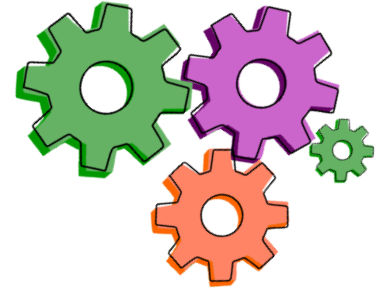


No.2 / 2024:

Managed Migration

The Transitional Element



Managed Migration is the final phase of the roll out of Universal Credit. The DWP will invite remaining legacy benefit claimants to claim UC. 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 and ongoing UC award.

This Briefing investigates how this Transitional Element is being worked out.

NOTE: This briefing focuses on working age claimants – although it applies to anyone who has been sent a Migration Notice. We will be publishing a briefing on Managed Migration for State Pension age claimants in the future. If you want to be notified about its publication, please email advice@ucnotes.co.uk.

The Information in this Briefing

The information in this briefing is based on our understanding of the Regulations, DWP guidance, 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. Getting information from the DWP has been quite difficult but they have now released some 'guidance' on how Transitional Protection works and have shared further information in stakeholder meetings.

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 advice@ucnotes.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 practice 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 with any examples.

IMPORTANT: This Briefing was first published on 20th June 2024 based on the Guidance and information available at that time. It will be updated as we learn more and is subject to change.

The Transitional Element

Key Points:

Entitlement

Not all 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 18).

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. The DWP will get information from the relevant benefit departments about the claimant's entitlements on their Migration Day (i.e., the day before their UC entitlement begins). (See page 7).

The Indicative UC Amount is an imaginary award based on the claimant's circumstances on their Migration Day. This will be based on information held by the relevant legacy benefit departments 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, a claimant's Indicative UC Amount will not include a Housing Costs Element if they do not have an award of Housing Benefit even if they are liable to pay rent. (See page 9).

Checking the amount of the Transitional Element

Due to the various sources of information used by the DWP when calculating a Transitional Element, 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 – they are entitled to see a breakdown and should be given one although they may need to push for this.

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) after the first Assessment Period. 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 20.)

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 25)

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 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 to 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.

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^A 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 Day¹. Any 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 Transitional Protection – including a Transitional Element. A claimant's 'final deadline day' is usually a calendar month after their Deadline Day. The Regulations state that it the last day of an Assessment Period that started on Deadline Day. So, where the claimant's Deadline Day is the last day of the calendar month, their final deadline day will be the penultimate day of the following calendar month.

Entitlement to Transitional Protection is then based on their circumstances on their **Migration Day** – this is the day before their entitlement to UC begins². 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.

^A Annex E - 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 claimant's first UC assessment where:

- they made a 'qualifying claim' for Universal Credit, and
- they were in receipt of a legacy benefit 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 on or before their 'final deadline day' i.e., within a calendar month after their Deadline Day.

EXAMPLE: The deadline given in Ruby's Migration Notice was 3rd 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 31st October. Ruby missed this deadline, so her Child Tax Credit entitlement ended on 30th October, and her IR-ESA and HB ended 2 weeks later. She made a successful claim for UC On 17th November – as this was before her 'final deadline day' (which would have been 29th November), the DWP will treat the claim as if it was made on her Deadline Day. This means that her UC entitlement began on 31st 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 a legacy benefit 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 a legacy benefit on their Migration Day their first claim for UC must be successful^A. This means that the claimant attends any interviews as requested, provides any extra information and evidence within the set time limits, and agrees a claimant commitment.

A failed claim for UC still ends a claimant's legacy benefits. Tax Credits will end on the day before they made their claim, and the other legacy benefits will end two weeks later. If they make a second claim for UC after their first claim fails^A and this is more than two weeks after they made the first one, they will not be entitled to a legacy benefit on their new Migration Day and so will not be entitled to a Transitional Element.

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

^Aunless they get their first claim 'reopened' – the DWP have said in guidance^B that they will do this if the claimant's first claim failed because they didn't verify information on time if they go on to make another (successful) claim before their Final Deadline Day. In other situations, the claimant could try to get their first claim reopened on MR or appeal.

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 may never have had any dealings with the DWP or had a Claimant Commitment before (e.g., partners on IR-ESA claims).

^B [Move to Universal Credit \(managed migration\): overview v9](#)

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.)³

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

The Total Legacy Amount may not be the same as the legacy benefits 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 legacy benefit entitlement, 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 9).

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 (special rules apply where the Indicative UC Amount is nil). This will be included when their first UC award is assessed. But can be lost or eroded after that – see page 20 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.

How has the Transitional Element been calculated?

Claimants are entitled to see how their Transitional Element has been calculated – however, the DWP are not providing this information as standard. Claimants should ask on their UC Journal (or via the helpline if they have an online claim) to see how their Transitional Element has been calculated. Specifically asking for the Total Legacy and Indicative UC Amounts could be helpful. DWP have said that they are working on a process to ensure that claimants are able to easily access this information in a standardised format, but this is not in place yet.

WARNING

Online Benefit Calculators: We are aware that not all online benefit calculators work out a UC Transitional Element or may not be 100% accurate if they do.

Steps for calculating the Transitional Element

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' in the same 'benefit unit' and were getting a legacy benefit 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 (based on legacy entitlement)⁴
2. Calculate the claimant's Indicative UC Amount⁵
 - 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 earnings from legacy departments / 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 Element⁶

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[^], any change in circumstances that occurs after this day will not affect the initial amount of the Transitional Element (but could affect the amount included in future UC awards).

[^]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 22 for more details).

[^]If it is later found that wrong information was used to calculate the Transitional Element (i.e., the information held by the legacy department 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 23 for more information.

EXAMPLE: Two weeks after making her claim for UC Rita had her second child – as this happened after her Migration Day, it will not affect the amount of her 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.
NOTE: As long as the extra Child Element is included in her first UC assessment, it will not erode her Transitional Element.

EXAMPLE: Val and Charles claimed UC in the same 'benefit unit' before the deadline given in their Migration Notice. They made their claims on 4th September, so their Migration Day is 3rd 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

The DWP will add together the claimant's entitlements to the legacy benefits that they are entitled to on their Migration Day to give their Total legacy Amount (TLA). Any 'legacy' benefits that they are not receiving are ignored.

Tax Credits

HMRC will provide the 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.

The DWP will take this daily rate, multiply it by 365 and divide by 12 to give the monthly equivalent (note: the DWP will still multiply by 365 in leap years)⁷.

EXAMPLE: Shaheen and Rizwan receive Working and Child Tax Credit. Their latest award letter says that their entitlement for the period including Migration Day is £7,460.60 for Child Tax Credit and £6,646.65 for Working Tax Credit – this is their entitlement for the year (i.e., 365 days). HMRC will send the DWP the relevant 'daily rates' (CTC = £20.44, WTC = £18.21) and the DWP will convert this to a monthly amount by multiplying by 365 and dividing by 12. The amount of Tax Credits added to their Total Legacy Amount will be £1,175.60.

Shaheen and Rizwan are actually receiving the equivalent of £900 a month as their award is being reduced by a previous overpayment – but this will not affect their Total Legacy Amount.

Housing Benefit / Income-Related ESA / Income Support / Income-Based JSA

The DWP will get the claimant's weekly entitlement(s) from their internal systems – for HB, they have access to an integrated service. It is the claimant's entitlement before any deductions for previous overpayments / third-party deductions / sanctions that is used.

The DWP will take this weekly rate, multiply by 52 and divide by 12 to give the monthly equivalent.

EXAMPLE: Shaheen and Rizwan also receive Housing Benefit. They pay £120 a week in rent to their Local Authority. Due to their income their HB entitlement is £81.24 a week. The DWP will convert this to a monthly amount by multiplying by 52 and dividing by 12. The amount of Housing Benefit added to their Total Legacy Amount will be £352.04.

Shaheen and Rizwan are actually receiving the equivalent of £290 a month as their award is being reduced due to a previous overpayment – but this will not affect their Total Legacy Amount.

EXAMPLE: Polly receives Income-Related ESA. She is in the Work-Related Activity Group and is currently being sanctioned for failing to attend a Work Focussed Interview. Her IR-ESA entitlement is £126.45 but she is currently receiving £35.95. It is the amount before the sanction that is converted to a monthly amount and added to her TLA. So, the amount of IR-ESA added to her TLA will be £547.95.

Note – according to the Regulations⁸ where a claimant is entitled to both IR-ESA and Contributory ESA, the amount added to their Total Legacy Amount will be their total IR-ESA entitlement as though they were not receiving C-ESA. For most claimants, this will be the same as adding both their IR-ESA and C-ESA entitlements to their TLA. This will make their TLA higher than expected. However, the DWP should account for this by not deducting their C-ESA as unearned income when they calculate the claimant's IUCA. So, for most claimants this will not have an effect on the amount of any Transitional Element entitlement.

However, this could be an issue if the DWP choose to apply this rule to claimants who meet the entitlement rules for both IR-ESA and C-ESA, but due to their income only receive C-ESA (because their C-ESA entitlement is higher than their IR-ESA entitlement). For these claimants, this Reg would mean that their lower IR-ESA entitlement is added to their TLA (even though they are not actually receiving it) and their higher C-ESA entitlement will not be deducted from their IUCA – reducing their entitlement to the Transitional Element.

This is based on our interpretation of the Regulations, and we have not seen what the DWP are doing in practise. If a claimant is made worse off, we would recommend requesting a Mandatory Reconsideration of the calculation of their Transitional Element on the grounds that the TE has not properly compensated them for the loss of income on moving to UC.

EXAMPLE: Rose is receiving both Income-Related ESA and Contributory ESA. She receives £138.20 C-ESA each week and this is topped up by £102.35 IR-ESA. Her total IR-ESA entitlement is £240.55 – it is this that is converted to a monthly amount and added to her Total Legacy Amount. So, the amount of IR-ESA added to her TLA will be £1,042.38.

Total Legacy Amount

The DWP will add together the monthly figures to produce the claimant's Total Legacy Amount (TLA).

REMEMBER: the only benefits that will be added to the TLA are Housing Benefit, Income-Related ESA, Income Support, Income-Based JSA and Tax Credits. Any other benefits that the claimant is receiving (e.g., Carer's Allowance) are not added to the TLA.

REMEMBER: The claimant's Total Legacy Amount could be very different to the amount of legacy benefits actually in payment.

EXAMPLE: Shaheen and Rizwan are receiving Housing Benefit and Tax Credits. In total they receive the equivalent of £1,190 a month from these two benefits as they are both being reduced for previous overpayments. However, their Total Legacy Amount will be £1,527.64 (£1,175.60 TC + £352.04 HB).

Shaheen also receives £470.38 in PIP each month but this is not a legacy benefit so is not added to the TLA.

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 legacy benefits than they should because they have failed to report an advantageous change (e.g., being awarded a disability benefit that entitles them to a Premium / Element), the DWP may not recalculate their Transitional Element if the claimant realises at a later date that they should have been entitled to a higher amount of Transitional Element.

See the section on 'Retrospective Changes' on page 23 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:

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.

EXAMPLE: Bev receives Working and Child Tax Credit and Housing Benefit. If she made a claim for Universal Credit outside of the Managed Migration process, she would be entitled to an award of £750.13. However, her Indicative UC Amount will be £1,081.04. The main reason for this difference is the fact that Bev is receiving a Child Element in her CTC for her youngest son who recently moved into a residential care home. This means she will have a Child Element included in her Indicative UC Amount for him (see page 10). However, under the UC rules, Bev will not be classed as 'responsible for' her son and so will not have the Child and Disabled Child Elements included for him. In addition to this, her Indicative UC Amount is being calculated based on a monthly earned income of £1,228.85 (based on the figure provided by HMRC – see page 14). However, the Real-Time Information will report that she receives £1,306.85 each month as she has received a pay increase that she hadn't reported to HMRC before making her claim for UC.

2A: The Indicative Maximum UC Amount (IMUCA)

A claimant's Indicative Maximum UC Amount (IMUCA) 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.

Which Elements will be included?

The Elements included in their Indicative UC Amount are based on the information held by legacy benefit departments, available from the Customer Information System (CIS) and the claimant's declaration.

Elements are added as detailed on the following pages.

'Missing' Elements

Due to the way the UC (Transitional Provisions) Regulations 2014 work, some claimants may not have all the Elements included in their Indicative Maximum UC Amount that you would expect.

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 resulting Indicative UC Amount is lower and the lower it is, the bigger the different between it and the Total Legacy Amount).

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 should be based on the single Standard Allowance for someone age 24 (as she was on Migration Day). Although her first UC award will include the 25+ Standard Allowance, as she will have turned 25 by the end of her first Monthly Assessment

Child Elements

IMPORTANT:

The Regulations say that the number of Child Elements included in a claimant's Indicative Maximum UC Amount will be based on the number of Child Element included in the Child Tax Credit award, we are assuming that if there is no entitlement to any Child Tax Credit, then no Child Elements will be included in the Indicative Maximum UC Amount.

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 IMUCA will be 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 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 £287.92.

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 18 for more details.

Disabled Child Elements

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. 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. disability benefit, the Disabled Child Element included in the Indicative UC Amount will be the lower amount. The DWP have confirmed that they will always base the Disabled Child Elements included in the IMUCA on the information from HMRC – even if the claimant reports something contradictory on their UC claim.

Where a claimant is incorrectly receiving the low DCE in Child Tax Credit when it should be the high rate, they will be overpaid the Transitional Element by up to £190 a month until HMRC have sent a corrected 'daily rate' based on the Low Disabled Child Element. This overpayment will be recoverable – along with any overpayment of Child Tax Credit caused by the failure to report that the rate of their child's disability benefit had changed.

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

The DWP said at the same stakeholder meeting that they will not include a Disabled Child Element in the Indicative UC Amount if there is not one present in a Child Tax Credit award. Claimants in this situation will have a Disabled Child Element included in their normal UC awards if they report their child's disability benefit when they make their claim for UC – but one will not be included in the IMUCA.

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, their Transitional Element will be worked out without the Disabled Child Element and this will mean that they miss out on up to £190 of Transitional Element. (i.e., the difference between the low Disabled Child Element 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 they could miss out of some Transitional Element (see example below). They should notify HMRC and get the Disabled Child Element included in their Tax Credit award before they claim UC if this is possible.

Childcare Costs Element

Reg 54 para 2(b) of the UC (Transitional Provisions) Regulations 2014 says 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 amount of the Childcare Costs Element to include in 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 May 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 Working Tax Credit but would not be entitled to one in their 'actual' UC award. This could mean that they are worse off when they move onto UC with no immediate compensation. Please see page 18 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 up to four weeks after the change happened. This means that they still receive help with their childcare costs in WTC for up to four weeks. If they make a claim for UC during this run-on, 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

The DWP have confirmed that the LCW / LCWRA Element will be included in a claimant's IMUCA if –

- they are entitled to a Support / WRA Component in IR-ESA on Migration Day, or
- they are entitled to a Support / WRA Component in C-ESA / NS-ESA on Migration Day, or
- they are entitled to NI Credits for LCWRA or NI Credits for LCW (and their associated period of LCW began before 3rd April 2017) on Migration Day.

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 (this would not erode any Transitional Element), and if found to have LCWRA, he would be entitled to the LCWRA Element after serving the 3 month 'relevant period' (which would erode any Transitional Element, see page 20).

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?

The DWP have said that a claimant will have an LCW/RA Element included in their Indicative UC Amount in the situations listed above. They have not mentioned claimants who will be 'treated as' having LCW/RA. We therefore assume that these claimants, will not be considered to have LCW/RA when their Indicative Maximum UC Amount is worked out (even if they will be 'treated as' having LCW/RA for their normal UC awards) – and so no associated LCWRA Element or work allowance when their IUCA is calculated

This will make claimants better off overall as not having an LCWRA Element included in their IMUCA means that is lower than expected which increases their entitlement to the Transitional Element. Additionally, for claimants with earned income (who do not have children nor a partner who has been found to have LCW/RA) not having a Work Allowance applied to their IUCA will mean that it is lower than expected, and so transitional protection may increase.

If the LCWRA Element is added to their UC award after their first assessment period, then this will erode their Transitional Element. NOTE: if they are treated as having LCWRA because they are terminally ill and their death can reasonably be expected within 12 months when they make their claim for UC, then their UC award should include a LCWRA from the beginning of their claim (as they are excluded from the three month 'relevant period' and therefore not erode any Transitional Element).

Carer Element

The DWP have confirmed that the only basis for including a Carer Element in a claimant's Indicative UC Amount is the claimant declaring themselves a carer on their UC claim (or later reporting that they have been a carer since before their UC claim).

EXAMPLE: Beccy gets Income Support and Housing Benefit. She also gets Carer's Allowance. When she makes her claim for UC she misunderstands that question about being a carer and clicks 'no'. When her Transitional Element is first calculated, her IMUCA will not include a Carer Element (although her Carers Allowance will be classed as assessable income and reduce her IUCA). Beccy should report on her UC Journal that she is a carer and that her caring responsibilities started before she claimed UC – her Transitional Element should then be recalculated to include a Carer Element in her IMUCA. Note – this will lower any TE entitlement.

Could a claimant not on Carers Allowance benefit from not declaring themselves as a carer when they first claim UC?

Probably not – a claimant may think they can maximise their entitlement to the Transitional Element by not declaring themselves as a carer on their UC claim (remember the lower the IUCA the more likely the entitlement to a TE). But, if they then declare themselves as a carer after the end of their first MAP, the addition of the Carer Element will ‘erode’ their Transitional Element and they will be in the same position as if they declared themselves as a carer from the beginning. It is possible that a claimant could become entitled to the Carer Element during their first MAP – so they were not entitled to it on their Migration Day but are entitled to it in their first UC award – but it is not clear how the DWP will deal with these cases if they arise.

Housing Costs Element

IMPORTANT:

The DWP have confirmed beyond doubt that a Housing Costs Element will not be included in the Indicative Maximum UC Amount where there is no HB in payment.

If they are receiving HB, the DWP have said that they will include the HCE as calculated for the first MAP in the IMUCA (i.e., the HCE included in their first UC award, will be used for their IMUCA). For most claimants, this will not be an issue, but it is unclear what will happen where a claimant has a change in housing situation between Migration Day and the end of their first MAP. We have asked the DWP for clarification on this issue. If the claimant is worse off as a result, they should challenge this approach as it is not in line with the Regulations which state that it is the claimant’s circumstances on Migration Day which are important⁹.

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.

EXAMPLE: Sharon is 43 years old. She gets Income-Related ESA (with a Support component) and Housing Benefit. She makes a claim for UC after receiving her Migration Notice. As she is receiving Housing Benefit, the DWP will include a Housing Costs Element in her IMUCA. On the last day of her first Assessment Period, the DWP know that Sharon is living in a socially rented three-bedroom house (rent £500 a month) with her two sons (aged 22 and 25) – she receives Daily Living PIP so there are no Housing Costs Contributions. If the DWP include the HCE calculated for the first MAP in her IMUCA, they will include a HCE of £500. But Sharon’s youngest son only moved in a week after she claimed UC. So, Sharon was under-occupying her property on her Migration Day and as such the HCE included in her IMUCA should be £430 (as the Bedroom Tax applies). If the DWP use the HCE calculated for the first MAP in the IMUCA (and Sharon is entitled to a Transitional Element), she will be underpaid the TE by up to £70 a week. If this happens, Sharon should request an MR of the calculation of her Transitional Element as it has not been calculated in line with the Regulations.

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, Elements that are ‘missing’ from the IMUCA (e.g., the Housing Costs Element for those not receiving HB) should be in the claimant’s normal UC awards if they meet the entitlement conditions.

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: For earned income, the DWP will get figures from legacy benefit departments – this could mean that the amount used in the TE calculation is different to that used in the claimant's normal UC awards.

Any Earnings?

For earned income, it does not matter what the claimant reports on their UC claim or what the RTI System reports that they earn in their first MAP – what matters is whether they are receiving a legacy benefit that is being reduced by earned income. The Regs¹⁰ dictate the order in which legacy benefits are considered.

Receiving Tax Credits?

If a claimant is receiving Tax Credits, the Regs say that the earned income figure used to reduce the IUCA should be based on their earned income figure that is reducing their Tax Credits.

Where a claimant is entitled to Working Tax Credit, 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)¹¹. This is usually their gross earnings from employment / self-employment* (less any pension contributions reported to HMRC) in the previous tax year. However, DWP guidance states that where the claimant has reported a change in expected income for the current tax year to HMRC, it is this figure (with no disregard applied) that will be used to calculate their Indicative UC Amount – even if HMRC are still using their past year income because the change is less than £2,500.

*NOTE: The Regulations do not apply the Minimum Income Floor to the Indicative UC Amount, so where HMRC report low / no earnings 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. Once the DWP have this monthly amount, they will work out the claimant's Indicative Assessable Earnings figure by deducting the Work Allowance[^] if applicable and multiplying by the taper rate of 55%.

EXAMPLE: Imaan works 30 hours a week and currently receives £1,656 a month in wages after tax, NI and pension contributions. As she is receiving WTC, HMRC will report the annual income figure that they are using to calculate Imaan's Tax Credit entitlement – this is £21,000 (her salary last tax year less pension contributions). The DWP will divide this by 12 and deduct notional amounts for tax and national insurance giving a monthly amount of £1,553.52 – they will then deduct the Work Allowance (£673 because there's no HCE in her IMUCA) and apply the taper rate. Her IUCA will be reduced by £484.29 for earned income.

We are still unsure what should happen where a claimant is receiving Child Tax Credit and has earned income but is not entitled to Working Tax Credit (i.e., they are working but not doing enough hours to be entitled to WTC). In these cases, their CTC will probably not be being reduced by their earned income (either because they are receiving IR-ESA / IS / IB-JSA / PC and are 'passport'ed to full CTC or because their income is below the CTC-only threshold of £19,995 pa). The way that the Regulation is written suggests that claimants in this situation should not have any earned income taken off their IUCA because none is being taken off their CTC. If they are earning below their Work Allowance, this will not affect their entitlement but if they are earning above it, it will mean that there is income being taken off their normal UC awards that is not being taken off their IUCA. If they are worse off as a result, they could try and challenge the DWP's approach as the Regulations are not clear in this matter.

Receiving Income-Related ESA / Income Support / Income-Based JSA

Where a claimant is not receiving Tax Credits, the Regulations say that the next step is to look at whether they are receiving IR-ESA, IS or IB-JSA. If they are, the DWP will look at whether this is being reduced by any earned income. If it is, the DWP will convert the weekly figure being used to reduce their legacy benefit, convert it to a monthly amount, deduct a Work Allowance[^] if applicable and apply the taper rate.

EXAMPLE: Carol receives Income Support, Housing Benefit and PIP Daily Living. She cares for her dad and receives Carer's Allowance. She works for 10 hours a week and earns £120 a week after pension contributions. This reduces her IS entitlement by £100. When the DWP calculate her IUCA, they will look at the earned income that is reducing her IS (£120) and convert this to a monthly amount (£520). She is not entitled to a Work Allowance so the DWP will apply the taper and her IUCA will be reduced by £286 for her earned income.

Note: Carol can request a WCA once she has claimed UC. If she is found to have an LCW/RA, a Work Allowance will be added to her claim from the MAP in which she requested the WCA. The Work Allowance will increase the amount of UC she receives but will not affect her Transitional Element, i.e., it will not be recalculated or 'eroded'. (However, if she receives a new LCWRA Element she could end up being worse off overall – see the example of David on page 22.)

What if someone on IR-ESA has 'permitted earnings'?

This is another unanswered question and we do not yet know what the DWP will be doing - if you see an example, please let us know! Where a claimant has 'permitted earnings', their IR-ESA is not being reduced by those earnings. If we take the Regulations as written, they suggest that claimants with 'permitted earnings' should not have their IUCA reduced for earned income (because their IR-ESA is not being reduced). Again, this could create issues for claimants who are earning above their Work Allowance.

If the DWP do calculate a claimant's TE in this way and they are worse off, they should request a Mandatory Reconsideration of the decision as the TE has not properly compensated them for their loss.

EXAMPLE: Lukas receives Income-Related ESA and Housing Benefit. He works 14 hours a week and receives £140 but this does not reduce his IR-ESA entitlement as it is 'permitted earnings'. On UC, he will be entitled to a Work Allowance of £404 a month but he will earn £202 more than this each month – so his UC will be reduced by £111.10 for earned income. If the DWP do not reduce his IUCA for earned income, he will not be entitled to a Transitional Element even though he will be £181.35 a month worse off on UC than he was on legacy benefits.

Only on Housing Benefit?

If a claimant's only legacy benefit is Housing Benefit, the DWP will see if this is being reduced by earned income. If it is, the DWP will take the weekly figure being used to reduce their legacy benefit, convert it to a monthly amount, deduct a Work Allowance[^] if applicable and apply the taper rate.

If they are getting Contributory ESA then they may have permitted earnings that are not reducing their Housing Benefit award – we assume these will be treated the same as for claimants getting Income-Related ESA who have permitted earnings (see above).

[^]IMPORTANT: If a claimant is not receiving Housing Benefit, their IMUCA will not include a Housing Costs Element. This means that where the claimant is entitled to a work allowance it will be the higher figure i.e., £673, that will be used when working out their Indicative Assessable Earnings.

Any Benefit Income?

The DWP will get information about the benefit income that should reduce the claimant's Indicative Maximum UC Amount from the Customer Information System. As normal, some benefit income is disregarded, and some reduces their UC award £ for £.

In June 2024, the DWP told us that this process is now automated for most^ benefits (i.e., the computer systems auto-populates the amount of benefits in payment). Prior to this, this was a completely manual process and it was an area where we were seeing mistakes. Claimants who made their claim for UC before the process was automated should check that the correct benefit income was deducted from their IUCA – we have seen examples where Carer's Allowance, IIDB and Widowed Parent's Allowance were missed meaning the claimants were being underpaid the Transitional Element.

Not deducting an income will mean that the claimant's Transitional Element is higher than it should be and so the claimant will be being overpaid Universal Credit.

^WARNING: This is still a manual process for Industrial Injuries Disablement Benefit (i.e., someone needs to look at another screen to check if IIDB is in payment and manually add in the amount if it is). As with all manual processes there is room for human error. Claimants receiving IIDB should check that it has been correctly deducted from their IUCA.

NOTE: Under normal circumstances a claimant's UC can be reduced by notional income from a deferred pension. However, if they claim UC after receiving a Migration Notice and were receiving Tax Credits when their Notice was issued, this income is ignored for the first 12 Assessment Periods and so will not affect their Indicative UC Amount.

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 £.

Our understanding is that the Transitional Element will not be calculated until everything has been verified – including unearned income. Claimants should make sure that they have reported the correct amount of unearned income (taking into account the appropriate disregards etc) to ensure that their Transitional Element is calculated correctly.

What about savings / capital?

As above, the DWP will get information about the claimant's savings / capital from their declaration i.e., claim.

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

Again, claimants should ensure that they are reporting the correct amount of savings / capital, and if any amount should be disregarded, then they should make a note of this on their journal as soon as they are able to. They should ensure that the correct amount of assessable savings / capital is taken into account when their Transitional Element is assessed to avoid over and under payments.

WARNING: Knowing what savings and unearned income should reduce a UC award can be complicated and claimants may incorrectly report savings/income that should be disregarded when they make their claim for UC. If they do so (and this is not picked up when the DWP verify the information), they could be overpaid the Transitional Element because their IUCA is being reduced more than it should.

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 £. If the claimant will be affected by the Benefit Cap, it will be applied.

Note: single State Pension age claimants and couples who are both State Pension age cannot be affected by the Benefit Cap.

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 much¹².

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: If a claimant is not entitled to a Managed Migration Transitional Element, we believe that the DWP should go on to consider entitlement to the TSDPE. So, 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^A.

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 legacy benefits they were entitled to).

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 20 - 22 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

In these cases, the claimant could receive less UC than they were getting in legacy benefits (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.

Specifically, the Regs say that claimants should be treated as responsible for any children included in their CTC claim. This will be an issue where claimants will not normally be treated as responsible for the child on UC (i.e., because they live abroad or away from home in certain residential accommodation). These claimants will have a Child Element included in their IMUCA even though one will not be included in their normal UC awards. Note: this issue also applies to some kinship carers in Scotland who can get CTC but not a UC Child Element but for this group the loss can be at least partially offset by an increase to the kinship carer payment from the LA.

If the DWP include a Child Element in a claimant's IMUCA for a young person who is not included in their normal UC award because it is past 1st September following their 19th birthday, we believe that this can be challenged. Note: we are not sure whether the DWP are doing this, but it is something to look out for. In some cases, a claimant can receive a Child Element for a 19-year-old in Child Tax Credit¹³ even though that 19-year-old would no longer be treated as a Qualifying Young Person for UC¹⁴. The Child Element cannot be included in UC for someone who is not a Child or QYP so there is an argument to be made that there should be no Child Element in the IMUCA for this young person. If one is included, the claimant should request a Mandatory Reconsideration.

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[^]) be worse off on UC.

[^]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.

Not currently feeling the full effect of the Benefit Cap but will on UC?

Some legacy benefit claimants will be receiving 'welfare'^ above the relevant Benefit Cap limit even though they are not excluded* from it. These are claimants who are either not receiving Housing Benefit or who's Housing Benefit is being reduced to 50p a week by the Cap so it cannot be reduced any further. This is because the only legacy benefit that can be reduced by the Benefit Cap is Housing Benefit. However, the whole of someone's UC award (although the Childcare Costs Element is ignored in the calculation) can be reduced by the Benefit Cap – so they will feel the full effect of the Cap once they move onto UC.

Even if these claimants were entitled to a Transitional Element on UC, they cannot receive above the relevant Benefit Cap limit so would not benefit from the TE. However, in these circumstances the Regulations ensure that they are not entitled to a Transitional Element.

Specifically, the Regulations¹⁵ state that where a claimant is not excluded from the Benefit Cap and is either:

- Not receiving any Housing Benefit, or
- Receiving 50p Housing Benefit a week due to the Benefit Cap

The Benefit Cap should be applied to their Total Legacy Amount i.e., their 'total welfare'^ should be calculated including all their legacy entitlements (ignoring any Working Tax Credit). This is then compared to the relevant Benefit Cap limit and their Total Legacy Amount is reduced by any excess.

*in addition to the existing exclusions, single claimants who are State Pension age and couples who are both State Pension age are excluded from the Benefit Cap.

^ 'welfare' includes: Child Benefit, Child Tax Credit, Housing Benefit, Income Support, Income-Based JSA, Income-Related ESA (WRAG), New-Style / C-ESA (WRAG), New-Style / C-JSA, Maternity Allowance, Widow's Pension, Widowed Mother's Allowance, Widowed Parent's Allowance.

EXAMPLE: Lorna lives with her 5 children (all born before 2017). She receives Widowed Parent's Allowance, Child Tax Credit and Housing Benefit – her HB is being reduced to 50p per week due to the Benefit Cap. As such, she will be affected by this special rule. Her 'total welfare' is £2,531.75 per month (made up of £2.17 HB, £1,481.78 CTC, £643.07 WPA and £404.73 CB). This means her 'excess welfare' is £696.75 (i.e., £2,531.75 - £1,835). This reduces her Total Legacy Amount so it is £787.20 (£2.17 + £1,481.78 - £696.75). Her Indicative UC Amount is also £787.20 as it is similarly reduced by the Benefit Cap, so Lorna is not entitled to the Transitional Element.

Each month Lorna had been receiving £1,483.81 in Housing Benefit and Child Tax Credit but she will only receive £787.20 in Universal Credit – that is a drop in income of almost £700 a month.

TOP TIP: Claimants who are not excluded from the Benefit Cap but are not currently feeling the full effect of it, could see a considerable drop in benefit income after moving onto Universal Credit. 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. They pay rent but were not getting HB so their IMUCA did not include a Housing Costs Element. However, their first UC award does. As this is included in their first UC award (in MAP 1) it does not erode their TE.

However, it will be 'eroded' by a change that takes place after the end of their first MAP if this change adds a new Element in their Maximum Universal Credit or increases an Element. 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 Element¹⁶.

EXAMPLE: Jess is 24 and a single parent. She receives her first UC award in November, 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 £18.23. Four 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 Income-Related ESA (in the WRAG group – no component) and Housing Benefit. When he claimed UC, he was entitled to a Transitional Element of £156. Six months later he requests a WCA review and is found to have LCWRA. The LCWRA Element will be added to his UC award from the MAP he requested the review. This reduces his Transitional Element to £nil and his Maximum UC Amount only increases by the excess (£260.19).

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[^]
- 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.

[^] 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 two¹⁷.

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 25.

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 year. It also includes a Transitional Element of £450. 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 in MAP 4. This will 'erode' his Transitional Element to £33.81 (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 £198.31 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 (£198.31) 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 also in any of the circumstances below¹⁸.

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 Assessments 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. Note: claimants will not be affected by this rule if their earnings were below the AET when they claimed (i.e., it does not matter if their earnings later go above the AET).
- 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.

* from 13th May 2024, the AET is £892 per month for single claimants and £1.437 per month for couples. It is the AET in place on the date their UC award starts that is used in this situation so for claimants who claimed before 13th May 2024, a lower AET will apply for this rule.

NOTE: The 'age waiver' that allows single State Pension age claimants and couples who are both State Pension age to claim UC ends in any of the circumstances in which Transitional Protection ends (although the AET rule is amended for these claimant). These claimants will then need to consider making a claim for Pension Credit if they are entitled. We look at this in more detail in the focused briefing.

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 two 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 not be included in his UC from the MAP after this. If in that next MAP he is entitled to some UC, he will remain entitled to 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 for more than 3 MAPs 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 TE.

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 state that the DWP can go back and recalculate the claimant's Transitional Element in limited circumstances¹⁹. 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, or
- official error, or
- the outcome of an appeal/supersession/revision to an 'existing benefit' that was submitted before the UC claim was made.

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 Income Support with a Disability Premium (based on his PIP entitlement) when he received his Migration Notice. He made a claim for UC, and this included a Transitional Element. A couple of months later DWP realise that Philippe's PIP ended 4 months earlier as he had not scored enough points (and had not challenged the decision). They remove the Disability Premium from his IS for the period from the date the PIP stopped up to the date he claimed UC. The DWP also reassess his Transitional Element and find that he was no longer entitled, meaning that he had been overpaid both Income Support and Universal Credit.

EXAMPLE: Eilidh and Brian were claiming IR-ESA 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 CTC, they would have been entitled to some TE. 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 TE and they have missed out on that extra income. Note: they would still have the Disabled Child Element included in their UC awards if they report the DLA on their claim, or from a later point if they delay notifying the UC Department.

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

This will ensure their entitlement to the Transitional Element is maximised and they do not miss out, or end up with a recoverable overpayment.

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 Income Support and Housing Benefit when he received a Migration Notice and made a claim for UC. His IS included a Disability Premium as he receives PIP daily living but did not include a Severe Disability Premium – even though it should have done. When he claimed IS, Ryan was living with his brother and was not classed as 'living alone'. However, his brother also gets PIP daily living – Ryan reported this to the IS Department, but they did not add the SDP to his award. Ryan can request that the IS Department include the SDP in his award from the start of his IS claim up to the date he made his claim for UC. Additionally, as he has been underpaid the Transitional Element due to official error, the DWP should recalculate his TE entitlement. He has been underpaid IS and UC.

If the claimant was awaiting a decision on an award of an 'existing' benefit

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 Child Element in their Child 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 in relation to an 'existing benefit' (defined in the Regulations as: Tax Credits, Housing Benefit, Income-Related ESA, Income Support or Income-Based JSA). The Regulations 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 Child Tax Credit award.

The DWP have said in guidance 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, we would still advise that 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 Income Support, Child Tax Credit and Housing Benefit. 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.

Note – her UC awards should be reviewed to include the DCE from the start of her UC award. If she reports the DLA to HMRC within one month of it being awarded, her CTC should also be revised.

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

This will ensure there is a record of the claimant's 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, New-Style JSA and Housing Benefit 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 Element. 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.

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 place in the claimant's first Monthly Assessment Period (MAP).

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 Income-Related ESA, Child Tax Credit and Housing Benefit. 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 £206. 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 £nil and their Maximum UC will only increase by £81.92. 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 £206 (i.e., it will not be 'eroded').

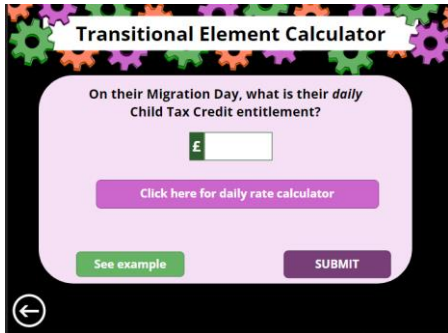
Useful Resources

Transitional Element Calculation Sheet

Please let us know what you think.
Email: julia@ucnotes.co.uk

[Click here](#)

Transitional Element Calculator



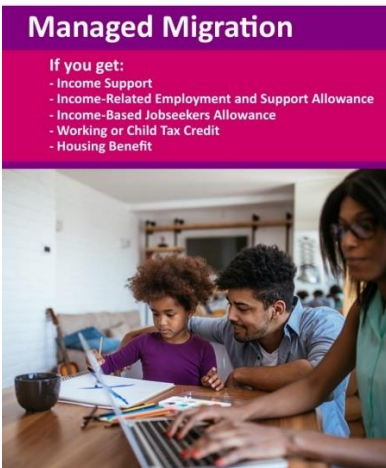
Based on our understanding of how the DWP are assessing the Transitional Element.

Please let us know what you think:
Email: rachel@ucnotes.co.uk

[Click here](#)

Booklet

Your guide to
Universal Credit

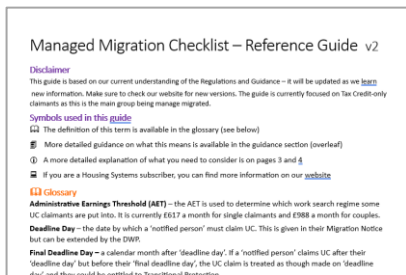


We have produced a booklet all about Managed Migration aimed at claimants.

Why not a web version embedded on your customer website?

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

Checklist



Our checklist for Benefits Advisers goes through all the questions you need to ask when supporting a claimant who has received a Migration Notice. It helps you give the best advice and make sure you've covered all bases.

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

Online Workshops



We run open online workshops about Managed Migration

[Click here](#)

Or book an in-house session delivered by experts and tailored to your needs- from just £645+vat

Interested? Email us: 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 (unless otherwise stated).

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

¹ Reg 46(1)

² Reg 49

³ Reg 50(2)

⁴ Reg 53

⁵ Reg 54

⁶ Reg 52(1)

⁷ Reg 53(2)

⁸ Reg 53 (6)

⁹ Regs 54 and 49

¹⁰ Reg 54(2)(C)

¹¹ As above

¹² Reg 55

¹³ The Child Tax Credit Regulations 2002 Reg 5

¹⁴ The Universal Credit Regulations 2013 Reg 5

¹⁵ Reg 53(11)

¹⁶ Reg 55

¹⁷ Reg 55(5)

¹⁸ Regs 56 and 57

¹⁹ Reg 62