

Scottish Government Response to the Consultation on Universal Credit (Claims and Payments) (Scotland) Regulations 2017

June 2017



Scottish Government
Riaghaltas na h-Alba
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MINISTERIAL FOREWORD



On 16 January 2017, the Scottish Government launched a consultation seeking views on draft regulations on Universal Credit which would give Scottish applicants more choice over the way their Universal Credit payments are made.

Universal Credit remains reserved to the UK Government but our priority is to use the flexibilities available to us in Sections 29 and 30 of the Scotland Act 2016 to make sure that where we can, its delivery is better suited to the needs of the people in Scotland.

We specifically consulted on the two priority flexibilities of more frequent payments of Universal Credit (twice monthly) and managed payments to social and private sector landlords.

There are also two other flexibilities. First, the power to vary the amount of housing costs paid to people in receipt of Universal Credit and we are working with the Department for Work and Pensions to establish a way by which we can abolish bedroom tax at source. Second, there was strong support, from respondents to the social security consultation, to split payments between members of a household. We have already begun to take this work forward with womens' groups, disability and carer organisations and, following discussion with the Department for Work and Pensions, we will make an announcement on how and when split payments can best be delivered as soon as we can.

We received 100 responses to our consultation on the draft Universal Credit regulations, and the majority (87%) thought that the regulations met their policy intent. We have made a number of changes to the regulations based on respondents' views and these are set out in this Government response.

However, many of the comments we received were outside the remit of this consultation, and indeed, the powers available to the Scottish Government through the Scotland Act 2016.

One of the most frequently raised issues was the 6 week wait for the first payment of Universal Credit. It is clear from the consultation, and what I have heard directly from people in receipt of benefits, local authorities and landlords, that the roll out of full service Universal Credit is causing unacceptable levels of anxiety, hardship and rent arrears. That is why the Cabinet Secretary for Communities, Social Security and Equalities wrote to Damian Green, then Secretary of State for Work and Pensions on 21 March 2017 calling for a halt to the roll out of Universal Credit full service in Scotland until these problems are fully resolved by the UK Government. The UK

Government has stated that it has no intention of halting the roll out but we will continue to press our case on behalf of all those adversely affected by the lengthy 6 week wait for the first payment.

This document sets our response to the consultation. It sets out the revisions we have made to the Universal Credit regulations to take on board the views of respondents, and how we will work with the Department for Work and Pensions to ensure that our UC flexibilities are delivered in a way that meets our social security principles of dignity, respect and fairness. On 29 June 2017 we laid the Universal Credit (Claims and Payments) (Scotland) Regulations 2017 in the Scottish Parliament, to come into force on 4 October 2017.

The new Universal Credit flexibilities marks the first use of our new social security powers. It demonstrates our commitment to making full use of every power coming our way, and our determination to alleviate some of the inherent unfairness in the Universal Credit system by progressing the introduction of the Universal Credit flexibilities to provide people in Scotland with more choice over how they manage their household budget.

A handwritten signature in black ink, appearing to read 'Jeane Freeman', with a long horizontal flourish extending to the right.

Jeane Freeman MSP
Minister for Social Security

INTRODUCTION

Background

1. Universal Credit (UC) is a single payment for working age people introduced by the UK Government. UC aims to improve work incentives, simplify the benefit system and reduce fraud and error. UC remains reserved to the UK Government, however, the Scottish Government has some administrative powers to change payment arrangements for UC.
2. The main differences between UC and other current welfare benefits, for example Jobseeker's Allowance, are that:
 - UC is available to people who are in work and on a low income, as well as to those who are out of work;
 - most people will apply online and manage their claim through an online account;
 - people will usually receive just one monthly payment per household, paid into a bank account; and
 - support with housing costs (rent) will go directly to the individual in most cases as part of their monthly payment.

The Scottish Flexibilities

3. Sections 29 and 30 of the Scotland Act 2016 allow Scottish Ministers to introduce flexibilities in relation to UC with regard to the person to whom, and the time when, UC is to be paid. These are:
 - having the option of being paid UC twice a month rather than monthly;
 - having the option of any UC housing element being paid direct to social and private sector landlords;
 - the power to vary the amount of housing costs paid to people in receipt of Universal Credit; and
 - the power to split payments between members of a household
4. The two priority flexibilities being progressed through the Universal Credit (Claims and Payments) (Scotland) Regulations 2017 are:
 - having the option of being paid UC twice a month rather than monthly; and
 - having the option of any UC housing element being paid direct to social and private sector landlords.
5. These changes are intended to provide more choice and control over UC payments, as well as safeguarding tenancies and preventing the build-up of rent arrears. Neither option will affect the overall amount of UC that is payable.

6. These changes will not replace the Department for Work and Pensions (DWP) system for Alternative Payment Arrangements¹ which will continue to operate for those who fall under the current criteria of requiring this (e.g. as a result of a vulnerability or rent arrears).

7. The two priority flexibilities will be available for **new claimants in full service UC areas**. We are working with the DWP to agree when existing UC recipients will also have the option of requesting the Scottish flexibilities and we will communicate this widely to people in receipt of UC and local and national partners before the Scottish flexibilities for new claimants in full service UC areas come into effect.

8. The two other UC flexibilities are being progressed separately. First, the power to vary the amount of housing costs paid to people in receipt of UC and we are working with the DWP to establish a way that we can abolish bedroom tax at source.

9. Second, 88% of respondents to the social security consultation supported splitting payments between members of a household. People emphasised that money can sometimes be used as a tool in domestic abuse settings and that the DWP's approach to UC could result in one person receiving benefits on behalf of the entire household, which could exacerbate existing problems. The Scottish Government is committed to tackling all forms of violence against women, including domestic abuse. That is why we have already begun to take this work forward with womens' groups, disability and carer organisations. Following discussion and agreement with the DWP we will make an announcement on how and when split payments can best be delivered in due course.

10. As UC remains reserved to the UK Government, the Scottish flexibilities will be delivered by the DWP and arrangements for delivery will be set out formally in a Service Level Agreement agreed by both Governments. The Scottish flexibilities will, however, form part of the Scottish Government's wider work programme on social security to ensure that the appropriate links are made to the new Scottish Social Security Agency and the 11 benefits that are being devolved.

Consultation

11. We received 100 responses to the consultation on the draft Universal Credit (Claims and Payments) (Scotland) Regulations 2017. An independent analysis was carried out by Craigforth and the full report is available at: <http://www.gov.scot/Publications/2017/06/7377>

12. The consultation asked if the draft regulations met the policy intent of offering a choice to applicants on having their UC payments made twice monthly and also the choice of managed payments of rent direct to landlords.

¹ Alternative Payment Arrangement is when DWP offer managed payments of rent or more frequent payments if a person fits certain criteria eg has rent arrears over 8 weeks or substance misuse problems

13. On the frequency of payment question, 88 out of 100 respondents thought the draft regulations met the policy intent. On the question of managed payments of rent to landlords, 87 out of 100 respondents thought the policy intent was met.

14. Respondents were also able to provide further remarks in addition to their yes/no answers. These resulted in many comments which were out with the scope of this consultation and beyond the powers available to the Scottish Government through the Scotland Act 2016. Nevertheless, they are very important to the successful implementation of the Scottish flexibilities and that is why our response also covers them.

SCOTTISH GOVERNMENT RESPONSE

Regulations

15. We have made a number of **changes to the draft regulations** to reflect respondents' views. We have:

- i) strengthened the wording to address stakeholder concerns that a right to request a flexibility, rather a right to choose, could unintentionally result in a request for a flexibility being refused without a legitimate reason, which is contrary to the Scottish Government's policy intention. The new regulations make it clear that the Secretary of State "*must agree to a request... unless the Secretary of State considers it to be unreasonable to implement the request*". In practice, the Scottish Government expects almost all requests for a flexibility to be granted unless there are exceptional circumstances, for example, where an individual is already on an Alternative Payment Arrangement. We are also working with DWP to ensure that guidance, training and support to DWP staff is clear on the process and policy, and provides examples of the exceptional circumstances that may lead to a flexibility being refused.
- ii) removed the word "claimant" and replaced it with "applicant or recipient" and the term "person" to reflect our wider commitment to create a social security system which treats individuals with dignity and respect. Our new Social Security Bill which was introduced in Parliament on 20 June enshrines these principles in legislation, as well as the principle that social security is a human right. The principles will also be linked to a statutory duty that will be placed on Scottish Ministers to prepare and publish a social security charter.
- iii) updated the references to rent to include "service charges" to reflect views that its omission could lead to build up of arrears of this element of housing costs even if the rent itself was paid.

16. We have considered carefully the views of respondents who felt that there should be an automatic payment of rent direct to landlords in all cases. We are strongly of the view that applicants and recipients of UC must have a choice. It is not for Government to tell an individual how to manage their household budget and is contrary to our social security principles of dignity and respect. In addition, making the direct payment of rent to landlords a default position creates a clear disparity of choice between people in receipt of UC and those who are not.

17. We laid the Universal Credit (Claims and Payments) (Scotland) Regulations 2017 in the Scottish Parliament on 29 June 2017, to come into effect on 4 October 2017.

Wider operational issues

18. The remaining issues raised by respondents focused on **wider operational issues**, many of which are out with the scope of the Universal Credit (Claims and Payments) (Scotland) Regulations 2017, or indeed the social security powers the

Scottish Government has through the Scotland Act 2016. Nevertheless they do have relevance to the successful implementation of the UC flexibilities in Scotland.

19. The most frequently raised issue was the payment of UC being in arrears and, in particular, the 6 week wait for the first payment of UC. It was seen as critical because of the impact that it can have on people in receipt of UC including putting them into hardship and crisis. It can also lead to the build-up of significant rent arrears.

20. In addition to the consultation, the Scottish Government has received representations from MSPs, local authorities, the third sector and landlords about the impact of the 6 week wait, as well as wider issues with the roll out of full service Universal Credit.

21. It is clearly causing unacceptable levels of anxiety, hardship and rent arrears across Scotland. That is why the Cabinet Secretary for Communities, Social Security and Equalities wrote to Damian Green, then Secretary of State for Work and Pensions on 21 March 2017 requesting a halt to the roll out of Full Service Universal Credit until these problems are fully resolved by the UK Government. The UK Government has made it clear it has no intention of halting the roll out, however, we will continue to press them to take responsibility for fixing the problems they have created.

22. Other issues raised by respondents related to how the flexibilities would work in practice, in particular how an applicant appeals a decision and the importance of making claimants aware of the choice of the Scottish flexibilities was also stressed by a number of respondents.

23. On the point relating to appeals, the Scottish Government has not prescribed in our regulations a complete right to choose a flexibility because the DWP, rather than the Scottish Government, is delivering the flexibilities and this proposal is incongruent with their legislation and underlying principles of welfare reform. That is why, as mentioned earlier, we have changed the regulations to make it clear that the Secretary of State must agree to a request unless it is unreasonable to do so.

24. It is also unlikely that someone would be refused a flexibility that they request unless there were exceptional circumstances. Administrative decisions of this type are not usually appealable to tribunals and judicial review is the only available route where a right of appeal does not exist. Therefore, we are working with the DWP to ensure that a process is in place where the non-granting of a flexibility, if challenged, can be reviewed if new evidence is presented.

25. We will also work with stakeholders, in particular welfare advice services, to explain how the process will work; and also ensure all our communications on the UC flexibilities, in particular for claimants, make the steps for challenging the non-granting of a flexibility clear and easy to understand. Management information on reviews will also be part of our Service Level Agreement with the DWP.

26. A **Joint Implementation Forum (JIF)**, comprising of officials from the DWP and Scottish Government, is responsible for taking forward the practicalities relating

to the implementation of the Scottish flexibilities. This is the Forum through which we will ensure that the appropriate processes, training and support materials are in place for DWP staff to deliver the Scottish flexibilities effectively in Scotland. The work of the Forum is overseen by the appropriate governance structures in both the Scottish and UK Government, and ultimately the Joint Ministerial Working Group on Welfare (JMWGW). The JMWGW comprises of Ministers from both Governments and is responsible for ensuring the smooth transition of social security related aspects of the Smith Commission's report from the UK Government to the Scottish Government. There is also a wider communications group between the UK Government and Scottish Government that takes an overall approach to the devolution of powers between the two governments. The relationships between the two governments is underpinned by an MOU which includes joint working protocols on communications.

27. The two key strands of the JIF's work is the development of a Service Level Agreement between the Scottish Government and the DWP, and a joint communications plan. Both governments are committed to working to ensure that those who will be impacted by changes are at the forefront of what we do.

28. As described earlier, as UC remains reserved to the UK Government, DWP will deliver the Scottish flexibilities on behalf of the Scottish Government. The **Service Level Agreement** will set out, among other things, roles and responsibilities, financial arrangements and service level expectations. It will be reviewed on an annual basis to ensure that the arrangement continues to represent good value for money and deliver effectively for the people of Scotland.

29. Key to the successful delivery of the Scottish flexibilities is **clear, timely and effective communications** targeted at different audiences, including people applying for or in receipt of UC, landlords (private and social sector), local authorities, the third sector and other representative organisations such as CoSLA. In doing so we will follow the wider social security programme plan that sets out the overall timescale for delivery for social security powers.

30. The Scottish Government and the DWP are committed to implementing a joint DWP/SG communication plan overseen by the JIF. A key element is ensuring that UC claimants in Scotland are aware of the choices available, are able to access the information in formats and media that are most useful to them and are supported appropriately to make the right decision. We will work with local partners to inform the development of our key messages, and also support them to communicate the Scottish flexibilities through their networks and existing groups to ensure as wide a reach as possible.

31. The Scottish Government and DWP are also working together to develop agreed information notes, guidance and presentations for frontline practitioners in local authorities, housing associations, advice services, as well as DWP and the new Scottish Social Security Agency when it is established. The purpose of this joint approach is to ensure consistency of message and practice.

32. The Scottish Government and the DWP will review its communications strategy on a regular basis through the JIF, seeking feedback from a range of

sources including the Scottish Government's Experience Panels to get the views of people with lived experience of the system. This will ensure the Scottish UC flexibilities is based on evidence of what works, value for money and places the people of Scotland at its heart.



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