

# Benefits Bulletin

## SDP Gateway...

7<sup>th</sup> January 2021

Issue **1** [2021]

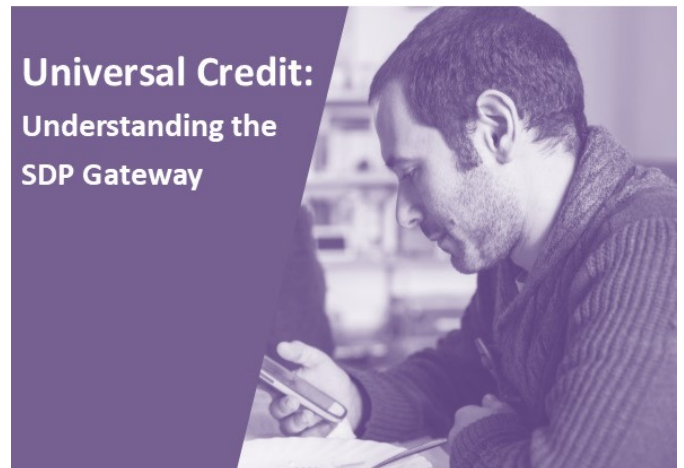
## 1. SDP Gateway - Removed from 27<sup>th</sup> January...

The 'SDP Gateway' will be removed later this month meaning that people getting the 'severe disability premium' (SDP) as part of a 'legacy benefit' will, from **27<sup>th</sup> January 2021**, no longer be prevented from applying for Universal Credit by choice or when 'natural migration' applies to them.

Instead, those getting the 'severe disability premium' may elect to apply for Universal Credit (as a replacement for their 'legacy benefits') or be expected to apply for Universal Credit like other claimants are should they trigger 'natural migration' due to a change in circumstance.

However, when claiming Universal Credit those getting the SDP will have included in their Universal Credit calculation, an SDP transitional protection payment designed to address the financial loss of the 'severe disability premium'.

### Universal Credit: Understanding the SDP Gateway



We are not at this stage certain what the transitional payment will be called. It has been given a number of different labels. However, what is clear is that the payment will be in the form of an extra 'element' built into the overall 'Maximum Universal Credit' calculation in the same way as extra 'elements' may, for example, be awarded for children, for 'limited capability for work' and/or because a person has a caring responsibility. For the purposes of this Benefits Bulletin we are going to call it the 'SDP transitional protection element'. When awarded it will be worth:

#### Single Claimants:

- £120.00 per month if they are entitled to the 'limited capability for work-related activity element'

- £285.00 per month if they are not entitled to the 'limited capability for work-related activity element'.

### Couples Claimants:

- £405.00 per month where the SDP was paid at the couple rate and no one has since become entitled to Carer's Allowance or the Universal Credit 'Carer Element' for looking after either member of the couple
- £120.00 per month if they are entitled to the 'limited capability for work-related activity element' and either the SDP was not paid at the couple rate or it was paid at the couple rate but someone has since become entitled to Carer's Allowance or the Universal Credit Carer Element for looking after either member of the couple
- £285.00 per month if the £405.00 per month payment does not apply and there is no entitlement to the 'limited capability for work-related activity element'.

However, please be aware that should an award of the 'limited capability for work-related activity element' be made then any 'SDP transitional protection element' would be reduced to £120.00 per month unless the £405.00 per month amount is already in payment.

Because the transitional protection payment will form part of the overall 'Maximum Universal Credit' amount, it may be affected by the income and/or earnings the claimant has or in the case of a joint claim, the income and/or earnings of the couple.

Whilst the system is presently designed to prevent Universal Credit claims from those getting the SDP, this will change from 27<sup>th</sup> January 2021. From this date, it will no longer seek to block claims from those getting the SDP. Instead, it will seek to identify those who are getting the SDP and check that the rules for the SDP continue to be met. It will then flag up the cases where the 'SDP transitional protection element' needs to be awarded.

Once awarded any 'SDP transitional protection element' should remain in payment even if, for example, the claimant ceased getting a relevant qualifying benefit or someone obtained Carer's Allowance or the Universal Credit 'Carer Element' for looking after them. However, an award of the 'SDP transitional protection element' would stop if someone ceased to be entitled to Universal Credit / their award of Universal Credit came to an end. Moreover, an award to the SDP transitional element would cease where a person becomes a member of a couple or ceases to be a member of a couple. It could be that entitlement to Universal Credit is lost because someone starts work (or increases their hours of work) and the level of earnings means they no longer qualify. It could be that someone loses entitlement to Universal Credit because they have travelled abroad on holiday or to visit family and are absent from Great Britain for more than one month. It is therefore, clear that people who are getting the 'SDP transitional protection element' need to think carefully before embarking on a course of action that could bring their award of Universal Credit to an end. Once removed any 'SDP transitional protection element' may not be reinstated upon any subsequent future claim.



Note: If someone is of working age and has been getting the SDP but only through their Housing Benefit entitlement then they would not be entitled to the 'SDP transitional protection element' were they to elect or be required to apply for Universal Credit.

See DWP Memo [ADM 15/19](#), Housing Benefit Circular [A11/2020](#) and this [LINK](#) for more information.

## 2. Background and History...

Historically when disabled people were awarded a 'legacy benefit' (See 4. What is a Legacy Benefit?) their award could have included a 'severe disability premium' (See 3. What is the Severe Disability Premium?) worth up to £66.95 per week for a single person and up to £133.90 per week for a couple dependent upon the disability benefits they received and their personal circumstance.

When Universal Credit was introduced people who have been getting 'legacy benefits' have been expected to apply for Universal Credit under a system known as 'natural migration' (See 5. What is Natural Migration and Managed Migration?) when they have experienced a relevant change of circumstance. In essence, they have been expected to give up their 'legacy benefits' in place of Universal Credit.



In [Benefits Bulletin - Issue 17 \[2018\]](#) (dated 21.6.2018) we reported that the High Court had found in [R\(TP and AR\) v Secretary of State for Work and Pensions](#) that it was unlawful to expect people on 'legacy benefits' who were getting the SDP to move on to Universal Credit under 'natural migration' rules. This was because of the amount of money they stood to lose as a result given that Universal Credit has no equivalent to the SDP and, unlike under 'managed migration', the 'natural migration' scheme offers people no transitional protection amount to cover any shortfall between the amount they received under 'legacy benefits' compared to any new Universal Credit entitlement. The findings of the High Court judgement were later upheld in the Court of Appeal in [R\(TP, AR and SXC\) v Secretary of State for Work and Pensions](#).

## January 16

Then in [Benefits Bulletin - Issue 1 \[2020\]](#) (dated 21.1.2019) we reported how, as a response to these rulings, the Department for Work and Pensions (DWP) had, from **16<sup>th</sup> January 2019**, introduced new rules (The Universal Credit (Transitional Provisions) (SDP Gateway) Amendment Regulations 2019 - [Statutory Instrument 2019 No.10](#)) introducing the 'SDP Gateway' meaning that anyone getting the SDP was prevented from applying for Universal Credit by choice or when 'natural migration' might otherwise apply to them. The new rules instead allowed the person to continue to claim 'legacy benefits'.

Then, in response to the case law judgements, the DWP introduced new legislation in July 2019 which, in effect, served to remove the 'SDP Gateway' protection from 27<sup>th</sup> January 2021 and put us in the position that we are now in. This legislation was the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 ([Statutory Instrument 2019 No.1152](#)).

Moreover, following the case law judgements, the DWP have worked to identify SDP claimants who applied for Universal Credit before 16<sup>th</sup> January 2019 (i.e. before the introduction of the 'SDP Gateway'). So far, 16,000 claimants nationally have been identified. In these cases, the claimants have had a 'Transitional SDP Amount' included as part of their claim to address the financial loss of the SDP. They have also been awarded a lump sum arrears payments to compensate them for any financial loss covering the period since their Universal Credit claim.

The amount of the 'Transitional SDP Amount' is the same as that which is now going to be paid to people from 27<sup>th</sup> January 2021 by way of the 'SDP transitional protection element'. Please see 1. SDP Gateway Removed from 27th January.

In cases where people getting the SDP have inadvertently or incorrectly been allowed to claim Universal Credit since the 16<sup>th</sup> January 2019 (i.e. after the introduction of the ‘SDP Gateway’) the DWP have had the power to either make an award of the ‘Transitional SDP Amount’ or to return them to ‘legacy benefits’. The DWP’s own guidance provides that people who have claimed Universal Credit since the 16<sup>th</sup> January 2019 should be returned to ‘legacy benefits’ where the error has been identified before Universal Credit has been put into payment or where it is in the person’s ‘best interests’ (including best financial interests) to return them to ‘legacy benefits’.

However, if a person’s Working Tax Credit or Child Tax Credit award has been terminated, HMRC do not have the same power to revise and reinstate any award. In such cases a new tax credit claim would be required and HMRC would look to compensate the person for financial loss upon its receipt of a complaint from the claimant.

In any event, since 8<sup>th</sup> October 2020 the DWP have converted any ‘Transitional SDP Amount’ (paid separate to any Universal Credit payments) to the ‘SDP transitional protection element’ and paid it as part of a person’s Universal Credit. In doing so, the payment may be affected by the income and/or earnings the claimant has or in the case of a joint claim, the income and/or earnings of the couple in the normal way.



More importantly, entitlement to the payment may end where a person becomes a member of a couple or ceases to be a member of a couple.

### 3. What is the Severe Disability Premium?

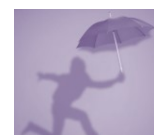
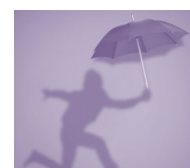
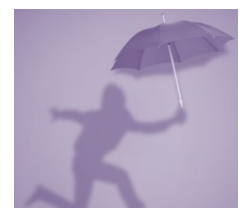
The ‘severe disability premium’ (SDP) is not a benefit in its own right. It is a ‘premium’ that may be included in the calculation of a person’s award of:

- Income-based JSA
- Income-related ESA
- Income Support
- Housing Benefit

The rules on who qualifies for the SDP can be quite complicated, particularly in couple situations. Put simply, to be eligible to the SDP a person must:

- be in receipt of a ‘qualifying benefit’ (e.g. Personal Independence Payment daily living component, Disability Living Allowance care component at the middle or higher rate or Attendance Allowance); and
- not be looked after by someone who receives a payment of Carer’s Allowance or an award of the Universal Credit ‘Carer Element’ for looking after them.

Moreover, to qualify, the person must be considered to be living alone. Some people who may actually be living with the person may nonetheless be treated as invisible to the system (e.g. anyone aged under 18, another person who gets one of the aforementioned ‘qualifying benefits, a person’s landlord or a person’s lodger).



In the case of couples, both members of the couple must ordinarily be getting a 'qualifying benefit' or one must be getting a 'qualifying benefit' and the other must be severely sight impaired.

There is nothing to stop someone who is on one of the aforementioned 'legacy benefits' from now qualifying for the SDP, providing they meet the qualifying conditions by becoming eligible to one of the 'qualifying benefits' (e.g. PIP daily living component) or because a person, whose presence previously stopped them from being treated as though they lived alone, has moved out.

As stated, the rules are sometimes complicated particularly when it comes to couples. This [LINK](#) elaborates but do seek further information and/or advice as necessary.

## 4. What is a Legacy Benefit?

A 'legacy benefit' is one of the collection of benefits that will ultimately be replaced by Universal Credit. In so far as the SDP is concerned the key 'legacy benefits' are:

- Income-based JSA
- Income-related ESA
- Income Support
- Housing Benefit

Of course, Child Tax Credit and Working Tax Credit are also 'legacy benefits' because they too will be replaced by Universal Credit. However, there is no SDP relevant to tax credit entitlements. Therefore, they are not relevant to the issues covered herein.



## 5. What is Natural Migration and Managed Migration?

Both 'natural migration' and 'managed migration' are mechanisms for moving those people who are presently getting a 'legacy benefit(s)' on to Universal Credit.

Under 'natural migration', a person is expected to apply for Universal Credit when they experience a relevant change of circumstances. For example, when a person:

- has a child that is their first child and they were not already getting Working Tax Credit
- move from one local authority area to another and need help with their rent
- is getting Income-related ESA and fails the Work Capability Assessment (i.e. they are found fit for work)
- is getting Income-based JSA but secure employment disqualifying them from being able to get Income-based JSA
- is getting Income-based JSA but becomes too sick to work.

Under 'managed migration' the DWP will contact individual claimants, giving them a three-month window in which to apply for Universal Credit. If they fail to do so, they will lose their entitlement to any 'legacy benefits' they are receiving. The process of 'managed migration' is presently being piloted. Once piloting has been completed it will be rolled out nationally.

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