

## **Universal Credit Regulations, Benefit Cap (Housing Benefit) Regulations, and the Claims & Payments Regulations**

### **Comments and questions raised during the consultation**

This note provides the more detailed and technical comments received during the Social Security Advisory Committee's recent consultation on the above regulations.

Respondents have also made a large number of comments relating to matters of policy which have, in the main, been excluded from the main body of the report since the Committee's stated intention at the start of the consultation was to focus on issues relating to implementation and operation. We have, nonetheless, included below a section containing policy-related comments which raise issues on which the Department might wish to reflect further.

### **Technical comments on the regulations**

#### ***Universal Credit***

1. *Couples (reg 3(1))*: there is a degree of ambiguity in the wording. It could be interpreted as though neither partner need satisfy any of the basic conditions of entitlement in order to establish entitlement;
2. *Persons treated as not being in Great Britain - exemptions (reg 7(4))*: the position relating to people from Montserrat is unclear.
3. *Claimant Commitment (reg 13(1)(a))*: the drafting of this sub-paragraph needs attention as there is no sub-paragraph (b) and that the heads of (a) are linked by both an 'and' and an 'or'.
4. *Restrictions on Entitlement (reg 16(2)(b))*: further clarification of this provision is needed to clarify whether it intends to refer literally to the length of the sentence or rather the predicted term spent in custody.
5. *Amount Deducted for Income (reg 19)*: the policy rationale for having a lower disregard for claimants with housing costs is not clear. Having minimum and maximum disregards adds complexity, and a lower disregard for those with housing costs will be a disincentive to work. Clarification is needed about whether a claimant's earnings disregards will be upgraded during a dispute about eligibility for housing costs and whether a recoverable overpayment will arise if housing costs are restored. Regulation 19(3) would benefit from further clarification on the application of a 65 percent taper.
6. *Standard Allowance and Child Element (reg 20)*: CPAG noted that the proposed lower rate of the additional amount for disabled children (equivalent to the LCW element) is significantly less than the current disabled child element paid with child tax credit. They

argue that will adversely impact vulnerable families with a disabled child, with many families being worse off by up to £30 per week. Although the Government has indicated that the higher rate will rise to around £77 per week, it is not mentioned in the Explanatory Memorandum (EM). The use of the word 'and' after regulation 20(2)(a) suggests that both rates could be paid where applicable, but paragraph 48 of the EM uses the word 'or'. Clarification would therefore be helpful.

7. *Manner of Determining Total Entitlement to Welfare Benefits (reg 70(5))*: section 18 of the Welfare Reform Act 2007 refers to a person being disqualified 'for receipt' of benefit rather than 'from receipt'.
8. *Reduction of Universal Credit (reg 71(2))*: further clarification would be helpful here to remove ambiguity around the treatment of child care cases.
9. *Exceptions etc (reg 72(1))*: in sub-paragraph (g)(i) and (iii) the drafting might be clearer if it read 'that person is not receiving it by virtue of' rather than 'that person is not receiving it under'. The Department should also check whether the reference to regulation 9 - rather than regulation 7 - of the Social Security (Attendance Allowance) Regulations 1991 is correct.
10. *Claimants Subject to no Work-Related Requirements (reg 79)*: here, and in several other places, the term 'responsible carer' has been used but not defined.
11. *Earnings Threshold for Claimants Subject to No Work-Related Requirements (reg 80)*: further clarification on how the threshold will be applied in cases of fluctuating earnings, or where a claimant only works for part of the year (eg school terms) would be helpful. The meaning of 'a sustained period' is likely to be open to differing interpretations. Also the definition of the threshold in terms of weekly earnings does not sit easily with UC's monthly assessment period.
12. *Claimants Subject to Work-Focused Interview Requirement Only (reg 82)*: further clarification is required on whether kinship carers are included in this provision.
13. *Work Search Requirement (not to be imposed) (reg 88)*: further clarification is needed here. For example:
  - there appears to be a mis-match between sub-paragraph (3)(a) and regulation 10(4);
  - sub-paragraph (3)(i)(iv) would appear to exclude those who are in the situation of caring for someone who went into hospital or a hospice and subsequently died. It would be helpful to have clarification on whether that is the intention; and

- the comments above relating to regulation 80 also apply to sub-paragraph (3)(j).
14. *Domestic Violence (reg 89)*: the reference to sub-paragraph (2)(a) in sub-paragraph (1)(a) should be amended to paragraph (2);
  15. *Circumstances in which a Work Search Requirement must not be imposed etc (reg 90)*: in sub-paragraphs (3)(k) and (l) the opening words should be *'the claimant'*.
  16. *Zero Sanctions (reg 98)*: it is unclear whether this regulation also applies where a claimant is no longer subject to conditionality for reasons other than having LCW or LCWRA (e.g. becoming a carer or parent).
  17. *Period of Hardship Payments (reg 110)*: given the length of the sanctions in some cases, the Department might want to reflect on whether the requirement for a monthly application for hardship payments will put unnecessary burdens on staff and claimants.
  18. *Meaning of "Alternative Finance Payments" (Schedule 1, para 6)*: clarification is required on whether the term *'alternative finance payments'* covers sharia mortgages.
  19. *Liability for Payments (Schedule 2)*: it is understood that there will be provision for advance payments to be made as payments on account of benefit. Further clarification would be helpful on whether there will be an equivalent provision to the existing rule in connection with Housing Benefit (reg 93 of the HB Regs) which would require an interim payment to be made if the housing aspect of the claim cannot be determined within 14 days.
  20. *Failure to Pay by the Person Liable (Schedule 2, para 1)*: this might usefully be amended to *'has claimed'* rather than *'is claiming'* since once the claim has been made it ceases to exist.
  21. *Contrived Liability (Schedule 2, para 9)*: a definition of *'contrived liability'* in the legislation is required.
  22. *Number of Bedrooms (Schedule 4, paras 12 and 37)*: the Department should reflect on whether these paragraphs need to be revised in the light of the Court of Appeal decision in the case of Burnip v Birmingham City Council and Another [2012] EWCA Civ 629 (15 May 2012).
  23. *Temporary Absence of a Benefit Unit Member (Schedule 4, para 13)*: it is unclear why paragraph (5) has been included when the size criteria is the same whether or not one partner in a couple is absent.

24. *Private Sector Rents etc (Schedule 4, part 4)*: clarification is required as to whether tenants who are currently excluded from the LHA rules (eg Rent Act protected tenants) are included in the new scheme.
25. *Housing Costs Element (Schedule 4, paras 38 to 42)*: further clarification is required about whether, in situations where the social sector under-occupation rules apply to joint tenants, a renter could be penalised if the joint-tenant under occupies their portion of the dwelling even if the renter does not.
26. *Polygamous Marriages*: the fact that existing provisions relating to polygamous marriages are not to be carried forward into UC will mean that spouses, other than the first, will be treated as single adults with the result that a polygamous household will receive a higher level of UC per adult than the partners in a couple. The resultant inequality of treatment is an issue which merits further consideration.

### ***Benefit Cap (Housing Benefit) Regulations***

27. *Exceptions to the Benefit Cap (reg 75E(1))*: see comments (above) made in relation to regulation 72(1) of the Universal Credit Regulations.
28. *Exceptions to the Benefit Cap (reg 75F(1) HB Regs)*: since those on ESA and in the support group are exempt from the cap, further clarification is required about whether the exemption should extend to severely disabled claimants on Incapacity Benefit or Severe Disability Allowance.
29. *Interpretation (reg 75G)*: the reference to 'regulation 96(10)' should be amended to 'section 96(10)'.

### ***Claims and Payments Regulations***

30. *Joint-Claims (reg 10)*: this regulation should be reviewed to determine:
  - whether this provision needs to be aligned with regulation 3(1) of the Universal Credit Regulations. Regulation 10 does not appear to make provision for what happens when one member of a couple is exempt from claiming;
  - whether the 'unable' in paragraph (4) could be amended as it will be open to a wide interpretation. It may be helpful to pin down its intended meaning more closely; and
  - provide further clarification in paragraph (5) about what will happen if both partners satisfy the conditions of entitlement after they cease to be a couple.

30. *Time within which a claim must be made (reg 24)*: this regulation should be reviewed in light of the following:
- given the precondition stipulated by paragraph (2)(b) it is not clear that there is a need for the additional words '*the claimant was not able to make a claim in the manner prescribed in regulation [CP9]*' in paragraph (3)(b) and (c); and
  - sub-paragraph (3)(c) only works by assuming the very thing to be established. It might be preferable to refer to the first day of UC entitlement because a claim in the prescribed manner is a condition of entitlement and it is the date of claim and therefore the start of entitlement which is being considered.

## **Broader policy comments**

### ***Universal Credit Regulations***

1. *Couples (reg 3(1))*: a high number of responses questioned the Government's decision that where one member of a couple was over state pension age and the other was under, the appropriate benefit should be UC rather than State Pension Credit. They argued that this would impact adversely on the elder partner in the long-term, although they will be protected in the short-term.
2. *Temporary Absences (regs 3(6) & 4(7))*: reducing the period of temporary absences from 52 weeks to 26 weeks may cause some difficulties for a claimant whose partner or child is, for example, in hospital or respite care. Although the partner would be eligible to claim as a single person, the loss of support with respect of a child could jeopardise ongoing contact with them if they were at a distance and travel costs were high.
3. *Qualifying Young Person (reg 5(1)) and Exceptions to Conditions of Entitlement (Education) (reg 12(1))*: Respondents raised the following issues for the Department to reflect on with the Department for Education to ensure that the effect of this policy does not conflict with the broader aims of encouraging young people to complete their education, and its own aims of enabling them to secure sustainable employment:
  - the change in the definition of a 'qualifying young person' will mean that some young people may feel constrained to leave education and claim benefit in their own right, even though it could be detrimental to them in the long-term. It will also mean that the rules are out of kilter with those in Child Benefit; and
  - Disability Rights have commented that this provision effectively restricts the ability of young people to complete their education.

Currently, anyone under 21 in non-advanced education can claim HB but for UC, it will only be possible if they are without parental support or in one of the other groups prescribed in regulation 12. Students on DLA can claim income-related ESA at present, but will only be able to claim UC if they also have a limited capability for work.

4. *Minimum Age of Entitlement (reg 6(2))*: there may be merit in considering whether this provision should be extended to include the situation where a young person is at risk of being forced to live away from their parents.
5. *Meaning of 'Receiving Education' (reg 10)*: the National Union of Students (NUS) support DWP's intention to move away from previous definitions of full and part-time courses to a position where there is greater recognition of the flexibility of modern study patterns. It potentially allows, for example, for more intensive evening courses that would give scope for a person to comply with a work search requirement and secure entitlement to benefit. It will be important to ensure that the guidance provides the right foundation to enable decision-makers to make reasoned and balanced decisions.

Regulation 10(2)(b) provides a definition of education as: *'undertaking any other full time course of study at an educational establishment for which a loan, grant or bursary is provided for the person's maintenance or would be available if the claimant applied for it.'* The NUS assert that a distinction should be made between those courses for which a statutory payment is made – ie where there is entitlement if the student meets certain criteria – and discretionary payments which now form the bulk of further education funding in England.

6. *Claimant Commitment (reg 13(1)(a))*: a judgment from the Secretary of State that a request for a review is unreasonable has the potential to be disputatious. If it is intended that a claimant could only challenge such a decision by way of Judicial Review rather than appeal, the Department might want to consider a different approach.
7. *Maximum Amount of Award (reg 18)*: respondents have raised concerns on the absence of additions for disability and other elements in UC. It is asserted that this will impact heavily on severely disabled claimants. Moreover a lone parent under 25 will face a significant cut in benefit which is likely to have an impact upon child poverty. Several respondents have also commented upon the lack of an age addition for those above state pension age. While transitional protection will offer a safeguard in the short-term, in the long-term, given the premise that UC was to be cost neutral overall, disabled people and others will effectively subsidise those who stand to gain from the reforms.

8. *Amount of Standard Allowance and Child Element (reg 20)*: The NUS note that students with children are some of the most vulnerable learners, and that support for their children is crucial. It would be helpful to have clarity on how the support currently available through Child Tax Credits will be transferred to UC, and respondents have asked for an assurance that no parent will be worse off under the new arrangements.
9. *Period for which the LCW or LCWRA is not to be included (reg 24(1))*: this will mean that some claimants will have to wait almost a month longer than others to qualify for a LCW or LCWRA element, depending on when they happen to have fallen sick, giving some arbitrary results. There might be merit in considering an approach which gives a more consistent result.
10. *The Work Condition (reg 28(2)(b))*: the list appears to disadvantage the self-employed who, if they become sick, will not be entitled to Statutory Sick Pay. Unlike in Tax Credits, there is no deeming provision. The Department might usefully consider extending the list to include Statutory Sick Pay.
11. *The Child Costs Condition (reg 29(1)(b))*: this provision seems to prevent the necessary flexibility which is required by fluctuating child-care arrangements (eg where a school holiday falls within an assessment period).
12. *Child Costs Element (reg 30(2)(a))*: this provision contains a power for the Secretary of State to disallow childcare charges where they are considered to be excessive having regard to the 'extent to which the claimant is engaged in paid work'. Abuse of the system should be prevented, however this is a wide discretion and there is some concern among respondents that it could be used to force people in low paid jobs to move their children to inferior and cheaper childcare providers. It has been suggested that because the upper ceiling and the limit on 70 percent of childcare charges are a sufficient disincentive to claimants incurring excessive charges, the regulation should be revised to make clear that 'excessive' charges relate only to numbers of hours of childcare appropriate to the number of hours of work. The Department may wish to consider whether the power is necessary and, if not, whether it could be omitted.
13. *Limited Capability for Work (reg 35 and Schedule 7)*: the Department may wish to reflect further on the following points:
  - pregnant women entitled to maternity allowance or within 6 weeks of their expected date of confinement (or 14 days following the date of confinement) are currently treated as having LCW. Their exclusion from entitlement to a LCW element under UC is not explained and will cause hardship for some women; and

- there is no provision for treating a claimant as having limited capability for work while awaiting assessment or disputing a decision through revision or appeal - a process which could take many months. Regulation 90 only relaxes work related requirements in these circumstances, for a maximum period of 14 days, twice a year.
14. *Work Capability Assessment (reg 37)*: the Department may wish to reflect further on the following issues:
- paragraph (2) places a cap on work incentives for disabled claimants, including those undertaking 'permitted work'. CPAG suggest that as long as a claimant can satisfy the work capability assessment there should be no limit since, in any event, the means-test for UC would exclude higher earners;
  - in relation to paragraph (4) it has been suggested that, as currently, there should be provision for a reassessment after 6 months as, in many cases, the previous assessment may have been inaccurate as many independent reports and enquiries about the accuracy of assessments have established. People with mental health problems, in particular, may not have accurately advocated their difficulties or challenged assessments within the prescribed time limits and there should be provision for requesting a reassessment after a reasonable period.
15. *Deprivation of Capital (reg 47)*: the new test of 'reasonable expenditure' could be an area on which there could be a degree of inconsistent decision-making before case-law emerges. The new test may be difficult to apply in cases where a claimant has a mental health condition. If the legislation is not tightened, care needs to be taken to ensure that the underpinning guidance for the Department's decision-makers is clear and comprehensive.
16. *Trade Disputes (reg 52)*: the TUC has welcomed the greater simplicity of the UC rule on trade disputes, but is concerned that children and adults not involved in a dispute will now face significant hardship. At present, they may qualify for IS, but they will not under the new system. This change will cause avoidable hardship and, in long disputes, there may be significant impacts for children.
17. *Permitted Expenses (reg 54)*: the draft regulations only allow for expenses reimbursed by the employer whereas, in the current regulations affecting WTC and HB, expenses incurred by the employee but not reimbursed are also covered. This will affect expenses reimbursed by a third party and tax deductions for such things as cleaning uniforms, buying specialist clothing or repairing tools, where the employer does not reimburse the worker.

18. *Student Income (reg 65)*: The NUS indicates that it has previously been given assurances by the Government that, in general terms, the intention is not to change the way student income is treated except where doing so would support the aim of simplifying the regulations. NUS supports this objective but is keen to ensure that the same general principles in the present legislation remain: for example that grants, loans and other funding for specific purposes (tuition fees, course costs, childcare etc) should be disregarded, along with a suitable proportion of any general payment intended to support students in lieu of books, equipment and travel.
19. *Expected hours of work (reg 81(2))*: respondents have raised the following points for further consideration by the Department:
- in sub-paragraph (a)(ii), in determining whether a person has reasonable prospects of finding work, there may be external factors to be considered which are outside the scope of the individual's control eg the local labour market and the availability of childcare. It is understood that this potential tension will be explored further in guidance;
  - in sub-paragraph (c) it is unclear why this provision only applies to claimants with long-term impairments when short-term acute impairments can equally affect a claimant's ability to work for 35 hours a week.
20. *Work Availability Requirement (reg 87(3)(b))*: the Department is asked to reflect further on the following points raised during the consultation:
- Gingerbread assert that it is unrealistic to expect a responsible carer to be able to organise childcare with only 48 hours' notice, particularly if they are solely reliant on formal childcare provision (the current rules allow for one week to find alternative arrangements);
  - the current easement of 24 hours' notice to attend an interview if providing a paid or unpaid service (eg giving someone a lift to work in a car or community service such as rehabilitation work with ex-offenders) has not been carried forward. Given that one of the descriptors for ESA envisages people with impairments needing help to get in to work, the removal of this easement could create some difficult cases;
  - there are currently flexibilities around work search requirements (for instance, where a child has been excluded from school) which have not been carried forward into these regulations. This type of issue will be explored and set out more fully in the guidance, but the shift away from specific exemptions and

21. *Work Search and Availability Requirement (reg 88)*: it is unclear why this provision only applies to claimants with long-term impairments. Respondents have suggested that the Department should consider extending the provision to those with short-term acute impairments which can equally affect a claimant's ability to work for 35 hours. It has also been suggested that, as claimants who are unfit for work for longer than 14 days are more likely to be unable to fulfil work-related requirements, paragraph (5) should be extended to claimants awaiting assessment of whether they have LCW and are providing medical statements.
22. *Domestic Violence (reg 89(3)(d))*: respondents have commented that the maximum period of one month allowed to obtain the required notification should be extendable where there are delays due to pressure of work in hard pressed services such as the Police or Social Services.
23. *Circumstances in which a Work Search Requirement must not be imposed (reg 90)*: The following issues have been raised on which the Department is asked to reflect further:
- the easement for undertaking work search requirements allows people with a certain level of earnings to be exempt. In considering earnings for this purpose, it is unclear why the combined earnings with a partner are included, but earnings from self-employment are excluded;
  - in sub-paragraphs (3)(e) and (f) provision is made for ordinary and additional maternity and paternity leave, but not for ordinary and additional adoption leave. Work search requirements are eased for adopters in other parts of the legislation, but they seem to have been disadvantaged at this point.
24. *Amount of a Reduction under Sections 26 and 27: 16 and 17 Year Olds*: given the Department's recognition that 16-17 year olds should face lower sanctions, and for a shorter period, due to the vulnerabilities associated with the limited circumstances in which they are entitled to Universal Credit, the Department is asked to consider whether there is a case for retaining the existing safeguards which currently apply for 16-17 year olds.
25. *Conditions for Hardship Payments (reg 109(1)(e))*: to qualify for a hardship payment a claimant is required to have made every effort to cease to incur any expenditure which does not relate to accommodation, heating, food and hygiene. It would be helpful to have greater clarity about how this will work in practice, and how

payments relating to, for example, a legal debt, essential clothes or bedding, or meeting a child's developmental needs will be treated.

26. *Rent Payments (Schedule 1, para 2)*: in the definition of 'rent payments' no provision is made for 'use and occupation charges' (the payments made by a person commonly left in the property after the death of a tenant whilst the new tenancy situation is resolved). Similarly there is no provision for mesne profits.
27. *Payments which are not Rent Payments (Schedule 1, para 3)*: this means that leaseholders will have to meet a demand for ground rent from their own resources.
28. *Extended Benefit Unit of a Renter (Schedule 4, para 11)*: the size criteria will apply in terms of the 'extended benefit unit'. As now it includes the claimant and partner, the children and any non-dependants (broadly defined as anyone living with the claimant), and not foster children. Significantly it does not include lodgers or sub-tenants. It appears that the income from the lodger/sub-tenant will only be taken into account if it is taxable which may help to balance things out. Given that one way for claimants to deal with any shortfalls between the housing costs they pay and the benefit they get for these is to take in lodgers, the Department might wish to consider ensuring that if they do, they do not lose out further.
29. *Temporary Absence of a Benefit Unit Member (Schedule 4, para 13)*: this provision will have an adverse impact upon remand prisoners subsequently found not guilty or who are given an outcome by the court which is other than a custodial sentence.
30. *Amount of Housing Cost Contributions (Schedule 4, para 16)*: respondents have commented that the proposed rate of deduction for non-dependants in receipt of an income-related benefit will cause hardship. They have queried whether a non-dependant in receipt of UC or any income-related benefit should be classified as an "exempt renter" for the purposes of paragraph 17. Non-dependants who are students or in receipt of a training allowance have also been mentioned in this context. The legislation provides that live-in carers will count as non-dependants. Although no deduction will be made if the claimant or partner gets a specified benefit, is blind or if the non-dependant receives carer's allowance, this would not appear to assist those who have carers employed by charitable or voluntary organisations who currently do not count as non-dependants.

### ***Benefit Cap (Housing Benefit) Regulations***

31. *Exceptions to the Benefit Cap (reg 75F(1) HB Regs)*: it has been suggested that:

- people in more expensive accommodation as a consequence of being foster or kinship carers should be exempted from the benefit cap. Grandparents Plus advises that it has conducted a recent survey which finds that almost half of kinship carers are raising a child with a disability or special needs; and
- since those on ESA and are in the support group are exempt from the cap, further consideration should be given to whether the exemption should extend to those on Incapacity Benefit or Severe Disability Allowance who are severely disabled.

### ***Claims and Payments Regulations***

32. *Making a Claim (reg 9(1))*: by abolishing the facility to accept paper claims, the Department may be committing itself to unnecessary administrative expenditure. There will be some claimants without internet facilities and who are unable to use (or without access to) a telephone but who would be perfectly able to complete a paper claim. Those claimants may now need a visit. Clerical claims have been retained in PIP on the basis of the diversity of PIP claimants. However there will be similar diversity amongst UC claimants.
33. *Claims in the Alternative (reg 23)*: there is arguably a case for allowing a claim for UC to be treated as a claim for CA and vice versa, both in the alternative and in addition. People coming to the benefit system for the first time are sometimes unaware of precisely which benefit they should claim and for carers it may not be obvious. This is particularly so given the shift to online claiming where people are expected to do their own research rather than calling in to the local office and receiving advice.
34. *Time within which a claim must be made (reg 24(3)(c))*: the need to require doctors and medical staff, and possibly oblige claimants with additional costs by making it a requirement, to provide written evidence in all cases is questionable. There may be instances where the Secretary of State already has the relevant evidence to hand or it may be self-evident. It is worth noting that GPs can charge for the provision of such evidence.
35. *Amending and Withdrawing a Claim (regs 28 & 29)*: the current rules allow a written application to be amended in writing and a telephone application may be amended in writing or by telephone, provided the application has not already been determined. Similarly, an application may be withdrawn if the claimant notifies the Secretary of State before it has been determined, although regulation 5(2) of the 1987 Regulations does not specify any manner in which that notice must be given.

Since the preferred method of applying for UC will be on-line, it was anticipated that specific provision would have been made for

amending and withdrawing applications on-line. This does not seem to be the case. Additionally, there is no provision for joint claims to be amended or withdrawn jointly. The wording suggests that one person alone is able to amend or withdraw the application.

36. *Advance Claims (reg 30)*: the Department has stated that

*'at present the only Universal Credit claim that we plan to accept in advance will be claims from prisoners'.*

A number of submissions raised, in particular, the needs of people moving out of supported housing into a home of their own. The facility to treat a claim as made in advance and award benefit accordingly has long been an important administrative tool available to the Secretary of State to smooth the process of determining claims to benefit with advantages for the claimant and the Department alike. The chances of the first payment being delayed are reduced when the Secretary of State accepts a claim in advance.

In the context of on-line claims, it may be possible for a person seeking to make a claim in advance to have their information stored on the system, so that at the start of entitlement, they can return to the computer, complete the final stages and press the 'send' button, without necessarily being inconvenienced unduly. But it will not always be possible for claimants to do that and any delay on their part will prejudice their subsequent award. Although in other circumstances a claim can be treated as made on the day the claimant first signalled an intention to make a claim, it would not work in the case of claims in advance because the date of claim would still be prior to the start of entitlement and the current rules are clear that the Secretary of State will not consider such claims.

37. *Duration of Awards (reg 38(1))*: this provides that a claim for UC is to be treated as made for an indefinite period and any award on that claim is to be made for an indefinite period. The desirability for the Secretary of State's discretion to be bound in this way has been queried. In the vast majority of cases claims will be open-ended, requiring any awards made on the claim to be similarly open-ended, but if, for example, a single person falls sick a fortnight before reaching state pension age, it would arguably help the Secretary of State to be able to make a single decision rather than making an initial decision followed by a second one shortly afterwards, both with a right of appeal. The commitment to exclusive open-ended awards does not cohere well with section 88(2) of the Welfare Reform Act 2012 which indicates that the fall-back position for PIP will be fixed term awards.
38. *Payment Period (reg 41)*: given the Welfare Reform Act's principle of seeking to align and simplify benefits, a more consistent approach

would be to pay PIP at monthly intervals rather than every four weeks.

39. *Third Party Deductions (reg 52)*: there is no explicit provision for the deduction of arrears on payments of service charges by hostels and supported accommodation providers. Currently this is an important way for them to recover payments for ineligible service charges and respondents argue that, without it, many will struggle to recover the money owed. A high turnover of hostel residents means that this could be a regular problem and the loss of income could impact on the services they are able to offer.