

# Disability Rights UK



## Universal Credit and related Regulations

### Response to the SSAC call for evidence: July 2012

#### Disability Rights UK

Disability Rights UK was formed through a merger of Disability Alliance, Radar and the National Centre for Independent Living on 1 January 2012. We aim to be the largest national pan-disability organisation led by disabled people. Our vision is of a society where everyone with lived experience of disability or health conditions can participate equally as full citizens.

Disability Rights UK's objectives are:

- To mobilise disabled people's leadership and control;
- To achieve independent living in practice;
- To break the link between disability and poverty; and
- To put disability equality and human rights into practice across society.

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#### Introduction

In this response we focus on two particular areas where we consider that the regulations as drafted act against the intention of the Welfare Reform Act 2012 (referred to henceforth as the 'Act').

Firstly, we consider the limitations that are built around eligibility for the 'limited capability for work' (LCW) element and the 'limited capability for work and work related activity' (LCWRA) element when claimants are moving into (or wish to remain in) full-time work. We believe that these limitations will act as a disincentive for universal credit claimants to move into or remain in full-time work.

Secondly we consider the limitations to universal credit eligibility for full-time students. We believe that these limitations will act as a disincentive for universal credit claimants to move into or remain in full-time education.

## **(1) LCW and LCWRA elements; full-time work**

The second paragraph of Regulation 37 limits the application of the work capability assessment (WCA):

*(2) If the claimant has weekly earned income above [the relevant threshold] an assessment may only be carried out where the claimant is entitled to a disability living allowance (DLA) or a personal independence payment (PIP).*

In which case, applying paragraph 5, the claimant would be treated as not having a limited capability for work:

*(5) Where, by virtue of this regulation, an assessment may not be carried out under this Part, and none of the circumstances mentioned in Schedule [WCA2S] or [WCA3S] (Claimants treated as having limited capability for work etc) apply, the claimant is to be treated as not having limited capability for work.*

And would not be eligible therefore to either the LCW element or the LCWRA element.

It is true that the third paragraph allows for the WCA to be applied in cases where a claimant is already accepted as having a limited capability for work and a re-assessment is required:

*(3) But paragraph (2) does not prevent an assessment being carried out for the purposes of reviewing a previous determination that a claimant has limited capability for work on the basis of an assessment under this Part [or under the ESA Regulations].*

However as they stand the regulations will be restrictive in a way that will counteract the intention of the Act. The following examples provide explanation:

**Example 1:** Stephen has rheumatoid arthritis. He lives with his partner and two children. He moves into full-time work after previously receiving contributory ESA. He does not receive DLA or PIP. After being in work for 18 months he separates from his partner. He claims universal credit as his pay is relatively low and he is responsible for two children. However, since he does not receive DLA or PIP and his period of limited capability for work ended when he moved into work, he cannot be assessed under the WCA and therefore cannot get either the LCW or the LCWRA element. Yet if he were to leave work, the WCA could

then be applied and one of the elements payable (after the assessment phase is complete). He sees an advice worker and is surprised to find out he would be better off if he finished his job (as long as he was found to have a limited capability for work in a new WCA).

**Example 2:** Debbie has MS. She is a single parent with one child. She receives universal credit that includes a LCW element. She does not receive DLA or PIP. Her condition has improved with a new medication regime. She takes on a full-time job. Her period of limited capability for work is terminated, due to the improvement in her condition. She continues to receive a lower amount of universal credit. Two years later, her condition deteriorates. She would like to stay in work, but does not think that PIP is appropriate yet. She does think that she would satisfy the limited capability for work assessment. When she contacts the DWP, she is told that as she is no longer in a period of limited capability for work and she is not entitled to DLA or PIP, the WCA cannot be applied as long as she remains in full-time work. She leaves her job. The WCA is applied, she is placed in the work-related activity group and the LCW element is included once more.

Situations of this nature will be common. In November 2011 the number of working age claimants of ESA and incapacity benefits was 2,580,000. At the same time there were 1,841,000 DLA claimants of working age (*DWP Quarterly Statistical Summary 16.05.12*). The PIP thresholds will be set at a higher threshold (generally speaking) than DLA in order to obtain the envisaged 20% savings. Hence it is highly probable that there will be several hundred thousand people who will satisfy the assessment for limited capability for work but will not be entitled to either DLA or PIP. Such people will be faced with a universal credit cliff edge benefit reduction as a consequence of moving into full-time work. Though this will not normally take effect immediately, but will be applied in such circumstances as described in the above examples, it will nonetheless be a clear disincentive for many claimants to move into work. This will particularly be the case for claimants with variable conditions.

**Conclusion:** In order to avoid such cliff edges occurring, the requirement for claimants to be entitled to DLA or PIP before the WCA can be applied if they are in (or moving into) full-time work needs to be removed.

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## (2) Receiving education

The twin hurdle that applies to the LCW and LCWRA elements for claimants in full-time work also applies to students in full-time education:

**Regulation 12(1)** *A person does not have to meet the basic conditions in section 4(1)(d) of the Act (not receiving education) if ...*

*(b) the person is entitled to a disability living allowance or personal independence payment, and has a limited capability for work, or limited capability for work and work related activity;*

The linkage with DLA and PIP would appear to be reflecting current ESA legislation:

**Regulation 18** *Paragraph 6(1)(g) of Schedule 1 to the Act does not apply where the claimant is entitled to a disability living allowance.*

(The Employment and Support Allowance Regulations 2008)

But why do we need to retain the link within universal credit? The structure of universal credit ties disability support (through the LCW and LCWRA elements) to the work capability assessment and not through DLA and PIP entitlement. We can only assume that the reason that claimants need to be entitled to DLA or PIP **and** have a limited capability for work, or limited capability for work and work related activity, in order to claim universal credit as full-time students is to limit entitlement. But this will have the unfortunate consequence of creating a disincentive for universal credit claimants to move into or remain in full-time education. Again, this will counteract the intention of the Act. The following example provides an explanation:

**Example:** Hannah is in the second year of her degree course. She is recovering from a stroke which has left her with left-sided hemiplegia. She has been receiving the PIP mobility component and universal credit. As there has been a degree of improvement in her mobility, she informs the DWP, her PIP award is reviewed and the mobility component is terminated. As a consequence, her universal credit is also terminated. Faced with this dramatic drop in income, she finds it difficult to manage. She leaves the course and reclaims universal credit. The WCA is applied and she is placed in the work-related activity group.

**Housing support** – It is accepted under the current system that full-time students with a limited capability for work should be able to access housing benefit. Regulation 56 of the Housing Benefit Regulations (2006) allows awards to be made to a student:

*(ea) who has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;*

Unfortunately, under the proposed Regulation 12(1), entitlement to any housing support through universal credit will only be possible where the student is also entitled to either DLA or PIP. Such housing support is often crucial in determining whether or not a someone with a disability is able to access full-time education. By way of example:

**Example:** Narinder has epilepsy. She receives universal credit (which includes an LCW element and a housing element). She previously received the DLA care component because of her supervision needs. She was recently invited to claim PIP on conversion; but her claim was not successful (as there is no specific route to a PIP award through the requirement for supervision). Narinder lives in a housing association flat that has been specially adapted for her. She is offered a full-time place on a degree course. She would like to take this up, but is concerned that she would not be able to pay the rent for the flat without the housing element. She contacts the DWP and is told that she would not be entitled to universal credit as a full-time student unless she is also entitled to PIP. Narinder regrettably declines the place on the course.

**Conclusion:** In order to avoid a disincentive for disabled people to move into (or remain in) full-time education, the universal credit eligibility requirement for claimants to be entitled to DLA or PIP **in addition** to satisfying the WCA needs to be removed. To encourage more disabled people to move into full-time education we would suggest the following wording be used for regulation 12, allowing it to be less restrictive and more flexible:

**Regulation 12(1)** *A person does not have to meet the basic conditions in section 4(1)(d) of the Act (not receiving education) if ...*  
*(b) the person is entitled to a disability living allowance or personal independence payment, or has a limited capability for work, or limited capability for work and work related activity*

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### **Contact/further information**

If you have any questions about this response or Disability Rights UK please do not hesitate to contact: Ian Greaves: [ian.greaves@disabilityrightsuk.org](mailto:ian.greaves@disabilityrightsuk.org)