

**Housing  
Rights**

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**Consultation Response**

**Response to the SSAC Consultation  
on the Universal Credit (Transitional  
Provisions) (Managed Migration)  
Amendment Regulations 2018**

**August 2018**

when everyone has a **home**

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## 1. INTRODUCTION

The process of “managed migration” – the move from existing benefits to Universal Credit (UC), is due to commence in July 2019. This is seen as “the final phase” of the introduction of Universal Credit in the Great Britain (GB).

In June 2018, the Social Security Advisory Committee (SSAC) published the Government’s Draft Regulations which detail how the Department for Work and Pensions (DWP) propose to undertake the process of managed migration. The Draft Regulations outline both the transitional operational mechanisms and procedure of this process. The Explanatory Memorandum has also been made available in order to provide the policy objectives of the migration period.

This response sets out Housing Rights’ comments on the Draft Regulations, and makes recommendations that the DWP may wish to consider in order to ensure claimants are protected as much as possible during the migration period. While UC is a benefit which absorbs several legacy benefits which look at a number of aspects of a claimant’s life e.g. their capability for work, disabilities and care for dependents, Housing Rights perspective in responding to this consultation remains acutely on the housing impacts of the Draft Regulations. **The focus is to ensure that any transitional protection arrangements are equitable, transparent and shield claimants from undue hardship. Housing Rights’ contribution recognises how these Draft Regulations regarding primarily Social Security change, can potentially put people at risk of homelessness in Northern Ireland (NI)**

### HOUSING RIGHTS

Housing Rights has been helping people in housing need for over fifty years and we are the **leading provider of independent specialist housing advice services in NI**. At Housing Rights we work to improve lives by tackling homelessness and housing problems, and our policy work is based on the experience of our clients.

Housing Rights offers advice to people living in all housing tenures in NI. Indeed, we regularly provide advice, assistance and advocacy to clients; routinely making representations on matters involving UC. We also work at a strategic level, sitting on internal and external welfare reform and UC housing forums, discussing the NI specific impact of UC. Furthermore, Housing Rights has also drafted an NI Legal Professional Resource on the housing specific impacts of UC on claimants in NI; this has been sold throughout NI. Having been involved in discussions about housing impacts of UC at the infancy of its inception, Housing Rights is acutely aware of the complexities regarding NI’s experience. This unique position has enriched the perspective of our response.

## CONTEXT

### *The introduction of UC IN NI*

The gradual and phased introduction of UC began in GB in 2013, but it took some time for NI catch up with this process. UC claims began to be accepted in Limavady in September 2017 for new applications and/or those who “naturally migrated” to UC; the staggered introduction is due to complete by December 2018.

A number of flexibilities, in the operation of UC, have been negotiated for NI, this include:

- Payments will be made to claimants twice monthly, rather than monthly;
- The Housing Costs element of a Universal Credit award will automatically be paid to the landlord, rather than to the claimant;
- Joint claimants of Universal Credit will be able to request that their award of Universal Credit be split between two bank accounts.

Despite these flexibilities, Housing Rights are mindful of the growing concerns regarding the particular housing impacts of UC. Whilst the introduction of transitional protection measures is therefore welcome, the protections must translate into improved outcomes on the ground.

### *The weakening of protections which existed under Housing Benefit*

The introduction of UC saw the loss of several important housing benefit protections such as the “overlapping payment” “income shock protection” and “interim payments”.<sup>1</sup>In addition, protection of household housing benefit levels upon the death of someone in the household, was also significantly reduced. Furthermore, currently the ability of Discretionary Housing Payments (DHPs) to alleviate some of the financial loss, is limited by restrictive legislation. In light of this, there is a need to ensure that any transitional protection measures are robust and a cognisant of the current limitations in NI.

Housing Rights suggest that of **particular concern are those who live in the private rented sector**; this sector does not benefit from the robust regulation of the social rented sector. SSAC will be aware that there is currently a proposal to allow the Northern Ireland Housing Executive (NIHE) to discharge their homeless duty into

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<sup>1</sup> Housing Benefit Regulations (NI) 2006 (as amended)

the sector; along with lower fitness standards, affordability concerns and lack of regulation, are Housing Rights main concerns regarding this proposal. These concerns are further compounded by the introduction of UC. Housing Rights operate a Landlord Advice Line, and indeed we have seen evidence of anxious landlords, who do not wish to accept tenants in receipt of UC, owing to complexities with payment.

**Housing Rights would recommend that the SSAC is cognisant of the particular NI context when considering these Draft Regulations. In this response Housing Rights identify certain elements of these Draft Regulations which may further compound financial hardship already experienced by clients in NI and as such, Housing Rights make a number of suggestions for consideration by the SSAC.**

## SUMMARY OF DRAFT REGULATIONS

From reviewing the contents of the available literature on proposed transitional arrangements, Housing Rights have deduced the following:-

The *Universal Credit (Transitional Provisions) (Managed Migration) Amendment Regulations 2018* (the 2018 Draft Regulations) make a number of amendments to the *Universal Credit (Transitional Provisions) Regulations 2014* (the 2014 Regulations); they provide for the requirement for claimants on existing benefits to:

- make a claim for Universal Credit (UC),
- the closure of their existing benefit, and
- the calculation, award and ongoing treatment of any transitional protection

The 2018 draft Regulations introduced 3 Regulations:

**Regulation 1:** citation and commencement, introducing the Regulations and stipulating that they come into force on the day in which they are made.

**Regulation 2:** Inserts new provisions into the 2014 Regulations to provide for the managed migration process and also the administration of transitional protection (TP); namely:

- housing benefit transitional protection,
- changes to allow tax credits to be terminated as part of the managed migration process and then finalised under the 2018 Regulations,
- extension of the time for claiming UC for up to a month if the claimant's delay in making a claim under the managed migration process is attributable to official error,

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- the process which claimants with an award of an existing benefit will follow when they are managed migrated to UC;
- the termination of entitlement to existing awards if claimants or claimants and/or their partners fail to make a claim for UC within the deadline that they are given; and
- the ability to consider, calculate, pay and administer additional amounts of UC (referred to as transitional elements) and other provisions, designed to provide transitional protection for those existing benefit claimants who, upon managed migration, would otherwise have a lower entitlement to UC (including a nil entitlement) than had been their total entitlement to their existing awards
- introduce a Gateway Condition into the 2014 Regulations so that claimants who are receiving:
  - Income-related Employment and Support Allowance (ESA(IR));
  - Income-based Jobseeker's Allowance (JSA(IB));
  - Income Support (IS); or
  - HB;

And have the Severe Disability Premium (SDP) included in their award will not be able to claim UC. Instead, rather than naturally migrate to UC, they will remain on their existing benefit if they have a change of circumstance that would require a new claim for a benefit (that UC is replacing) to be made.

This regulation will also introduce a transitional payment within UC for claimants who have already naturally migrated to UC, and prior to that migration had qualified for SDP as part of their JSA(IB), ESA(IR), IS or HB awards. This payment can be 'backdated' to the start of the UC award if certain conditions are met. This backdate is based broadly on the amount of SDP that the claimant(s) were receiving prior to natural migration.

**Regulation 3:** Makes a consequential amendment to allow existing benefit claimants who are in receipt of SDP and therefore can no longer make a new claim to UC to be able to make new claims to existing benefits.

**In this response Housing Rights have identified the housing specific impacts which they government may wish to take into consideration.**

## 2. SUMMARY OF CONSULTATION RESPONSE

- Housing Rights, in principle, welcome the introduction of transitional protection measures via Draft Regulations. However, Housing Rights have **identified certain elements of these Draft Regulations which may further compound financial hardship already experienced by clients** in NI and as such, make a number of suggestions for consideration by the SSAC. **Housing Rights recommend that the SSAC is cognisant of the particular context in NI when considering these Draft Regulations**
- Housing Rights welcome the commitment for continued payment of the housing benefit transitional payment. However, owing to the complexities in the managed migration process, **Housing Rights suggest that this is transitional payment is protected for all managed migration claimants**, regardless if there is a delay in the claimants migration process. **The payment has been vital in protecting against arrears and/or eviction.**
- Housing Rights welcome the protection afforded to students via legacy benefit protection. **Students can experience hidden homeless and financial hardship that can significantly impact upon their life.**
- While Housing Rights are pleased to see protection for those in receipt of SDP, Housing Rights have a number of comments and recommendations. Firstly, for claimants who have already naturally migrated to UC and experienced financial loss **Housing Rights believe any transitional payment awarded, should not be “broadly based” on their SDP, but equal to, thus fully addressing any financial loss to these claimants. Secondly**, while there is a commitment to ensure claimants in receipt of SDP who experience a change of circumstances will not naturally migrate to UC, **this will not extend to wider changes of circumstance. Housing Rights recommend that, in order to avoid future maladministration and future proof any policy it essential that a list of change of circumstances (deciphering wider changes of circumstances) is entrenched in Statutory Guidance. This guidance should allow for discretion, however clear guidelines and transparency is key is preserving this discretion.**
- Housing Rights are pleased that a number of safeguards that have inserted into the managed migration process, such as extension of time to claim. However, **Housing Rights recommend that a number of additional safety nets are required e.g. guidance on “good reason”, more flexibility on claim deadlines and a more “managed” migration process.**

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- Housing Rights was disappointed to see the restrictive grounds in which a backdate for UC will be paid. The DWP have proposed to offer a one month backdating facility to encompass the claimants who have missed their new claim deadline, however could not have been expected to claim sooner because they had not been notified of the expiry of an existing benefit or an official error had occurred. However, **there is no consideration of subjectively. Furthermore, worryingly, this backdating facility only extends to one month, therefore if the delay exceeds this timeframe, it is possible claimants could be at a financial detriment due to a DWP error. Housing Rights recommend that this provision is reconsidered and furthermore, that backdating mechanisms as a tool to alleviate homelessness are evaluated.**
- While Housing Rights welcome the proposal for claimants to be re-awarded their transitional element if their UC award terminates due to receiving additional earnings in an assessment period and they make a new claim to UC within three months, Housing Rights wish to highlight a fundamental issue with the UC calculation system. **Housing Rights suggest that further consideration is given to the use of the “UC Journal” for calculation purposes and that the SSAC review the recent Child Poverty Action Group’s (CPAG) publication – “Rough justice: Problems with monthly assessment of pay and circumstances in universal credit”<sup>2</sup> which highlights how claimants are losing hundreds due to rigid assessment periods.**
- Housing Rights have concerns with how easily or in an insensitive manner a claimant can appear to lose their transitional protection i.e. missing a claim deadline or upon death of a household member. **As such, Housing Rights would ask the DWP to re-evaluate the potential impact of cessation of transitional protection.**
- Housing Rights strongly recommend that given DWP’s plans to commence migration in January 2019; **the formalisation of operational plans should be a priority. Failure to provide adequate support could see a significant number of people destitute and/or without a home. Housing Rights would recommend reviewing the Behavioural Insights Team 2015 report on “Applying behavioural insights to encourage earlier engagement from borrowers in mortgage arrears”<sup>3</sup> – this reports identifies key**

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<sup>2</sup> Full publication available at: <http://www.cpag.org.uk/content/rough-justice-problems-monthly-assessment-pay-and-circumstances-universal-credit-and-what-ca>

<sup>3</sup> Full report available at: <https://www.communities-ni.gov.uk/sites/default/files/publications/dsd/bit-report-may15.pdf>



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considerations when encouraging engagement, such as the use of plain English.

- Housing Rights strongly recommend that in order for the spirit of the legislation to be achieved and also for it to be applied equitably, **robust and clear guidance – both statutory and operational – must be drafted as a priority and in a timely manner to accompany the Draft Regulations. In light of the context provided at the start of this response, Housing Rights recommend that this guidance is NI specific and made publically available.**
- Housing Rights have serious concerns regarded the proposed “test and learn” approach proposed by the DWP for the process of managed migration. While a degree of flexibility is required in any public policy, **Housing Rights would strongly suggest that process of managed migration is a significant undertaking and therefore, robust mechanisms should be put in place to ensure its efficient operation.** Housing Rights suggest that this is not appropriate given the impact on people and potential to contribute towards homelessness. Housing Rights wish to highlight one of the key recommendations contained in **National Audit Office June 2018 Report on “Rolling out Universal Credit”<sup>4</sup>**, - to ensure that operational performance and costs improve sustainably before increasing caseloads through managed migration.

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<sup>4</sup> Full report available at: <https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit.pdf>

## 3. RESPONSE

### 3.1 Proposed Transitional Protection measures for “managed migration”: Comments and further considerations

#### *Housing Benefit Transitional Payment (“2 week run on”)*

- 3.1.1 The DWP have proposed to amend Regulation 8A of the 2014 Regulations in order to allow payments of housing benefit to continue for a further 2 weeks where existing benefit claimants were entitled to housing benefit prior to making a new UC claim, **once they have complied with the managed migration process**. This payment will also be disregarded as unearned income.
- 3.1.2 Housing Rights are pleased to see that this provision, which already exists for natural migration, has been mirrored in the Draft Regulations. This transitional payment can provide tenants, particularly in the private sector, **with much needed financial support** during the transitional period. In the absence of the “statutory interim payment” which existed under housing benefit, **Housing Rights has had experience of tenants accruing technical arrears while awaiting their UC payment and equally landlords becoming concerned regarding length of time for receipt of first payment of rent, this transitional payment has helped bridge this gap, alleviate pressures of both tenants and landlords, and thus sustaining tenancies**.
- 3.1.3 In addition, the **National Audit Office in their June 2018 Report on “Rolling out Universal Credit”<sup>5</sup>**, reported that one of their key findings was that **one in five claimants due not receive their full payment on time**; further compounding the need for this housing benefit transitional payment.
- 3.1.4 However, while Housing Rights welcomes the amendment to ensure the housing transitional payment will not be subject to any change in circumstances during the two – week period, Housing Rights recommend that **clarity is provided as to what precisely constitutes a “change of circumstances”**. It has been our experience that there has been some confusion surrounding this. (Discussed later)
- 3.1.5 Finally, Housing Rights would like to highlight the qualification of this amendment- claimants can access this payment **once they have complied with the managed migration process**. Housing Rights have concerns that

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<sup>5</sup> Full report available at: <https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit.pdf>

several claimants, may miss out on this vital housing transitional payment, due to complexities of the migration process i.e. miss a claim deadline and therefore not be eligible for this housing benefit transitional payment. Housing Rights would recommend that it is considered that this caveat is removed from the amendment and added protection is considered to preserve this important payment. Not doing so could potentially lead to eviction and/or arrears. If it is not possible to remove this caveat, Housing Rights would urge consideration of extra support for claimants when making the application process, to ensure the application is completed and access to this vital support safeguarded.

### ***Student legacy benefit protection***

- 3.1.6 The DWP, via Regulation 60 have stated that they will ensure that where claimants are receiving an existing benefit and are also undertaking a full-time course of education, but upon managed migration do not meet the UC entitlement conditions, i.e., because they come within section 4(1)(d) of WRA 2012 ('WRA 2012') i.e. receiving education, then they would be treated as meeting that condition and, therefore, be able to make a claim for UC. Once they do make a claim, they would also be entitled to UC including TP if applicable. The DWP have stated that this exemption from section 4 of the WRA 2012 would last until the course that they were on at the point of their managed migration ends.
- 3.1.7 Housing Rights welcome this protection for students. Owing to the current Housing Benefit Regulations the vast majority of students who are eligible for Housing Benefit are younger adults with complexities or additional responsibilities; these claimants rely on Housing Benefit to sustain their tenancy during study. Without this assistance, many of these claimants would be unable to maintain their accommodation and potentially become homeless; indeed, this would have a wider impact on claimants' future – ability to access a job etc... Inside Housing in a recent publication<sup>6</sup> highlighted how homelessness can have a profound impact on students. **Thus Housing Rights welcomes the assurance that this group of claimants will be afforded protection.**

### ***Protections for existing claimants of Severe Disability Premium***

- 3.1.8 The DWP via Regulation 2(6) and Regulation 3 of the Draft Regulations proposes to insert protections for existing claimants of SDP.
- The DWP advises that they will introduce a provision so that claimants in receipt of legacy benefits who have an SDP will not be

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<sup>6</sup> 20th July edition of Inside Housing (pages 25-26).

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able to claim UC, and will instead still be able to claim legacy benefits when have change of circumstances. The effect of this being that rather than “naturally migrating” to UC, they will remain on their legacy benefit.

- The provisions will also introduce a transitional payment within UC for claimants who have already migrated to UC, this payment will be backdated and will be based broadly on SDP amount.

3.1.9 Housing Rights is aware that the matter of SDP and UC has been a complex one; UC does not have an equivalent to the SDP, thus claimants who receive SDP are likely to lose the most in monetary terms should they migrate. Indeed cases regarding this impact has recently been heard in the High Court, two separate claimants being awarded compensation after a ruling that they were unlawfully discriminated against.<sup>7</sup> Housing Rights have also received a number of calls seeking advice on the matter.

I.e. Ms A was in receipt of ESA and Carers Allowance (CA) as she was caring for her mother. Her mother died in February and she got the 8 week run on of CA. When this ended Ms A says she was told that she had to apply for UC and her Landlord was sent a letter telling him that her Housing Benefit claim had been cancelled and she has to apply for UC.

3.1.10 While this protection is welcome for those in receipt of SDP, as this demographic may include some of the most vulnerable in society- i.e. disabled people who live alone and have no carer, Housing Rights have a number of comments and recommendations.

3.1.11 Primarily, **Housing Rights wish to highlight the issue of the number of claimants in receipt of SDP, who have already naturally migrated to UC after experiencing a change of circumstances.** An issue, the DWP and SSAC are no doubt acutely aware of, given a recent joint High Court Ruling.<sup>8</sup> While the DWP have undertaken to award a transitional payment which is “**broadly based**” to claimants who were incorrectly migrated and backdate it, Housing Rights would strongly suggest that these claimants should not be at a detriment due to maladministration, and thus should receive a transitional payment **equal to their SDP.** It is Housing Rights experience that many

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<sup>7</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2018/1474.html>

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claimants use their SDP and other disability benefits to substitute the shortfall in their eligible and contractual rent and for other household utility bills that make be higher as a consequence of their disability; therefore without these SDP payments, transitional payments and backdates, claimants may struggle to sustain their tenancies.

- 3.1.12 Secondly, the DWP have stated in their Explanatory Memorandum that while claimants in receipt of SDP who experience a change of circumstances will not naturally migrate to UC, **this will not extend to wider changes of circumstance** i.e. the formation of a new benefit unit. However, no further information is provided as to what constitutes a **wider** change of circumstances. **Housing Rights recommend that, in order to avoid future maladministration and future proof any policy it essential that a list of change of circumstances (deciphering wider changes of circumstances) is entrenched in Statutory Guidance. This guidance should allow for discretion, however clear guidelines and transparency is key is preserving this discretion.**

## ***Safeguards inserted into the managed migration process***

- 3.1.13 The 2018 Draft Regulations entrench the process claimants must follow for managed migration. Namely; those in receipt of legacy benefits will have to make a **new claim** for UC (in fact they will not be “managed migrated”), they will have just 1 month to meet this new claim deadline and those who do not meet the deadline will lose their access to transitional protection. While the DWP have provided a number of safeguards such as; extension to the time to make a new claim from 1 month to 3 if “good reason” is shown and the power to delay migration; Housing Rights have a number of concerns regarding the process of managed migration and will address each of these in turn.
- 3.1.14 Housing Rights would have concerns regarding the short timeframe claimants have to make a new claim for UC. While we welcome the safeguard that the **deadline of 1 month for a migration application to UC can be extended to a max of 3 months if “good reason” is provided**, Housing Rights recommend that further consideration is given to this proposal to ensure adequate mechanisms are put in place to guard against the risk that significant numbers of people could see their benefits stopped as they attempt to navigate the process of applying to UC. **Housing Rights would suggest that additional ‘safety nets’ are considered.**
- 3.1.15 As noted in the DWP’s Explanatory Memorandum to the 2018 Regulations, it is anticipated that 36% of those who will be migrating to UC via managed migration are in receipt of ESA(IR), therefore they are some of the most vulnerable in our society. It is Housing Rights’ experience that some clients may not understand their responsibilities- this can be due to a number of

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reasons e.g. mental health problems, learning difficulties such as literacy issues or cultural obstacles such as a language barrier, and indeed some clients can “bury their head in the sand” when it comes to changes. With the onus of migrating to UC being placed firmly on the claimant, it appears claimants are ‘actively migrating’, rather than experiencing “managed migration”. During similar periods of social security transition e.g. changes to LHA rates, Housing Rights would suggest that these claimants experienced a more “managed process”.

3.1.16 Again, notably, the **National Audit Office in their June 2018 Report on “Rolling out Universal Credit”**<sup>9</sup>, reported that one of their key findings was that 4 out of 10 claimants struggling to adjust to the UC system.

3.1.17 Furthermore, it is Housing Rights initial experience of UC applications, that claimants can find the process complex and require assistance. With this in mind, and given the fact that the consequences of missing the deadline (loss of transitional protection) will have a significant impact, **Housing Rights would recommend that this time is extended for a minimum of 2 months.** Housing Rights suggest that this may also give tenants time to account for their obligations under their tenancy agreement regarding notice to quit requirements.

3.1.18 DWP have provided examples which may include “good reason” for the 3 month extension. Examples include – those “having a mental health condition”. DWP state that guidance on “good reason” already exists and any new guidance will be in line with this. **Housing Rights would caution exact mirroring of previous guidance and recommend the DWP be cognisant of the unique and new application of UC when constructing guidance e.g. online application and verification requirements. Housing Rights would recommend that a core set of principles forms the foundation of any guidance produced.**

3.1.19 Housing Rights, in principle welcome the provision in the 2018 Draft Regulations providing the DWP with the power to delay the commencement of a UC award, to ensure the effective managed migration – the two circumstances for this appear to be to ensure UC is administered correctly or claimants absent or is in ill health. Housing Rights also are pleased to see an undertaking by the DWP that if it needs to delay a person’s award to UC, they will notify that person that their existing benefits will continue. However, **Housing Rights recommend that prior to any provisions being made regarding the power to delay, much more information needs to be provided and consideration given to the rationale and consequences.**

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<sup>9</sup> Full report available at: <https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit.pdf>

## ***Backdating***

3.1.20 The current restrictive grounds for backdating a claim for UC have been an ongoing concern for Housing Rights. Indeed, under Housing Benefit Regulations Housing Rights routinely use the backdating mechanism as a tool to reduce rent arrears and thus protection eviction and homelessness. Under Housing Benefit Regulations a subjective element is contained within the legislative backdating test i.e. a backdate can be awarded if there is “good cause”. While Housing Rights welcome the addition of another ground for backdating for managed migration claims, it appears that this “backdate” is in fact merely a method to limit any DWP administrative errors which may occur. To elaborate - the DWP have proposed to offer a one month backdating facility to encompass the claimants who have missed their new claim deadline, however could not have been expected to claim sooner because they had not been notified of the expiry of an existing benefit or an official error had occurred. **There is no consideration of subjectivity. Furthermore, worryingly, this backdating facility only extends to one month, therefore if the delay exceeds this timeframe, it is possible claimants could be at a financial detriment due to a DWP error. Housing Rights recommend that this provision is reconsidered and furthermore, that backdating mechanisms as a tool to alleviate homelessness are evaluated.**

***Claimants whose UC award terminates due to receiving additional earnings in an assessment period will be re-awarded the transitional element if they make a new claim to UC within three months***

3.1.21 DWP have proposed to protect those whose income may fluctuate by stating that their transitional element can be re-awarded if they make a UC claim within three months. While Housing Rights welcomes the intention behind this provision, it raises a fundamental concern within the UC system. For example while it may not be the case in all claims, it is Housing Rights experience that a fluctuation in earnings can often be due to one-off overtime or how a wage is paid that month; and due to how UC is calculated this can “knock” a client out of UC for that month, however it is not necessarily reflective of their income that month. **Housing Rights suggest that further consideration is given to the use of the “UC Journal” for calculation purposes** i.e. noting the abnormality in pay slips; this could potentially reduce administration of UC payments and transitional payments, and indeed be less cumbersome.

3.1.22 **Housing Rights also wish to draw attention to Child Poverty Action Group’s (CPAG) publication “Rough justice: Problems with monthly assessment of pay and circumstances in universal credit”<sup>10</sup>, which**

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<sup>10</sup> Full publication available at: <http://www.cpag.org.uk/content/rough-justice-problems-monthly-assessment-pay-and-circumstances-universal-credit-and-what-ca>

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highlights how claimants are losing hundreds due to rigid assessment periods. With regards to assessment income CPAG has called on the Department of Work and Pensions (DWP) to make the following improvements:

- Use of average earnings to facilitate more accurate assessment of fluctuating earners and accurate benefit cap decisions;
- Use of regular pay amounts (as opposed to real-time information on pay) to prevent the potential for monthly-paid claimants being assessed as having two pay packets in one assessment period;
- Permitting monthly-paid claimants to move the date of assessment to minimise the risk of a second pay packet being taken into consideration in any given assessment period;
- Disregarding income from pay or tax rebates relating to a period prior to claim; and
- Allowing earnings to be averaged over three months to determine entitlement to passported benefits.

Additionally, CPAG have identified issues with use of the 'whole month' approach, whereby a claimant's circumstances on the last day of each assessment period determines their entitlement for the entire preceding month. CPAG have called for the following improvements with regard to assessing changes of circumstance:

- Housing costs to be paid on the basis of actual rent liability (to protect claimants who move mid-assessment period); and
  - Pro rata payments of Universal Credit elements to allow for changes of circumstance e.g. someone moving out of the household mid-assessment period.
- CPAG Chief Executive Alison Garnham has called for these issues to be resolved in advance of mass migration of households over to Universal Credit. CPAG has also been granted permission to apply for judicial review of the rigidity of Universal Credit assessment periods. They are bringing the claim on behalf of two single, working mothers.
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## 3.2 Other Comments

3.2.1 Further to providing comment on the DWP's proposed transitional protection measures, Housing Rights have a number of other observations on the 2018 Regulations, each of these will be considered in turn.

### *Cessation of transitional protection*

3.2.2 Housing Rights have concerns regarding the circumstances that have been outlined by the DWP, when a claimant may lose their ability to receive transitional protection. **Receipt of this protection likely to be essential for claimants maintaining rental payments.** As previously mentioned, Housing Rights would urge clarity to be given on the **exact changes** would constitute a change of circumstances.

3.2.3 Of particular concern is the identification of - the circumstance of a couple separating or if a member of a couple dying- as a change of circumstance which would trigger cessation of transitional protection. This is an extremely sensitive time for a claimant; perhaps the most appropriate measure would be a period of time allowed before cessation and support put in place. **Housing Rights urge the DWP to consider the wider impact of these change of circumstances i.e. their entire UC payment would fluctuate, this could mean being unable to afford their rental payment. Therefore, the continual payment of transitional protection for a period of time is a vital lifeline for claimants.**

3.2.4 Finally, there appears to be no concession / exception to the 'change of circumstance' rule - e.g. victims of domestic violence will lose their transitional protection upon leaving an abusive partner.

3.2.5 **Housing Rights would ask the DWP to re-evaluate the potential impact of cessation of transitional protection.**

### *Communications*

3.2.6 As previously identified earlier in this response, the DWP have stated that 36% of migrating claimants are ESA(IR) claimants - many of whom will require added support. While the DWP have stated they will extend claim deadlines<sup>11</sup> for claimants who are "vulnerable and have complex needs" and are currently investigating how they can identify and determine these claimants so as to provide additional support , no firm information has been

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<sup>11</sup> "Interests of claimant or class of claimant or to safeguard the efficient administration of UC" – complex needs/absent.

provided and their role hasn't been defined yet. **Housing Rights strongly recommend that given DWP's plans to commence migration in January 2019; the formalisation of these plans should be a priority. Failure to provide adequate support could see a significant number of people destitute and/or without a home.**

- 3.2.7 In addition, while the DWP do outline a structure for advising claimants of the timescales of managed migration e.g. warning letters, no information is given regarding making these communications available in different formats or languages. **Housing Rights would recommend reviewing the Behavioural Insights Team 2015 report on "Applying behavioural insights to encourage earlier engagement from borrowers in mortgage arrears"<sup>12</sup> – this reports identifies key considerations when encouraging engagement, such as the use of plain English.**

### ***Statutory and Operational Guidance***

- 3.2.8 Upon review of both the 2018 Draft Regulations and the accompanying Explanatory Memorandum it is evident that the provisions have been drafted very widely and those confer wide discretion to decision makers, both in interpretation and scope. **Housing Rights strongly recommend that in order for the spirit of the legislation to be achieved and also for it to be applied equitably robust and clear guidance – both statutory and operational – must be drafted as a priority and in a timely manner to accompany the Draft Regulations. In light of the context provided at the start of this response, Housing Rights recommend that this guidance is NI specific and made publically available.**
- 3.2.9 It is Housing Rights experience with the UC Roll out to date, that guidance was produced very close to commencement dates and thus, advocates and claimants did not have an adequate opportunity to review and/or comment on the contents. Advisers regularly use both types of guidance to determine claimants' rights and responsibilities and thus it is in all parties' interests that guidance is produced as a priority.

### ***"Test and learn"***

- 3.2.10 DWP have stipulated in their Explanatory Memorandum that they will be utilising a "test and learn" approach throughout the process of managed migration. They explained that this was used in the roll out of UC and they were able to be flexible and adapt. **While a degree of flexibility is required in**

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<sup>12</sup> Full report available at: <https://www.communities-ni.gov.uk/sites/default/files/publications/dsd/bit-report-may15.pdf>

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any public policy, Housing Rights would strongly suggest that process of managed migration is a significant undertaking and therefore, robust mechanisms should be put in place to ensure its efficient operation.

3.2.11 Not appropriate given the impact on people and potential to contribute towards homelessness.

3.2.12 Again, in addition, the **National Audit Office in their June 2018 Report on “Rolling out Universal Credit”**<sup>13</sup>, one of their key recommendations was to ensure that operational performance and costs improve sustainably before increasing caseloads through managed migration.

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<sup>13</sup> Full report available at: <https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit.pdf>