Transitional Protection Workshop

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Links

- Transitional Provisions Regs
- https://www.legislation.gov.uk/uksi/2014/1230/contents
- Managed Migration Regs

  https://www.legislation.gov.uk/uksi/2022/752/contents/made
- Regs covering migration (reference)

  https://www.legislation.gov.uk/uksi/2014/1230/contents
- 2022 Amendments (reference)

  https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1056769/draft-universal-credit-transitional-provisions-amendment-regulations-2022.pdf
- Move to UC guidance

  https://www.gov.uk/government/publications/completing-the-move-to-universal-credit/completing-the-move-to-universal-credit--2

3 tracks of UC Migration

- Natural migration: change in circumstances
- Voluntary migration: move by choice
- Managed migration: migrated by DWP

No protection except Transitional SDP Element in some cases

** Only people protected are:-

- People who are an existing benefit claimant and there are no changes in their circumstances leading to their claim for Universal Credit
- People who were getting Severe Disability Premium at the time they claimed Universal Credit

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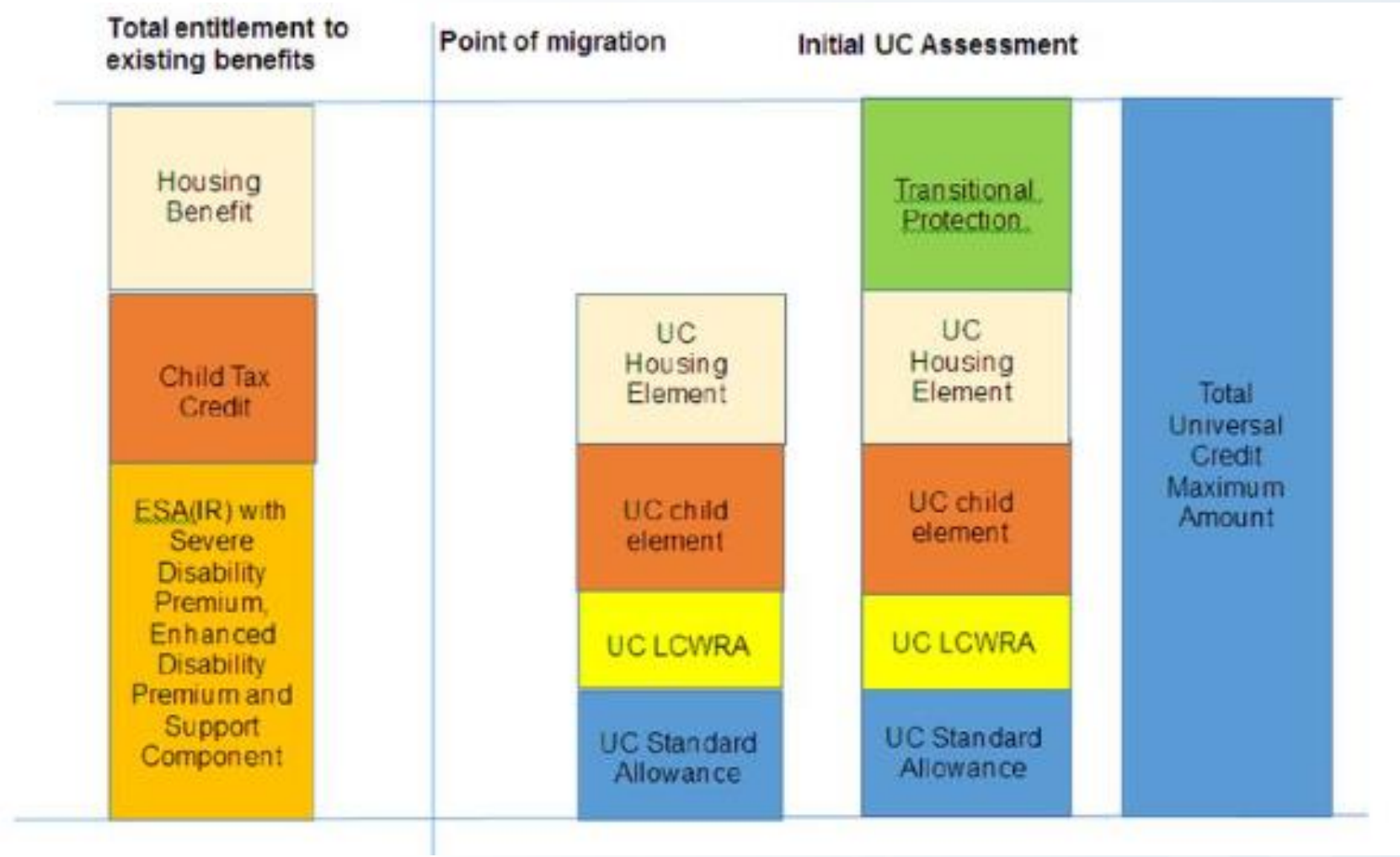
What do we mean by ‘protection’

- Transitional protection applies where the total award that a household would receive in the first month of UC is less than the total award of benefits and tax credits that the household receive at the point of managed migration
- When a claimant makes a claim for UC 'in time' after receiving a migration notice the DWP will compare their 'total legacy amount' to their 'indicative UC amount'. If their 'indicative UC amount' is lower then their initial UC award will normally include a Transitional Element
- Transitional protection is achieved by including an extra element of UC in the claim to the value of the difference (the transitional element)
- This means that they will - initially at least - be no worse off when they transfer across onto UC

**Any sanction applicable to a household's entitlement is ignored in the calculation

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Transitional protection



Who is protected

- To be entitled to Transitional Protection, a claimant must –
  - Make a 'qualifying claim', and
  - Meet the specific eligibility criteria on their 'Migration Day'

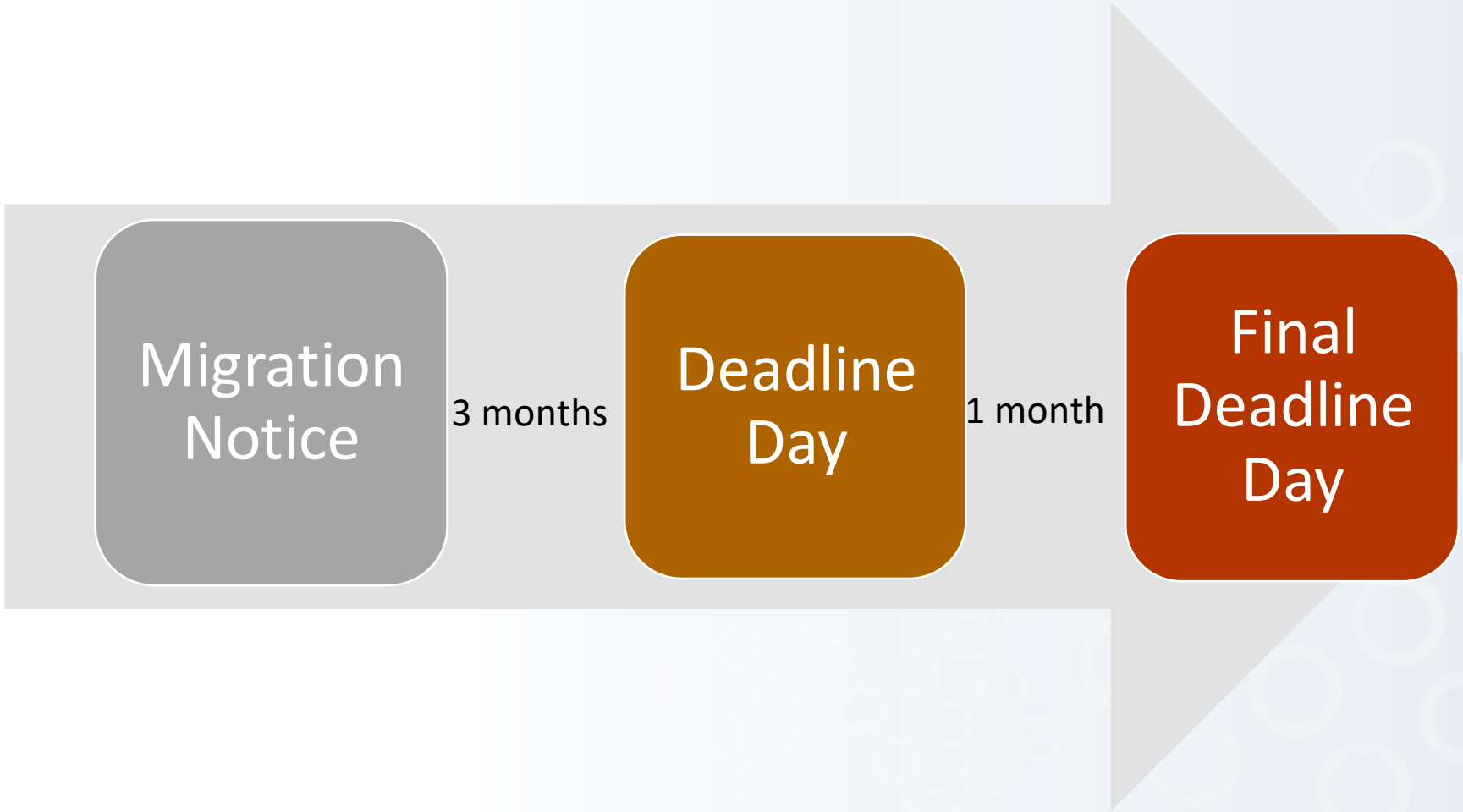
Qualifying claim

- A 'qualifying claim' is a claim for UC by a single claimant who is a notified person, or joint claimants, both of whom are notified persons, where the claim is made on or before the final deadline (Reg 48)

Migration Day

- The 'migration day', in relation to a qualifying claim, is the day before the first day on which the claimant is entitled to UC in connection with that claim (Reg 49)

Migration process



Types of transitional protection

- Transitional SDP Element – for those who received a Severe Disability Premium in legacy benefit in month before UC started
- Transitional Element – for those worse off at the point of claim
- Transitional Capital Disregard - for those Tax Credit claimants with savings of £16,000+ (for 12 months)
- Student – for those who are receiving one of more legacy benefits but would otherwise be excluded from UC (until their course has finished)

Transitional SDP Element

- Some claimants who were getting ESA (IR), Income Support or Jobseekers Allowance (IB), that included a Severe Disability Premium in the month before the date their UC award started, might qualify for the Transitional SDP Element as an extra Element in their UC assessment
- Not just an SDP in Housing Benefit
- You won't be able to get Severe Disability Premium transitional protection if you didn't satisfy the conditions for getting Severe Disability Premium on the first day of your Universal Credit claim
- For example, if someone starts claiming Carer's Allowance for you before you make your Universal Credit claim, you would no longer meet the conditions for getting Severe Disability Premium. So you wouldn't be able to get Severe Disability Premium transitional protection

Cont'd

- The amount of the Transitional Element in the claimant's first Monthly Assessment Period is a set figure:-
  - For those who moved to UC before 10 April 2023, it was £120, £285, or £405 depending on circumstances
  - For those who move to UC on or after 10 April 2023 and are entitled to the Transitional SDP Element, it is £132.12, £313.79, or £445.91 for the first assessment period
- It can be eroded or lost altogether after the first assessment period
- Once managed migration takes place SDP claimants will not get the SDP transitional element included in their UC award in their first assessment period, they will instead get a standard transitional element from the start of their UC claim

Single	An LCWRA element is included in your UC award	£132.12 per month
	No LCWRA element is included in your UC award	£313.79 per month
Couple	The higher SDP rate was payable in your legacy benefit	£445.91 per month
	You weren't getting the higher SDP rate and an LCWRA element is included in your UC award for either of you	£313.79 per month
	You weren't getting the higher SDP rate and no LCWRA element is included in your UC award for either of you	£313.79 per month



Refreshment

– 10 mins

Please do not leave the meeting; just switch off your camera and microphone

Transitional Element – Who is protected

- When a legacy benefit claimant makes a claim for UC 'in time' after receiving a migration notice, the DWP will compare their 'total legacy amount' to their 'indicative UC amount'. If their 'indicative UC amount' is lower, then their initial UC award will normally include a Transitional Element

Total legacy amount

- The sum of the monthly rates of any legacy benefits a claimant/joint claimants are entitled to on their migration day

Indicative UC amount

- An estimated award of UC based on the claimant's personal circumstances on their migration day, applying certain assumptions

Total Legacy Amount

- The **total legacy amount** is the sum of the representative monthly rates of all awards of any existing benefits to which a claimant is, or joint claimants are, entitled on the migration day
- Regulation 53 sets out the way in which the representative monthly rate of awards of tax credits and the other legacy benefits are to be worked out
- The representative monthly rates of existing benefits are to be calculated on the basis of the information held by the DWP and HMRC, on the migration day
  - For Tax Credit only claimants this means the monthly equivalent of their Tax Credit entitlement
- Other legacy benefits they could be entitled to, but are not receiving are ignored

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Indicative UC Amount

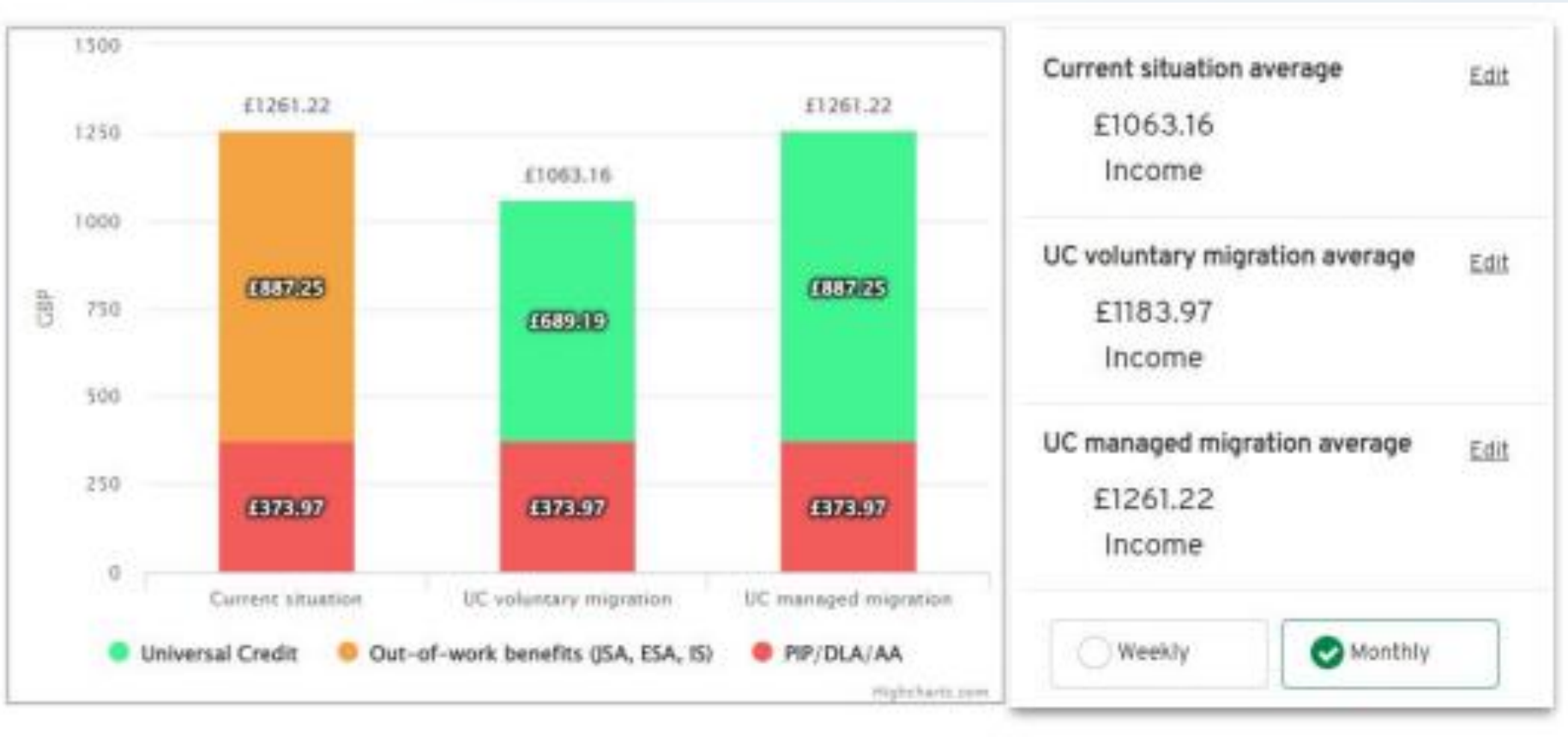
- The **indicative UC amount** is the amount to which a claimant would be entitled if an award of UC were calculated by reference to the claimant's personal circumstances on the migration day (estimated award)
- Subject to a range of assumptions set out in regulation 54 (regarding, eg, responsibility for children, earned income and childcare costs)
- The earned income used in calculating the indicative UC amount is to be calculated based on the earned income used for the representative monthly rate of benefits and tax credits – ie, on the basis of the information held by HMRC and the DWP on migration day

Calculation

- The way that transitional protection is calculated is complex
- Claimants are not entitled to an amount of transitional element that would take them above the benefit cap
- DWP don't include any details to show how they have calculated TP when moving across to UC

- **Check out the calculation step-by-step**
- https://revenuebenefits.org.uk/universal-credit/guidance/existing-tax-credit-claimants/managed-migration/calculating-the-transitional-element
- https://askcpag.org.uk/content/209490/managed-migration-transitional-protection

Policy In Practice Calculator –
www.betteroffcalculator.co.uk



Retrospective changes & effect on Transitional Element (TE)

Wrong information	• Overpayment – will recalculate TE • Underpayment – won't recalculate TE
Official Error	• Will correct claim • Will recalculate TE
Decision on previous benefit	• Revision/Supersession/Appeal made before UC claim • Will recalculate TE

(Reg 62)

Losing protection

- The transitional protection lasts until there is no shortfall* between the amount awarded under UC and the amount previously received or until:
  - a partner leaves or joins the claimant's household
  - the claimant's earnings fall below the level at which they would be expected to look for work for three consecutive months
  - the ending of the UC award
  - If an award of UC which included a transitional element ends because of an increase in earned income and the claimant makes a fresh (successful) claim within three months, the transitional element is also included in the new award

**Will be eroded over time – if entitled to a new element in UC, or the existing element increases (except childcare costs)

**Claimants who receive a Transitional Element won't see an increase to their Maximum UC until their TE is eroded to £nil

Changes that can decrease transitional element

- Transitional protection payments can decrease over time following a change in circumstances. Changes can include:
  - having a child
  - starting to care for a child or disabled person
  - an increase in housing costs (rent)
  - a worsening health condition
  - changes to government benefit rates
- This is because these changes are likely to increase Universal Credit amount
- Once awarded, the transitional element will not increase each year like benefit rates can. The transitional element will only ever be reduced, so that in effect income from UC is frozen until it becomes nil

Example

- Alfie is receiving CTC. He pays rent but, as he has £50,000 in savings, he does not receive HB.
- He receives a migration notice. His savings above £16,000 will be disregarded due to the transitional capital disregard and so he will not be excluded from receiving UC due to his savings.
- When the DWP works out Alfie's transitional element, his indicative UC amount does not include a housing costs element, because he was not receiving HB on his migration day. This means that his indicative UC amount is an underestimate of the amount of UC he is actually likely to be awarded, because his actual UC award will include a housing costs element.
- As a result of his indicative UC amount being lower than his total legacy amount, Alfie will receive a transitional element.
- Alfie would be better off on UC even if he weren't to receive a transitional element – because he will start to receive help with his rent, which he did not previously receive – but he will receive a transitional element in the calculation of his UC award anyway

Income

- DWP has told stakeholders that income which is not counted as income for tax credits, but would count as income for UC, should be counted as income for the purposes of the indicative UC amount – so it seems that any failures are the result of mistakes. Advisers should pay particularly careful attention to the transitional element calculation in cases involving income which does not count as income for tax credits but does count as income for UC
- Examples of income which are not counted as income for tax credits but which do count as income for UC, include Industrial Injuries disablement benefit, maternity allowance, severe disablement allowance, assumed yield from capital (often known as tariff income), most student income, and some kinds of maintenance from an ex-partner

Example

- Bobbie receives CTC and has student income. Bobbie receives a migration notice in the summer term of the academic year. Bobbie claims UC immediately as she is aware that if she claimed closer to the deadline she would be claiming during her university's long vacation. Because she claimed earlier, she should have her student income counted as unearned income in the calculation of her indicative UC amount. If she had claimed during the long vacation, then the student income would not have been included as unearned income in the calculation of her indicative UC amount. When Bobbie receives her UC award notification, she realises that she is worse off as a result of managed migration and has a much lower transitional element than expected. It is unclear why this is. As she has not been provided with an explanation of the calculation, she asks the DWP for a breakdown of the transitional element calculation. Once Bobbie receives the breakdown, she realises that the DWP has mistakenly omitted her student income from the calculation of her indicative UC amount – this meant that her indicative UC amount was an overestimate of the UC she would eventually be awarded. She asks for a revision of her UC award on the basis that her transitional element was incorrectly calculated. The DWP subsequently revises the award

Transitional Capital Disregard Element

- Tax Credit claimants can have over £16,000 in savings/capital and still be entitled to Tax Credits under Managed Migration
- As the savings limit on UC is £16,000 any claim for UC would normally be refused. However when a legacy benefit claimant makes a claim for UC 'in time' after receiving a migration notice then they will be allowed to make a claim and any savings/capital over £16,000 will be ignored for up to 12 monthly assessment periods (Reg 51)
- However, any capital between £6,000 and £16,000 is not disregarded will still attract tariff income
- The claimant will lose the Transitional Capital Disregard Element after 12 assessment periods, or if their savings drop below £16,000 or certain changes in circumstances

Note - couples

- No transitional element is to apply to anyone who has had a change of relationship status. But a transitional capital disregard could potentially apply to some people who have had a change to their relationship status, so long as their claim was still a 'qualifying claim' and they were entitled to tax credit on the migration day (Reg 50(2))
- The definition of a couple differs between tax credits and universal credit which means that it is possible for two people to be part of a couple for one benefit but not for the other. For example, in tax credits two people who are married or civil partners and who live in separate households are treated as a couple and required to make a joint claim. Under UC rules, as they don't live in the same household they are not a couple and therefore required to make single claims
- Where there is a joint tax credit claim but the individuals are required to make single UC claims, the transitional capital disregard can be applied to each UC single claimant

Some Students

- Most students aren't able to claim benefit, but there are some exceptions. There are more exceptions under the legacy benefit system than under the UC system
- When a legacy benefit claimant on a full-time course (advanced education) makes a claim for UC 'in time', after receiving a Migration Notice, and they are one of the students that would usually be refused UC, they will be allowed to make a claim and if entitled, can receive UC payments up to the end of their current course (Reg 60)
- The claimant will lose the protection when their current course ends or certain changes in circumstances

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Amended protection rules – self-employed

- Some self-employed claimants (or their joint claimant) may have to look for work / engage in work preparation activities as a condition of receiving UC
- Self-employed UC claimants have to report their income and allowable expenses every month – this could be a big change for many
- After the 12 month 'start-up' period a self-employed UC claimant could be affected by the Minimum Income Floor meaning the DWP take more earnings than they are actually receiving into account when assessing their entitlement making them worse off than had they been able to remain on Tax Credits

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How legacy claimants will fare when they move to Universal Credit



DWP analysis



Policy in Practice analysis

Worse off on UC

- Tenants who receive 50p pw HB
- Those with existing deductions from legacy benefits
- Those with existing transitional protection payment from Incapacity Benefit
- Those with earnings from Permitted Work
- Those with a child on DLA not at higher rate care
- Couples and lone parents under age 25yrs
- Mixed age couples

Cont'd

- Tenant or partner on lower rate care DLA, with non-deps in home
- Tenants with non-deps aged 21-24yrs on IS, JSA, UC (means-tested)
- Those on DLA/PIP/AA
- Self-employed and trading more than 12 months

Better off on UC

- Tenants with non-dependants (not non-dep couples)
- Non-couple, joint tenants who are under-occupying
- Tenants with lodgers
- Those working fluctuating hours
- Tenants working low hours and paying childcare
- Those who are working carers
- Those paying into a private pension scheme
- Those receiving War Disablement Pension

What are you already doing to engage with tenants to support their move to UC?





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Thank you for coming