



## \* Keep the £20 in Universal Credit \*

### Digital 'PIP Apply' pilot to be expanded

This week in the Commons, Justin Tomlinson, DWP Disability, Health and Work Minister confirmed that the 'PIP Apply' pilot is to be expanded in Spring 2021.

The 'PIP Apply' pilot is testing the use of an online version of the PIP 2 claim form.

Mr Tomlinson also said that the DWP is working on enabling claims to be made on the gov.uk website without the need to phone the DWP first.

Mr Tomlinson said 'We are committed to providing a digital channel - 'PIP Apply' - to widen claimants' choices on how to make a new claim for PIP. In October 2020 we introduced - testing on a small scale - an online version of the PIP 2 claim form for claimants to complete using an HTML link sent via an email. We will use the learning from this as we develop this service further. Our aim is to scale this service by Spring 2021.'

'We are also working on how we enable claimants to access this service directly from gov.uk removing the need for the initial telephone call. As this digital channel will be optional, we will ensure we continue to offer our telephony service and paper form for those who are unable or prefer not to use our online services.'

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- **"Fratila" and pre-settled status**

### More PIP delays

The Office for Budget Responsibility has said that the government's plan to introduce a minimum award length for Personal Independence Payment (PIP) has been delayed until April 2021

The government had said that -

'We are introducing a minimum award length for the Personal Independence Payment because we know that the assessment process can be burdensome for some disabled people and we want the benefit system to work better for those it supports. We will ensure no one will be reassessed for at least 18 months from their last review, unless they tell us their needs have changed. This will provide greater certainty for those in receipt of PIP.'

OBR highlights that the original timescale for the roll-out of the change has been pushed back - '... this Budget 2020 measure has been delayed to April 2021 from June 2020. The delay is due to the pandemic limiting DWP's ability to conduct PIP assessments.'

NB - the OBR also confirms that the migration of DLA claimants to PIP has been delayed by a further two years as a consequence of the pandemic and will now mean that migration is expected to be complete by 2025, nine years behind the original schedule.



# Changes for EEA nationals after the end of the transition period

The transition period ended at 11pm on 31 December 2020. The government legislated to end freedom of movement from the same point.

This means that EEA nationals can no longer rely on their rights under previous EU law. Instead, EEA nationals and their family members who came to the UK before the end of the transition may be protected by the EU withdrawal agreement and the UK legislation put in place to implement its requirements.

In simple terms the EU withdrawal agreement allows EEA nationals in the UK before the end of the transition period to continue to be treated in the same way as British Citizens. This should mean that in most cases they should have the same access to benefits as they did under the freedom of movement rules.

The government decided, as did many other EEA states, that registration was required in order to benefit from the EU withdrawal agreement. The EU settlement scheme is the registration process that the UK has implemented. All EEA nationals, whatever their situation, will only be protected by the terms of the withdrawal agreement if they apply to the settlement scheme and are granted either settled or pre-settled status.

There is legislation in place to allow EEA nationals and their eligible family members who have not yet applied to the scheme to continue to rely on rights to reside under the previous rules until their applications made before the 30 June 2021 have been determined. There is legislation that allows people granted pre-settled status to also rely on rights to reside under the previous rules to gain access to means tested benefits. A Court of Appeal decision in Fratila has called into question whether people whose only right to reside is pre-settled status can be excluded from entitlement to means tested benefits.

Applications can be made to the settlement scheme until 30 June 2021. After this date, EEA nationals and their family members who have not applied to the settlement scheme will be at risk of having no right to reside. This will affect their ability to stay in the UK and to claim any benefits.

As you would expect the rules are complex and as yet there is no comprehensive guidance on how the rules put in place will work. Please continue to contact SWRU when EEA nationals who have not yet been granted settled status are struggling with benefit entitlement.

## Pension Age is 66

Pension age has reached 66. This is the age a person can claim their state pension. It is also the age that a claimant without an existing award of a disability benefit will be able to claim Attendance Allowance; the age a single person can claim Pension Credit; and the age the younger claimant in a joint Universal Credit claim must reach before the couple can claim Pension Credit and pension age Housing Benefit.

Legislation is in place to eventually raise pension age to 67. However, there will be no further increase in pension age until 6 April 2026 after which pension age will increase each month until it is 67 for all new pensioners.

## SWRU Website

We have updated a number of our Covid / Social Security related articles in recent weeks. Take a look, and please refer clients to the website for information across a range of situations and which benefits may be available.

<https://www.swru.org/covid-19-updates/>

Including:

- ⇒ Can I be furloughed?
- ⇒ Advice for employed workers
- ⇒ Benefits Update for people who are ill, disabled or are a Carer

## DWP has 'no plans' to extend time limit for c - ESA beyond 365-day limit

This week in the Commons, Justin Tomlinson, DWP Disability, Health and Work Minister, that the DWP has 'no plans' to extend time limit for payment of contributory ESA where claimants have reached 365-day limit but not had a WCA.

He also announced that the DWP now have a ring-fenced operational team to identify contributory ESA claims that can be progressed without face-to-face assessments eg where further evidence might exist on other DWP benefit systems. Claimants should contact the DWP if they have further evidence they think might help progress their claim.

Face to face assessments for disability and sickness benefits have been suspended due to Covid 19.

At the time of writing, the government has not yet made a final decision on whether the £20 uplift on Universal Credit will remain in place. We support the Citizens Advice campaign **#keepthelifeline**

We would also like to see government increase legacy means-tested benefits and Carer's Allowance by the same weekly amount.

## Removal of waiting days for ESA extended

A new statutory instrument has been issued amending the initial 8 months removal of the waiting days for ESA entitlement for those clients who are "infected or contaminated" with Coronavirus disease, or who are isolating or caring for a child in either of those categories. The statutory instrument has extended the removal of the waiting days from 8 months to 14 months ie: mid-May 2021

Source; <https://www.legislation.gov.uk/uksi/2020/1097/made>

## Untidy tenancies - new DWP guidance

When looking at UC housing costs entitlement DWP describes joint tenancies where one of those joint tenants has left the accommodation as "untidy tenancies". They have been apportioning 50% of the housing costs to the remaining tenant which has meant a shortfall in the housing cost element paid.

New guidance has now been issued to Work Coaches and Case Managers with much clearer information as to the process to follow and to make them aware of the changes.

The published guidance is here: [http://data.parliament.uk/DepositedPapers/Files/DEP2019-0465/Joint\\_tenancies\\_v6.0.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2019-0465/Joint_tenancies_v6.0.pdf)

The National Housing Federation has also issued an article here: <https://www.housing.org.uk/news-and-blogs/news/new-advice-dwp-universal-credit-calculations/>

There is a new "to do" item for Work Coaches and Case Managers. This allows agents to record how many tenants live in the property and the amount of rent/service charge the claimant pays. This ensures that both the absent joint tenant (Untidy Tenancy) or unequal apportionment of rent within a housing costs support claim are paid correctly. A claimant can report this in their journal or by phone.

The guidance reminds Work Coaches and Case Managers what they must not do;

- Ask the claimant to re-declare housing costs as a single tenancy, unless there is a genuine change of circumstances.

- Make a housing declaration on behalf of the claimant that it is a single tenancy.

- Ask the claimant to get a new tenancy from their landlord or a landlord letter to confirm the claimant is solely liable.

Whenever housing costs are re-verified following a change, the new to-do is completed to ensure that the correct level of housing support continues to be paid.

# New Regulations following Johnson Decision

The Court of Appeal's judgment on 22 June 2020 in the Johnson case\* decided that the DWP's inclusion of two monthly earnings payments in one UC assessment period (due to variable payment dates for monthly salaries) was "irrational".

"It is declared that the earned income calculation method in Chapter 2 of Part 6 of the Universal Credit Regulations 2013 is irrational and unlawful as employees paid monthly salary, whose Universal Credit claim began on or around their normal pay date, are treated as having variable earned income in different assessment periods when pay dates for two (consecutive) months fall in the same assessment period in the way described in the judgment."

From 16th November The Universal Credit (Earned Income) Amendment Regulations 2020 (2020/1138) came into force. These Regulations make changes to regulation 61 of the Universal Credit Regulations 2013, which governs how DWP calculates earned income.

The Regulations create a power for DWP to treat one of two wage payments received/reported in the same assessment period as earnings in respect of a different assessment period.

The Regulations do not apply retrospectively. CPAG suggests that claimants affected by this "irrationality" before 16th November, should be advised to request a Mandatory Reconsideration and subsequently an appeal in order to challenge the matter. They suggest some tactics here:

<https://cpag.org.uk/welfare-rights/legal-test-cases/universal-credit-assessment-period-inflexibility>

Do remember that this only applies to claimants who are paid on a regular monthly basis. The situation for those paid weekly, fortnightly or four weekly continues as before.

\*SSWP v Johnson, Woods, Barrett & Stewart [2020] EWCA Civ788  
<https://www.bailii.org/ew/cases/EWCA/Civ/2020/778.html>

## Benefit Cap: UC vs Legacy Benefits

Claimants in receipt of Working Tax Credit (WTC) are protected from the benefit cap even if their total legacy benefit entitlement is over the capped amount. WTC has been flexible during the pandemic allowing claimants whose hours have been cut to continue to be entitled. This entitlement continues unless employment or self-employment has actually ended. After the end of employment when WTC ends the benefit cap does not apply to an award of Housing Benefit for a 39-week grace period.

The situation is not the same for Universal Credit (UC) claimants. If an award of WTC comes to an end and a claim for Universal Credit is made, the benefit cap may be applied immediately. To avoid the benefit cap a UC claimant needs to earn £604 in the Assessment Period. There is a grace period of 9 months if the claimant household earned at least £604 each month for a 12-month period. The £604 is equivalent to 16 hours per week at minimum wage. For low paid couples and single parents working 16 hours a week and claiming WTC and Child Tax Credit, any reduction in earnings during the pandemic, including 80% earnings furlough payments might mean they are benefit capped from the outset of a Universal Credit award.

The difference in the way the benefit cap works in Universal Credit is another relevant factor when a household considers whether a claim for Universal Credit is the right way forward. In many situations there will be no option, but where the claimants have a choice the consequences of the benefit cap, particularly at this time when additional hours can be hard to come by needs to be taken into account.

## Pre-settled status and Fratila

A recent Court of Appeal case 'Fratila' has created hope that EEA nationals and their family members who are granted only pre-settled status will be able to access Universal Credit (UC) and perhaps other means tested benefits and child benefit that are currently unavailable to them.

Although the Court of Appeal has decided that regulations removing entitlement to benefits from those with only pre-settled status are quashed, i.e. no longer exist., EEA nationals and their family members in this position are not yet able to claim UC and other affected benefits. This is because the Court of Appeal postponed the effect of their decision until after 26 February to allow the government to decide what to do. The government can ask the Supreme Court for permission to appeal. If granted there is likely to be a further delay before the situation is resolved and during this period pre-settled status is unlikely to be accepted as a right to reside that gives access to benefits. If the government are granted leave to appeal and the subsequent Supreme Court decision is made in their favour nothing will have changed. Pre-settled status will continue to be an excluded right to reside for UC. If, however, either the government do not appeal the decision further, or the Supreme Court agrees with the Court of Appeal, claimants with pre-settled status may be entitled to means tested benefits. It may well be some time before the situation is clear.

It is important to realise it is only benefit claimants that will be in a position to get backdated payments if Fratila is successful in the end. Claimants whose only right to reside is pre-settled status will need to challenge decisions that refuse them benefit and if they have not made a claim, or it is more than 13 months since a claim was refused and there is no existing appeal, make a new claim so they can benefit from a future favourable decision on Fratila. There is a useful article on the CPAG website, explaining what people in particular situations should do.

<https://cpag.org.uk/sites/default/files/files/resource/Fratila-advice-for-claimants-18-12-2020-v.2.pdf>

Making a claim and challenging decisions in these circumstances will more than likely lead to the case being 'stockpiled'. If the challenge is by Mandatory Reconsideration the case will be 'stockpiled' with the DWP or if it is an appeal it will be 'stockpiled' with HMCTS. If a claimant has a right to reside, other than pre-settled status it is important to make this clear in the challenge in order to avoid cases being stockpiled when they shouldn't be.

## Social Security/Covid round-up

We thought we would summarise the chronology of some of the social security changes that have been put in place because of the pandemic. All the dates are correct on 4 February 2021, but of course may change or be extended as the dates become imminent.

- [End of the Job Retention Scheme for employed workers \(Furlough Scheme\) - End of April 2021](#)
- [End of Self-Employed Income Support Scheme \(SEISS\) - End of April 2021](#)
- [Reduction of the UC Surplus Earnings "buffer" from £2500 to £300. The effect of this will be the surplus earnings rule will apply to more claimants—1 April 2021](#)
- [Suspension of Minimum Income Floor in self-employed UC claims ends - end of April 2021](#)
- [Relaxation of Working Tax Credits working hours rules if unable to undertake normal hours because of Covid ends - end April 2021](#)
- [Protection of Carer's Allowance claimants who are unable to care because they or the person they care for is shielding or ill with Covid, ends - 12 May 2021](#)

There are two further changes you may wish to make a note of, although they are not Covid-related:

- [Repayment of UC advances is extended from 12 months to 24 month period - October 2021](#)
- [Maximum debt recovery from UC is reduced from 30% of personal allowance to 25% - October 2021](#)

### High Court rules UC childcare help unlawful

The High Court has ruled that the UC requirement that childcare costs must have been paid, not just incurred, before they can be included in the award, is unjustifiably discriminatory. Mr Justice Chamberlain summarised the issue:

'The mechanism uses monthly 'assessment periods' and, in general, makes payments in arrears. The effect of the UC Regulations is that a claimant is entitled to be paid the CCE as part of her Universal Credit award only if she has already paid the charges, rather than merely incurred them. Claimants therefore have to find ways of paying the charges from their own funds. They will only be reimbursed several weeks afterwards. " We are still in the period during which the DWP could appeal this decision.

[Salvato, R \(On the Application Of\) v Secretary of State for Work and Pensions \[2021\] EWHC 102 \(Admin\) \(22 January 2021\)](#)

# “Tortuous Route” for Disabled Students claiming UC

Disabled students (supported by their Carers in many circumstances) are finding themselves in the peculiar position of having to claim NS-ESA, knowing they will not qualify for payments, in order to have a Work Capability Assessment which, if successful, will lead them to qualify for Universal Credit.

Usually students are prevented from claiming UC as they are “receiving education”. One of the exceptions is students who are receiving a disability benefit (AA, DLA or PIP) and have Limited Capability for Work. Many disabled students will be claiming a disability benefit but have not yet been through the work capability assessment process to determine if they have Limited Capability for Work/Limited Capability for Work Related Activity. Examples include disabled students who were previously in non-advanced education, were a qualifying young person for their parents or carer’s benefit claims or who were working prior to choosing to study.

In this situation, any UC claim that they make will be refused as they are “receiving education” and, despite receiving a disability benefit, have not been found to have LCW.

Under UC regulations, they cannot be “treated” as having Limited Capability for Work until the Work Capability Assessment has been carried out. Therefore, UC will close the claim, rather than starting the Work Capability Assessment process with them.

The end result of this is that they have to make a New-Style ESA claim, even though many will not qualify for a payment due to their lack of NI contributions. They will receive a letter stating they cannot be paid NS-ESA. They will be asked to participate in the usual Work Capability Assessment process and will either be found Fit for Work, or have Limited Capability for Work / Limited Capability for Work Related Activity.

At this point they can claim Universal Credit as they now satisfy the UC requirements of being a disabled student receiving education with LCW in receipt of a disability benefit.

It is currently unclear if any UC claim that was refused while they are waiting for their Work Capability Assessment can be successfully reviewed and revised once they have a decision on their Limited Capability for Work, dating from before the UC claim.

Disability Rights UK's Welfare Rights and Policy Adviser Ken Butler comments:

“This tortuous route is absurd. Worse, it undoubtedly has the effect of deterring universal credit claims by some disabled students. Some will not know to claim NS-ESA ‘workaround’ if refused and some may even not pursue their higher education course.”

## **Disabled Students Incorrectly Refused UC from 2013 – 2020**

On 3rd August, UC Regulations governing disabled student’s entitlement to UC were amended. (This is covered in “Tortuous Route” for Disabled Students claiming Universal Credit above)

In an interesting development a High Court Decision (R (Kausar and JL) v Secretary of State for Work and Pensions (CO/987/2020, 7 October 2020)) has found that, prior to the legislative changes, thousands of disabled students were incorrectly denied UC between 2013 and 2020. This happened because the Government had misunderstood the law about how to assess such claims, and adopted an unlawful policy of rejecting them without conducting Work Capability Assessments. The SSWP did not defend this claim and has accepted this decision (although she did immediately amend the UC Regulations)

It may therefore be possible for disabled students to ask for these erroneous decisions between 2013 and 2020 to be looked at again. Alternatively, the SSWP may choose to do a review herself.

Do let us know if you have clients in this situation.

## THE SDP GATEWAY HAS CLOSED

The SDP gateway closed on 26 January 2021. This means no claimant is prevented from claiming Universal Credit. Anyone in receipt of legacy benefits who will be better off on Universal Credit can now make a claim. When circumstances change and a legacy benefit ends, there will, in many circumstances be no choice but to make a claim for Universal Credit for claimants entitled to a SDP.

People who previously met the conditions for the SDP gateway to apply, however, may be eligible for a transitional Severe Disability Premium (SDP) amount on a new award of Universal Credit. The UC claim will need to have been made within a month of the last legacy benefit including the SDP ending. The legacy benefit will need to include, or have been superseded subsequently to include the SDP and the conditions for entitlement to the SDP will need to have continued. This means that if the reason for the move to UC is a claimant with an SDP moves in with a partner, the transitional SDP amount cannot be paid. If, however, a claimant with a PIP daily living award failed to attend a WCA assessment and their IRESA ended, prompting a claim for UC within a month, the transitional SDP amount should be awarded. The transitional SDP amount erodes when the client's maximum amount increases and can end with certain changes of circumstance including couples separating or forming and a sustained drop in earnings.



### Contact us

If you have any comments or complaints about the service you receive from Surrey Welfare Rights Unit you can discuss them with the Chief Officer at [bureau@swru.org](mailto:bureau@swru.org)

## SWRU Training

### Brexit and access to UC for EEA nationals

23 February 2021

10am—12pm

### Quick Benefits Calculator - getting to know the basics **SOLD OUT**

3 March 10am - 12pm and

10 March 10am - 11am

### Changes in benefit entitlement for mixed age couples

4 March 2021

10am - 12pm

### Social Security changes in response to Covid-19

9 March 2021

10am - 11.30

### Introduction to Welfare Benefits

5 x session course - all 10am - 12pm

Tuesday 16 March

Thursday 18 March

Tuesday 23 March

Wednesday 24 March

Thursday 25 March

**All courses are delivered on Zoom.**

**You can view Aims and Objectives of each course and book online at:**

**[www.swru.org/training/](http://www.swru.org/training/)**

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