of the LCWRA Element). As David cannot receive both the Carer Element and the LCWRA Element and the Carer Element is worth less, it is removed from his award. David's UC awards will be £185.86 lower going forward (because he lost the Carer Element and the addition of the LCWRA Element 'eroded' his Transitional Element so did not increase his Maximum UC).

### **Erosion cannot be reversed**

Once eroded, this reduction cannot be reinstated. So, where the claimant has a change in circumstances and this reduces their Maximum Universal Credit amount, the amount of the Transitional Element will not be affected.

**EXAMPLE:** Harry has been on UC for six months and receives a Transitional Element of £100. His mum usually cares for his disabled sister but became ill herself and took some time off, so Harry started caring for his sister for over 35 hours a week. He reported this on his UC account and the Carer Element was added to his award. This 'eroded' his Transitional Element to £nil because the value of the Carer Element (£185.86) is higher than his Transitional Element. After a few months, Harry's mum feels well enough to take over the caring responsibilities and Harry reports this on his UC account. He no longer receives the Carer Element, but the Transitional Element is not reinstated. He is now £100 a month worse off than he was before.

### **Changes that occur during the first MAP should not 'erode' the Transitional Element**

Sometimes a claimant has an Element added to their award from the first MAP at a later date – this should not 'erode' their Transitional Element.

**EXAMPLE:** Jacqui's mum was waiting for the outcome of a claim for Attendance Allowance when Jacqui made her claim for UC. When making her claim Jacqui indicated that she spends 35+ hours a week caring for her mum and she expects her mum to be awarded a 'qualifying disability benefit'. Jacqui's first UC award included a Transitional Element of £55. A month later, Jacqui's mum was awarded AA and Jacqui reported this on her UC account. She had the Carer Element added to her Maximum UC from her first MAP but the DWP 'eroded' her Transitional Element to £nil. This is incorrect and Jacqui should challenge this decision.

**WARNING:** Watch out for the Transitional Element being incorrectly 'eroded' when a new Element is retrospectively added from the First Monthly Assessment Period. It would be easy to miss such an error - the claimant would probably have no idea that they were being underpaid!

## Loss

The Transitional Element is not a normal Element and can be 'lost' (i.e., cease to be included in a claimant's Maximum UC). This is the case where it is 'eroded' to £nil but it will also be lost in any of the circumstances below<sup>16</sup>.

A claimant's Transitional Element would end if:

- They have been claiming UC as a couple but separate.
- They have been claiming UC as a single person and become a couple (unless that partner is not entitled to UC e.g., they have no recourse to public funds).
- They have a £nil entitlement to UC for more than three consecutive Monthly Assessment Periods due to earnings.
- Their earnings were at or above the relevant Administrative Earnings Threshold (AET)\* when they claimed UC but have been lower than the AET for more than three consecutive Monthly Assessment Periods.
- Their entitlement to UC ends, or drops to nil, for any reason other than due to being reduced to £nil by earnings (see above).

Where this happens, the Transitional Element will be lost from the beginning of the Monthly Assessment Period during which the change occurs. Note – it can be lost in the claimant's first MAP.

\* the AET is currently £677 per month for single claimants and £1083 per month for couples. It is expected to increase again in the future, but it is the AET in place on the date their UC award starts that is used in this situation.

**EXAMPLE:** Gavin and George claimed UC as a couple after receiving their Migration Notices. Their last UC award included a Transitional Element of £132. They have decided to separate and will be making individual claims for UC. Neither of these individual awards will include a Transitional Element.

**EXAMPLE:** Niamh has been claiming UC and her last award included a Transitional Element of £43. She is moving in with her partner who is also on UC and receiving a Transitional Element of £98. When they make a joint UC claim, it will not include a Transitional Element.

**EXAMPLE:** Roger is claiming UC and receives a Transitional Element of £230. His earnings fluctuate and in some Monthly Assessment Periods he earns so much that his UC is reduced to £nil. This has now been the case for the last three consecutive Monthly Assessment Period. If in the next MAP, his UC is reduced to £nil by his earnings again, he will lose the Transitional Element and it will no longer be included in his Maximum UC. If he is entitled to some UC in the next MAP, he will remain entitled to the Transitional Element.

**EXAMPLE:** Rohan claimed UC after receiving his Migration Notice and is entitled to a Transitional Element of £156. When he made his claim for UC he was working 16 hours a week and earning National Minimum Wage so was earning above the applicable Administrative Earnings Threshold. He lost his job last week and no longer has any earnings. If he can find a job earning above the AET that applied when he made his claim within four MAPS, he will remain entitled to the Transitional Element. But if not, he will lose the Transitional Element.

**EXAMPLE:** Zara claimed UC after receiving her Migration Notice and is entitled to a Transitional Element of £142. She has stopped working and started a full-time undergraduate degree. As she is responsible for a child, she can stay on UC whilst on her course. Her UC was reduced to £nil by her student income which means she has lost entitlement to the Transitional Element. If she claims UC again during the summer holidays (when her student income is not taken into account), her award will not include a Transitional Element.

**EXAMPLE:** Mike has been claiming UC – the award includes a Transitional Element. He is off work sick and just getting SSP – his earnings have dropped below the AET in place when his UC started for the fourth consecutive Monthly Assessment Period - so he has lost his Transitional Element.

# Retrospective Changes

When calculating a claimant's Transitional Element, the DWP use the information that is available to them at the time. In some cases, that information could be incorrect or change. However, the Regulations only allow the DWP to go back and recalculate the claimant's Transitional Element in limited circumstances<sup>17</sup>. The UC (Transitional Provisions) Regulations 2014 say that it can be recalculated where there has been –

- a misrepresentation by the claimant / failure to report a detrimental change in circumstances – see below, or
- official error – see below, or
- the outcome of an appeal/supersession/revision to an 'existing benefit' that was submitted before the UC claim was made – see page 21.

## Misrepresentation by the claimant / failure to report a change in circumstances

The DWP can revise the amount of the Transitional Element where the information used to work out the claimant's Transitional Element later turns out to be inaccurate or incomplete and this was due to:

- misrepresentation by the claimant, or
- failure by the claimant to report information and that failure was advantageous to the claimant (i.e., as a result they receive a higher amount of Transitional Element than they should have done).

**EXAMPLE:** Philippe was getting Working Tax Credit with a Disabled Worker Element (based only on his PIP entitlement) when he received his Migration Notice. He made a claim for UC, and this included a Transitional Element. When HMRC finalise his Tax Credit award they realise that Philippe's Personal Independence Payment ended 4 months earlier as he had not scored enough points (and had not challenged the decision). They removed the Disabled Worker Element for the period of his WTC award from the date the PIP stopped up to the date he claimed UC.

The DWP also reassessed his Transitional Element and found that he was no longer entitled, meaning that he had been overpaid both Working Tax Credit and Universal Credit.

**EXAMPLE:** Eilidh and Brian were claiming Working and Child Tax Credit when they received their Migration Notices and made claims for UC. They were not entitled to a Transitional Element. Their youngest daughter was awarded mobility DLA a couple of months before they claimed UC, but they did not inform HMRC. If they'd had a Disabled Child Element included in their Child Tax Credit, they would have been entitled to some Transitional Element. However, because they failed to inform HMRC before claiming UC and this was detrimental to them (i.e., they receive less UC than they could have done), the Regs do not require the DWP to recalculate their entitlement to the Transitional Element and they have missed out on that extra income. Note: they could still have the Disabled Child Element included in their UC awards if they report the DLA when making their UC claim.

## TOP TIP – make sure a claimant's legacy benefits are maximised before they claim UC

This will ensure their entitlement to the Transitional Element is maximised and they do not miss out.

## Official error

The DWP can revise the amount of the Transitional Element where there has been 'official error'. They can do this whether it resulted in an under- or over-payment of the Transitional Element.

**EXAMPLE:** Ryan was getting Working and Child Tax Credit when he received his Migration Notice and made a claim for Universal Credit. A few months before claiming UC he told HMRC that his PIP award had been terminated and they (incorrectly) removed the Disabled Worker Element from his award. This meant that he was not entitled to any Transitional Element. After claiming UC, Ryan talks to a Benefits Adviser who notices that he still met the qualifying conditions for the Disabled Worker Element despite not receiving PIP and therefore it had been removed in error. As Ryan has been underpaid the Transitional Element due to official error, the DWP should recalculate his entitlement and give him any UC he missed out on.

### **If the claimant was awaiting a decision on an award of an 'existing' benefit (i.e., Tax Credits, HB etc)**

According to Reg 62 para 1(b) of the UC (Transitional Provisions) Regulations 2014, the DWP can reassess a claimant's Transitional Element if the claimant:

- had applied before their 'migration day' to revise or supersede a decision in relation to an award of an 'existing' benefit (i.e., Tax Credits, Housing Benefit, Income-Related ESA, Income Support, Income-Based JSA), or
- was awaiting the outcome of an appeal in relation to such as application.

This would apply, for example,

- where the claimant had requested the addition of the Disabled Worker Element in their Working Tax Credit award, but made their claim for UC before HMRC had made the decision to include it.

NOTE: Depending on the claimant's circumstances, taking account of the retrospective change may have no impact on their Transitional Element amount.

**EXAMPLE:** Amos and Sofia had been receiving Working and Child Tax Credit. Sofia was awarded enhanced daily living PIP a couple of weeks before they made their claims for UC after receiving Migration Notices. They requested that the Severe Disability Element be added to their Working Tax Credit but had not received a response for HMRC when they made their claim for UC.

As this is a request for a supersession / revision of an 'existing' benefit, the DWP should recalculate their Transitional Element taking account of the increased Tax Credit award i.e., increased Total legacy Amount.

### **If the claimant was awaiting a decision on a different benefit (e.g., PIP/ADP, DLA/CDP etc)**

The Regulations quoted above specify that the DWP can recalculate a claimant's Transitional Element where they were awaiting a decision on an appeal/supersession/revision to an 'existing benefit' (i.e., Tax Credits, Housing Benefit, Income-Related ESA, Income Support or Income-Based JSA). The Regs do not mention any other benefits but it is possible that a claimant could be awaiting a decision relating to another benefit which could affect their entitlement to an 'existing benefit'. For example, they could have applied for DLA for a dependent child which, if awarded, would entitle them to a Disabled Child Element in their Tax Credit award.

The DWP have informally said that they would go back and reassess the Transitional Element in these circumstances – although this appears to be beyond what the Regs require of them. So, if the benefit the claimant is awaiting a decision on is not an 'existing' benefit, but the outcome will have an effect on an 'existing' benefit, they should notify the relevant benefit department and request a revision / supersession before they make their claim for UC. This would include where the claimant is awaiting a decision on a new claim for a benefit. This would ensure that they can then rely on the Regulations (explained above) that require the DWP to recalculate their Transitional Element.

**EXAMPLE:** Louise receives Widowed Parent's Allowance and Tax Credits. She had made a claim for Disability Living Allowance for her daughter 6 months before receiving her Migration Notice. The DLA award had been refused as had a Mandatory Reconsideration. Louise had gone on to appeal the DLA decision and was awaiting a date for the hearing when she made her claim for UC. Four months later her daughter is awarded middle rate care DLA. The DWP may go back and revise her entitlement to a Transitional Element even though the Regs do not require them to do so.

To ensure that she came under the Regs, Louise could have lodged an application for a revision with HMRC of her Child Tax Credit award pending the outcome of the DLA appeal before she made her claim for UC – as this would have been an application to revise/supersede an 'existing' benefit.

**TOP TIP – inform HMRC *in writing* about any application/appeal etc that could affect their entitlement.**

This will ensure there is a record of their request that they can later rely on.

## Timing of the UC claim

It is beyond the scope of this briefing to discuss all the ways in which the timing of a UC claim can maximise a claimant's entitlement but below are some key things that Tax Credit-only claimants may want to think about when deciding when to make their claim for UC (we have much more information on our website). They should ensure they make their claim by their 'deadline day' (or at the latest their 'final deadline day') but can decide when to make their claim before this.

### **Are they having a change that would increase their Total Legacy Amount more than their Indicative UC Amount?**

If they are, they may want to delay claiming UC until after this change if possible.

**EXAMPLE:** Ayo has been claiming Child Tax Credit and New-Style JSA but is starting a new job in a couple of months. She has just received her Migration Notice and is wondering when to make her claim for UC. If she claims before starting her job, she will not be entitled to a Transitional. However, if she waits until she is entitled to Working Tax Credit, she will be entitled to a Transitional Element of £141. In Ayo's case, starting work will entitle her to more Tax Credits but less Universal Credit so she is better off waiting if she can.

**EXAMPLE:** Maz is receiving Working and Child Tax Credit and has just received her Migration Notice. She will turn 25 in a couple of months. If she claims UC before turning 25, she will be entitled to a Transitional Element of £207. However, if she claims after turning 25, she will be entitled to the higher Standard Allowance in her UC and so entitled to less Transitional Element (£131). So Maz will receive a higher TE if she claims before her birthday. However, if she turns 25 after the end of her first MAP, the increase to the Standard Allowance will 'erode' her Transitional Element (to £131). If possible, Maz wants to turn 25 during her first MAP (i.e., she wants to claim UC within a month before her birthday).

### **Are they having a change that would increase their Indicative UC Amount more than their Total Legacy Amount?**

If they are, they may want to claim UC before this change if possible. Although be aware that if that change would erode their Transitional Element once on UC, it is best to make the claim so that the change takes places in the claimant's first Monthly Assessment Period.

### **Will they be entitled to a Transitional Element and having a change in circumstance that would 'erode' it?**

If they are, they may want to time their claim so that this change occurs before the end of their first Monthly Assessment Period if it makes them better off overall.

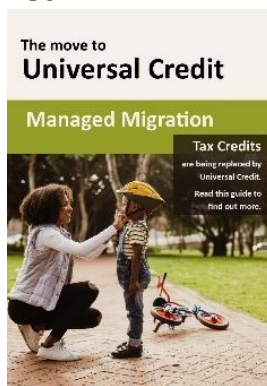
**EXAMPLE:** Duncan and Eve are receiving Working and Child Tax Credit. They have just received their Migration Notices, but their second child is due in a couple of months. They will be entitled to a Transitional Element of £320. If they claim now and their child is born after the end of their first MAP, the addition of the Child Element will 'erode' their Transitional Element to £50.42 and their Maximum UC will not increase. However, if they claim after their child is born, or it is born in their first MAP, their first UC award will include two Child Elements and a Transitional Element of £320 (i.e., it will not be 'eroded').

**EXAMPLE:** Rachel receives her Migration Notice in January. She is entitled to a Transitional Element of £254. Her rent is going up in April. If the rent increase happens after the end of her first MAP, it will 'erode' her Transitional Element so she may want to delay claiming UC to avoid this. However, as Rachel is a Tax Credit-only claimant who is paying rent, she could be considerably better off on UC than she is on Tax Credits and the amount she gains from moving onto UC as soon as possible could outweigh the negative impact of 'erosion'.



## Useful Resources

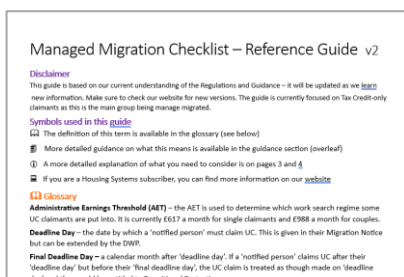
### Booklet



We produced this booklet aimed at Tax Credit-only claimants.

See it in its full glory – [click here](#).

### Checklist



We produced this checklist for Benefit Advisers working with Tax Credit-only claimants.

See it in its full glory – [click here](#).

### Online Workshops



Join us for a Managed Migration Overview – just £79+vat per delegate. [Click here](#) for details.

Or book an in-house session - from just £595+vat  
Interested? Email us: [training@ucnotes.co.uk](mailto:training@ucnotes.co.uk)

### E-Learning



Find out more about Managed Migration by completing one of our E-Learning courses.

If you are one of our E-Learning subscribers you'll have access to all our E-Learning courses either on the Housing Systems website or your own LMS. Alternatively, all our E-Learning courses are available to be purchased on an individual basis. [Click here](#) for more details.



## Regulations

The Universal Credit (Transitional Provision) Regulations 2014

<https://www.legislation.gov.uk/uksi/2014/1230>

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<sup>1</sup> Reg 46(1)

<sup>2</sup> Reg 46(3)

<sup>3</sup> Reg 49

<sup>4</sup> Reg 50(2)

<sup>5</sup> Reg 53

<sup>6</sup> Reg 54

<sup>7</sup> Reg 52(1)

<sup>8</sup> Reg 53(2)

<sup>9</sup> Reg 54(2)(C)

<sup>10</sup> As above

<sup>11</sup> Reg 55

<sup>12</sup> Schedule 2 Reg 7 (note – the Reg excludes claimants from being entitled to the TSDPE if they are entitled to a Managed Migration TE. This implies that if there is no entitlement to a Managed Migration TE, there can be a TSDPE)

<sup>13</sup> Reg 53(11)

<sup>14</sup> As above

<sup>15</sup> Reg 55(5)

<sup>16</sup> Regs 56 and 57

<sup>17</sup> Reg 62