Universal Credit and related Regulations

Response to the SSAC's call for evidence

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Introduction

1. The Child Poverty Action Group (CPAG) promotes action for the prevention and relief of poverty among children and families with children. To achieve this, CPAG aims to raise awareness of the causes, extent, nature and impact of poverty, and strategies for its eradication and prevention; bring about positive policy changes for families with children in poverty; and enable those eligible for income maintenance to have access to their full entitlement.

2. We have particular expertise of the functioning of the social security system through our welfare rights, training and policy work and we welcome the opportunity to respond to this consultation.

3. We note that the Committee is keen to examine the overall coherence of the regulations and to this end, we preface our detailed comments on the regulations, with some general observations with reference to the Government's aims, as set out in the Introduction to the Government's Explanatory Memorandum (EM) to the Committee on the Universal Credit (UC) Regulations. The substantive section of our response is presented under headings which correspond to the each part of the regulations, beginning with the UC Regulations, followed by the Claims and Payments Regulations. The Housing Benefit (Benefit Cap) Regulations are covered in the section on the benefit cap. We have only made comments on the Decisions and Appeals Regulations, which the committee is not consulting on, where they link with the other regulations. We have also not commented on the Jobseeker Allowance and Employment and Support Allowance Regulations which are not subject to formal consultation. The main changes to these regulations also mirror the UC regulations on claimant responsibilities.

General observations

4. The Government's EM on the UC Regulations highlights the key aims of the reforms, which are to simplify the benefit system and enhance work incentives, while continuing to protect the most vulnerable in our society. We have serious concerns about whether the proposed regulations will achieve these objectives.

5. Simplification is a worthy goal and widely supported objective, but is very difficult to achieve in a heavily means-tested and conditionality based system. There will be some streamlining with the integration of six benefits into one, payable to people in and out of work by a single agency, but the regulations reveal that many of the current rules which govern entitlement to means-tested benefits and which cause much of the current complexity will be imported into UC. These include the rules relating to residence and immigration, couples, students, limited capability for work, housing costs, and income and capital. The regulations will also create new areas of complexity including 'in-work conditionality', the benefit cap, minimum and maximum earnings disregards, and the migration of existing claimants onto the new benefits. 'Simplification' can also mask cuts in entitlement, for example through the removal of disability premiums, the restriction of housing costs for service charges, limitations on backdating claims, and monthly assessment periods which deem changes in circumstances to have occurred on the first day of the period.

6. Improving work incentives is predicated on the 65% taper rate, enhanced earnings disregards and more stringent conditionality rules and sanctions. The unified taper rate represents little change for many existing claimants, and there is no evidence that it will significantly influence the behaviour of claimants, compared with labour market factors such as the local availability of jobs, rates of pay and other conditions of employment, and the availability and cost of child care. In this respect the cut in maximum child care support from 80% to 70% which is carried forward in the UC regulations is particularly detrimental to work incentives. The more generous earnings disregards are welcomed but we do not understand the logic for reduced disregards for claimants getting UC housing costs. The new conditionality regime will be more stringent but we are not convinced that it will be effective in encouraging claimants to move into work. We are concerned that vulnerable claimants, including those with mental health problems, could face repeated sanctions for failures to comply with work related requirements. The recovery of hardship payments could leave claimants with less than the minimum income provided by UC for months or years.

7. With regard to continuing protection for the most vulnerable claimants, we are concerned about the effects of cuts in entitlement for disabled claimants by the removal of disability premiums from the UC scheme, the imposition of the benefit cap which will disproportionately affect children in larger families, and the abolition of the discretionary social fund. We would also question the wholesale reliance on IT to administer the system, given the appalling record of large-scale Government IT projects. Much reliance is to be placed on the 'real-time data system for employees, but there is no provision in the regulations for situations where the system breaks down. We fear that the amalgamation of payments for adults children and housing costs could leave claimants facing destitution if there is a problem with their claim or award, while monthly payments and awards could cause hardship and difficulty for many vulnerable claimants. The assumption that the vast majority of claimants will be able to initiate and manage their UC claims online also seems unrealistic. We await announcements on benefit rates, but the base levels must be viewed within the context of the £18 billion of cuts already implemented from 2010.

UC Conditions of entitlement

8. *Reg 3(1), (2) & (3):* It is unclear how regulation 3(1)(a) is compatible with regulation 10(1) of the Claims and Payments Regulations. It is also not clear how couples with one partner subject to immigration control, or where one partner does not accept a claimant commitment, are treated. In the former case, we believe that their claim should be treated as a joint claim in the normal way, as is currently the position with tax credits. In the latter case, we believe it would be grossly disproportionate and punitive to deny all entitlement (including payments for children and housing costs) because of one partner's recalcitrance. At least a single person's allowance plus appropriate additions should be paid to the partner who has accepted a commitment.

9. *Regs 3(6) & 4(7):* Temporary absences of up to 52 weeks are currently allowed and the reduction to 6 months seems unduly restrictive (e.g. where a partner or child is in hospital or respite care, or a child is in a residential school).

10. *Reg 5(1)(b):* 'A qualifying young person' for child benefit and current means-tested benefits has an upper age limit of 20. The reduction to 1 September after the 19th birthday could cause hardship where UC stops prior the end of a course.

There do not appear to be any rules relating to the CB extension period and terminal date rules. Different rules for child benefit and UC will also create confusion and complexity.

11. *Reg 7(4):* Does not include people from Montserrat and Zimbabwe currently designated.

12. *Reg 10(4):* The scope of this provision and its relationship with regulation 90(3)(a) is unclear. It appears to relate to part-time students.

13. *Reg 12:* This constitutes a significant restricting of the ability of young people to complete their education. Currently, anyone under 21 in non-advanced education can claim housing benefit. They will only be able to claim UC, however if they are without parental support or in one of the other groups prescribed in regulation 12. Students on disability living allowance can claim income-related employment and support allowance, but will only be able to claim UC if they also have limited capability for work.

14. *Reg 13:* We do not understand the purpose of regulation 13(1)(a), which appears to be excessively punitive. It is unclear what could constitute an 'unreasonable' request for a review but we can see no justification for distinguishing between an unsuccessful and an unreasonable request for a review. In both cases the claimant should have a choice whether to accept the original commitment (in which case UC is payable from the date of claim) or not accept it (in which case no UC is payable). It is also unclear how the 'period specified' will be determined and notified to the claimant.

15. *Reg 16(2)(b):* It is unclear whether this provision refers to the term of the sentence, or the term likely to be served (which is usually much shorter), and how it fits with the provision in paragraph 9(1) of schedule 3 which incorporates both meanings.

UC Awards

16. *Reg 18:* We are particularly critical of the lack of provision for disability additions or elements. Disability premiums have always been a feature of means-tested support in recognition of the extra costs associated with disability (for example, aids and adaptations, extra heating, transport, special clothing and diets). These have been removed under the guise of 'simplification', but together with the replacement of disability living allowance by the personal independence for which 500,000 less people will qualify, this change will impact heavily on severely disabled claimants, in direct contradiction of the Government's stated aim of protecting the most vulnerable. The severe disability premium is currently worth more than £58 per week, while the disability element of working tax credit is worth around £54 per week. The logic of the severe disability premium has always been that its targets additional support for the severely disabled on those who need it most, i.e. those reliant on meant tested benefit who do not have a fulltime carer. Its removal is a retrograde step.

17. The elements for limited capability for work (LCW) and work related activity (LCWRA) have been imported into UC from employment and support allowance, but there has always been a distinction between additional payments for incapacity for work and for disability, reflecting the fact that many disabled people are able to work, but still have additional expenses. The absence of disability

additions is particularly inimical to work incentives for disabled people and we would urge a rethink of this major cut in entitlement.

18. *Reg 18:* It appears that a lone parent under 25 will receive the same standard allowance as a single claimant without children. Currently lone parents aged 18 or over receive the same personal allowance as single claimants without children aged 25 or over. This would constitute a significant cut for young lone parents and their children.

19. Reg 18: There is no element for pensioners. Many pensioners will be forced to claim UC, as they have a partner who is below the qualifying age for SPC. At present such couples can choose to claim SPC. Either a pensioner element should be added or the rule forcing couples with one member below the qualifying age for SPC to claim UC be abolished. If not, many more hundreds of thousands of pensioners will be forced into poverty.

20. *Reg 19:* We do not understand the logic for giving a lower disregard to claimants with UC housing costs. Having minimum and maximum disregards adds complexities and confusion to the calculation of UC. Lower disregards for those with HC will be a disincentive for those claimants to work. Will a claimant's earnings disregards be upgraded during a dispute about eligibility for housing costs and will a recoverable overpayment arise if housing costs are restored? Regulation 19(3) is not clearly drafted and could be read as not applying the 65% taper.

21. *Reg 20:* The proposed lower rate of the 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. This will adversely impact vulnerable families with a disabled child, with many families being worse off by up to £30 per week. The Government has indicated that the higher rate will rise to around £77 per week, but there is no mention of this in the 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'.

22. *Reg 23(3) & (4):* The preclusion of the award of both a carer's and LCW / LCWRA element is an unnecessary and illogical restriction which will adversely affect some of the most vulnerable claimants. The fact that a claimant has LCW or LCWRA does not preclude regular and substantial caring responsibilities. The award of only one element where joint claimants both have LCW or LCWRA is similarly unduly restrictive and not reflective of reality. Disability related expenditure for two people is higher than for one.

23. *Reg 24(1):* This provision means 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. They will lose a significant amount of money as a result and this seems unfair and discriminatory.

24. *Reg 28 (2)(b):* This contains a list of the benefits a claimant must be in receipt of if they want to continue to receive childcare charges after they have ceased working. The list would appear to exclude the self-employed who become sick, as they will not be entitled to Statutory Sick Pay, and unlike Tax Credits, there is no deeming provision. Provision should be made for the self employed on an equal footing with the employed.

25. *Reg 29 (2):* This requires claimants to report their childcare costs monthly, and that if they are not reported by the end of the assessment period in which they are incurred, they cannot be met at all.

26. This is a substantial change from the current position with Tax Credits were reporting is annual Many claimants with fluctuating childcare costs will find it very difficult to accurately report their changes from month to month. Many claimants may simply forget or be unable to produce an accurate figure. If payments for childcare fall irregularly into different assessment periods some claimant may lose out due to the upper ceilings. Finally, their would appear to be no scope for late reporting even if the claimant had good reason to do so. We are worried that DWP have underestimated the practical difficulties these requirements will cause and urge it to be dropped or substantially amended.

27. *Reg 30(2)(a).* This contains a power for the Secretary of state to disallow childcare charges where they consider them excessive having regard to the "extent to which the claimant is engaged in paid work". In the DWP UC workshop on 11th July the only example that could be given by the Dept as to when this power might be used was if a claimant was working one hour per week and claiming for thirty hours childcare.

28. Clearly this would be an abuse of the system, but the power granted her is so wide and discretionary in nature that it could easily be used to force people in low paid jobs to move their children to cheaper childcare providers, which may be of much lower quality. The regulation should be re-written to make clear that 'excessive' charges relate only to numbers of hours of childcare appropriate to the number of hours of work. The upper ceiling and the limit on 70% of childcare charges are sufficient disincentive to claimants incurring excessive charges.

29. *Reg 35 and sch 7:* 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.

30. *Reg 35:* There is no provision for treating a claimant as having LCW 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, running the risk of punitive sanctions for sick and disabled claimants.

31. *Reg 36(2)(a):* It is much easier to have a separate schedule, rather than have to cross reference between the regulation and schedule 6.

32. *Reg 37 (2):* This provision places a rigid cap on work incentives for disabled claimants, including those undertaking 'therapeutic work'. As long as a claimant can satisfy the work capability assessment, we would advocate no limit, as in any event, the means-test for UC would exclude higher earners. The definition of the threshold in terms of weekly income, is not consistent with the UC monthly assessment period.

33. *Reg 37(4):* We believe 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.

UC Housing costs

Housing costs

34. The consultation period for these important regulations is extremely short. The regulations bear all the hallmarks of having been drafted in haste, and we would urge the government to ensure that there is sufficient time for them to be thoroughly revised before the scheme is implemented. Failure to do this will result in widespread confusion and injustice.

35. The basic rules on the housing cost element for both tenants (called “renters” in the regulations), and for homeowners are in regulations 21 and 22 of the Universal Credit Regulations 2012 and further detail appears in schedules 1-5. We comment on the provisions in general and then go in to further detail below.

36. Housing benefit has already been cut back to the point where there scheme no longer offers an effective safety net against homelessness in the private rented sector, and its value will erode still further as it becomes decoupled from market rents through uprating on the basis of the CPI. In this context, we would argue that no further cuts in the value of the housing element in UC are justified. We are concerned, however, that these regulations do represent further cutbacks to benefit entitlement, carried out under the guise of simplification. There are no impact assessments or EIAs in respect of these changes. Without this information we cannot assess who gains and who loses from these changes. Further details are given below.

37. The regulations have been radically simplified by comparison with those currently in force in relation to housing benefit and housing costs. The use of English in the drafting of these regulations is unusual in some places. Further the wording of the existing regulations has been largely abandoned, even where it is clear and economical, and has well developed case law on its meaning. This may have been in aid of plainer wording. We support the use of plain English, but the language should be used grammatically and in its usual sense. As English law is given a literal interpretation, clear drafting is vital. The word “renter” is used throughout the regulations. It has been defined in the regulations, at paragraph 1(2) Schedule 1(2) as claimants to whom regulation Ho9(1) applies. Ho9 seems to mean regulation 22(1). This would therefore be a claimant who meets the qualifying conditions for the housing element. We question whether “renter” is an appropriate term to use in legislation. It is not a word in common use as far as we are aware, and we do not think its meaning is clear, which is likely to lead to confusion and difficulties in interpretation. Similar concerns apply to other language used elsewhere in the regulations.

38. In respect of both housing benefit and housing costs, transitional protection is in place for groups whose benefit entitlement was previously assessed under past rules. We have no information about what transitional protection will be in place either for new UC claimants, or from those who currently benefit from transitional rules. Without this it is difficult to know who gains and who loses from UC.

39. There is no provision in the regulations for claimants in “exempt accommodation” which is accommodation provided by charities and voluntary organisations where

support is provided. These claimants currently have more generous rules applied to them under the Housing Benefit and Council Tax Benefit (Consequential provisions) regulations 2006. There is no explanation of how the housing needs of these vulnerable claimants will be met.

40. No provision for interim payments is made in these regulations, and we understand that provision for short term and budgeting advances, and payments on account are to be made separately. Care will need to be taken in considering how these will apply to claimants in receipt of the housing element for a number of reasons; the payment of UC a month in arrears is likely to cause difficulties for tenants who are asked for rent in advance, there may be budgeting difficulties for claimants used to managing their money on a weekly basis, and of course if claimants get into arrears through delays they risk homelessness, so they need to be protected from delays in administering their claims.

41. Currently the linking rules help people to satisfy the waiting period for help if their income is too high until owner costs can be included in the applicable amount. It appears this will now only apply while the claimant is on CBJSA or CESA. This is not sufficient.

42. The Explanatory Memorandum does not refer to individual regulations. It is therefore not always possible to tell which regulations the explanations apply to.

Schedule 1

Paragraph 3

43. There do not appear to be any rules in relation to long leaseholders, or ground rent, and it is not clear what the proposals are in relation to these claimants.

Paragraph 6.

44. We understand this to be a clarification that Islamic mortgages are payments which qualify for support, and we welcome this.

Schedule 2 Part 1 – Liability to make payments

45. Paragraph 1. It seems from p 12 of the Explanatory Memorandum that the intention behind this provision is that where an eligible member of a couple claims UC in respect of housing costs payable by an ineligible member of a couple, the claimant is treated as liable for the housing costs. We support this provision, but we submit it needs to be redrafted as its meaning is currently not clear.

Paragraph 2

46. This replaces regulation 8 HB Regs 2006 in listing circumstances in which someone is treated as liable to make payments. Some groups have been omitted from this provision without explanation, for instance an ex partner of the liable person is no longer treated as liable without having to meet the listed conditions, and eligible partners of students have been omitted from this provision. It is not

clear whether these omissions are intentional or not. If they are cutbacks in benefit entitlement they needs to be explained. We would support the reinstatement of the wording in reg 8(1)(c) HB regs 2006 which is clearer and more economical.

Part 2

47. This represents a considerable simplification of regulation 9 HB Regs 2006, the contrived tenancy rule. We welcome simplification as the previous regulation was complicated and difficult to understand. However what constitutes a contrived tenancy is not spelt out and is left to the Secretary of State to decide, so it will be in guidance, which is open ended.

Schedule 3

Part 1 – Occupation

48. These provisions represent a simplification of the current regulation 7 HB Regs 2006. Again, eligible students have been left out of the new provisions, without explanation.

49. Paragraphs 4, 5 and 6 contain provisions enabling claimants to receive the housing element in respect of two properties at the same time. However, no exception has been made for claimants who benefit from these provisions in the Housing Benefit (Benefit Cap) Regulations 2012. This means that claimants who receive an additional amount under these provisions may have it removed via the benefit capped.

50. We would submit that it is irrational for the government to accept in these provisions that claimants need this additional money to pay for their accommodation, but then to remove it via the benefit cap. We therefore recommend that the HB(BC) Regs should be amended so as to exempt claimants who benefit from these provisions from the effect of the benefit cap.

Part 2 – Treated as occupying accommodation

51. A number of provisions which allowed for claimants to receive housing benefit in respect of 2 homes have been omitted as follows:

- Claimants waiting for social fund payments. We appreciate that the social fund will be abolished, however, claimants may still be waiting for discretionary payments from local authorities, and be unable to move without essential furniture, help with removal expenses or money for a deposit. We would argue that it is reasonable to pay housing benefit in the meantime to secure their accommodation.

- Claimants who have to move quickly and cannot avoid liability on their previous home, eg because they need to give notice. This provision is still needed.

- Student couples who have to live apart, eg while one member is attending a course. We are not sure how much this was used, but it is still needed.

Part 3 Temporary absence rules

52. These rules have been radically simplified. It appears that the intention is that that periods of temporary absence of up to 6 months will be ignored in deciding whether the claimant is occupying accommodation as his/her home, save in cases of domestic violence where the claimant intends to return, in which case an absence of 12 months will be ignored. However the regulation is worded negatively, and it is not clear to us that it achieves the policy intention. We recommend that the wording be changed to something closer to the current formulation.

53. Other categories of claimants such as remand prisoners, claimants in residential accommodation for a trial period, and hospital inpatients who can currently be treated as in occupation during periods of temporary absence of up to 12 months will now be restricted to 6 months. There is no explanation in the Explanatory Memorandum of why this is, and no impact assessment. It appears to be a cutback in respect of some groups of claimants, and will be unfair to some claimants, such as prisoners who are ultimately acquitted, but will lose their homes if they are on remand for more than 6 months pending trial.

54. Further, the wording of paragraph 9 suggests that if the claimant is absent for longer than 6 months, s/he will not be treated as occupying his/her home on his/her return. We are not sure if this is intentional, if it is we are concerned that claimants who have to spend long periods away from home, perhaps caring for sick relatives, studying, or working away from home, may lose entitlement to claim benefit on their return indefinitely, or until they move addresses. This is clearly unjust. If this is deliberate, it needs to be explained.

55. As the housing element will now be subject to work seeking conditionality, some of these categories, such as remand prisoners, or claimants who are abroad for longer than a month, could no longer meet the conditions of entitlement to the benefit at all. The effect on other groups is not clear.

Schedule 4

Part 3

Paragraph 10

56. The size criteria are now applied to all claimants regardless of whether they are renting in the private sector or the social rented sector. Presumably this is in order to assess which of the subsequent provisions are to apply to them.

57. The claimant loses a bedroom for a member of the extended benefit unit if s/he is more than temporarily absent. It is unclear what will happen if someone is absent for a reason other than cited in the rules, ie in hospital.

58. The current provisions protecting claimants for a period who could afford their housing costs when they moved in, and on the death of a family member, need to be retained in the UC scheme.

59. Please see further comments on part 5 paragraph 37 below.

Paragraph 11

60. Clarification is needed that rooms for foster children will be counted for the purposes of calculating entitlement to the housing element of UC.

Paragraph 12

61. This paragraph contains the size criteria that will be applied in assessing the claimant's entitlement to the housing element. The rules do not contain any provision to reflect the Court of Appeal's decision in *Burnip v Secretary of State and Pensions* and the joined cases. We would argue that as a result they are unlawful, and that that discretion should be included in this regulation to allow additional rooms in exceptional cases, and in order to avoid discriminating against people who need an extra room because of disability.

Paragraph 16

62. Non dependent deductions have been radically simplified; only one level of deduction will apply. We understand the DWP has said that the rate of deduction will be £65 per month, which will be less than the rates that currently apply to non-dependents in work, but significantly more than the rate that currently applies to non-dependents in receipt of means tested benefits. We understand the intention is that this should act as a work incentive to non-dependents. It should also be easy to administer, because non-dependents will not need to be means tested at all.

63. However we submit that the proposed higher rate of deduction for non-dependents in receipt of means tested benefits to contribute to the claimant's housing costs is unfair and will cause hardship. A non-dependent who receives means tested benefits would be entitled to the full amount of the housing element in his/her own right if s/he moved into separate accommodation.

64. In order to preserve the simplicity of the scheme we recommend that non dependents in receipt of UC or any means tested benefit should be "Exempt renters" for the purposes of regulation 17. It should be straightforward for the DWP to means test these non dependents without intruding on their privacy as it would be administering their benefit claims.

Part 4

65. This part contains elaborate machinery for determining the level of housing costs eligible for payment under the scheme. There do not appear to be any exceptions

for groups of tenants currently excluded from the LHA rules, such as Rent Act protected tenants. There is no indication whether these groups will get any transitional protection or how it is proposed they will fit within the new scheme.

66. The Housing Benefit (Benefit Cap) Regulations will duplicate the effects of some of these provisions, for instance the 4 bedroom cap at paragraph 26, so that the scheme will be much more complex than it needs to be, and much less coherent.

67. Paragraph 28(2) limits the amount payable for claimants aged under 35 to the shared room rent. In our view, treating a claimant of 35 differently from a claimant of 34 in terms of the amount of the housing element they can claim amounts to discrimination on grounds of age. There does not appear to be any justification for singling out under 35s for this treatment, which we submit is therefore unlawful.

Part 5

Paragraph 31 – Service Charges

68. At present most service charges can be included in housing benefit, where payment is a condition of the claimant's occupation, subject to some exceptions. The new rule retains the conditions for entitlement, but restricts the service charges which can be covered to services necessary to maintain the fabric of accommodation, the cleaning of communal areas, and the cleaning of exterior windows if the claimant or his/her family cannot do this. This means that some service charges which are currently paid for, for instance services for the provision of adequate accommodation including warden and caretaking services, gardens, children's play areas, lifts, entry phones, portering and rubbish removal and other facilities will no longer qualify for payment. This is likely to affect claimants in sheltered or institutional types of accommodation who may be very vulnerable. They will have to fund these services from their subsistence benefits. This is a cutback, which needs an explanation.

Paragraph 33

69. This paragraph preserves a power to refer to the Rent Officer where the rent appears excessive. Given the drastic restrictions on the level of rent eligible for payment imposed by the measures the government has already taken to reduce HB expenditure, this provision is likely to be otiose.

Paragraph 37

70. Having had the size criteria applied under paragraph 10, a penalty is now imposed on tenants in the social rented sector for under occupation. This has been set at 14% of their housing element for one additional bedroom or 25% of the housing element for two extra bedrooms. The likely social consequences of this provision have been highlighted in parliamentary debate and elsewhere. Following the judgment of the Court of Appeal in *Burnip v Secretary of State for Work and Pensions*, the application of this deduction in cases where claimants require additional rooms as a result of disability is likely to be unlawful. We

recommend that the regulations be amended to reflect the court's decision in this case.

71. It is not clear to what extent this provision overlaps with the benefit cap. It will also add considerably to the complexity of administering the scheme for tenants in the social rented sector, who form the majority of HB claimants.

Schedule 5

Part 2

72. Paragraph 4 provides that owner occupiers in paid work of any kind are not entitled to support under UC. We had understood that one of the aims of UC was to equalise the position of homeowners in work who could not claim any housing costs in addition to WTC to that of tenants in work, who were able to claim HB in addition to WTC. Not only has this equalisation not been achieved, but support for home owners in work has been severely cut back.

73. Under the current scheme, homeowners who are doing work of up to 16 hours a week and claiming pension credit, ESA, income support or JSA top up, can claim housing costs. UC claimants will not receive this support. There is no impact assessment, and no EIA in respect of this cut, so we cannot tell who it affects and how, or how much money it will save. This will act as a considerable work disincentive to UC claimants who are homeowners, again, contrary to the purported aims of the scheme. We are told in the Explanatory Memorandum that this will be partly compensated by the operation of the full earnings disregard, but we do not know at what level earnings disregards will be set.

Part 3

Qualifying period

74. Although the Explanatory Memorandum says at paragraphs 83 and 91 that support for housing costs is intended to be short term, claimants will have to serve a waiting period, which seems contradictory, since it means they will not in fact receive any help in the short term. The justification for this is that claimants should take out insurance to cover this period. There is no information on how many people do in fact have this insurance, or how effective the insurance is at covering these periods of unemployment.

75. We would argue for the current period of 13 weeks to be retained in preference to the longer 39 week period previously in the regulations. This is because the justification for that shorter wait, the fact that the economy was in recession, still applies.

UC Capital and income

76. *Reg 45 & sch 9:* The list of disregarded capital is not yet complete but we would be concerned to ensure that the main items of capital currently disregarded when calculating means-tested benefits will continue to be disregarded under UC. Cuts under the guise of simplification can have a devastating effect on the lives of vulnerable claimants. Paragraph 2 of schedule 9 is limited to 'close relatives' (it is not clear where this term is defined), whereas the current provision for means-tested benefits refers to a 'partner or relative'. If paragraph 1 applies to any person, paragraph 2 would appear to be otiose.

77. *Reg 52:* This is another example of cuts under the guise of simplification. Claimants who wish to exercise legitimate rights during a trade dispute are effectively punished and deterred from doing so, on the grounds that the current rules are too complex (see paragraph 152 of the EM). We believe the rules should be simplified in a less punitive way.

78. *Reg 56(2):* Paragraph 171-188 propose monthly online reporting with strict time limits. Over onerous requirements will be a significant disincentive to take up self-employment.

79. *Reg 58:* This controversial provision is likely to act as a disincentive to take up and maintain self-employment and is likely to cause particular hardship during periods of recession or temporary downturns in trade. It is an inevitable characteristic of self employment that there are period of little or no work for even long standing and successful businesses, and that payment for work is irregular. This provision places claimants operating in such business at risk poverty and threatens their ability to work.

UC and HB Benefit cap

80. CPAG is opposed to the benefit cap on the grounds that it is fundamentally unjust and will cause great hardship. It will disproportionately affect larger families, lone parents, 'kinship carers', people in high rental areas, and people in more expensive supported accommodation. The comparison with families on average earnings is misleading because it does not take account of their access to 'in-work benefits' such as housing and council tax benefit, tax credits and child benefit.

81. *Reg 75C HB(Benefit Cap) Regs & reg 70 UC Regs:* The use of gross entitlement before any deductions for sanctions and overpayment recovery is extremely harsh and will cause additional hardship to claimants already receiving less than the minimum income normally provided by UC.

82. *Reg 75E(1)(c) HB Regs:* We welcome the exemption of claimants receiving the support component of ESA, but there is no exemption for claimants getting incapacity benefit or severe disablement allowance, who could also be severely disabled. This is inconsistent with the UC Regulations which exclude these benefits from the definition of 'welfare benefits' in reg 74. Another inconsistency between the regulations is that regulation 72(1)(a) excludes claimants with LCWRA, whereas regulation 75E(1)(c) of the HB Regulations only excludes those receiving the support component, which would not include claimants who have LCWRA but do not receive the component because of overlapping income.

83. *Reg 75E and 75F HB Regs:* The exemption for claimants getting working tax credit(WTC) is inconsistent with the UC exemption for those earning more than £410 per month in regulation 73(7). The latter is based on working 16 hours per

week at the minimum wage, whereas the qualifying hours for WTC depends on the claimant's circumstances. We believe it would be more consistent and would better smooth the transition to UC by using the definition of 'remunerative work' in regulation 6 of the HB Regulations 2006 to determine the work exemption

84. *Reg 75E HB Regs and reg 72 UC Regs:* We believe there should be additional exemptions for people in more expensive accommodation because of their special needs, foster carers, and kinship carers.

UC Claimant responsibilities

85. *Reg 76:* This provision is unnecessarily restrictive. A change of circumstances affecting which partner is the primary carer should not be artificially limited to once a year, or dependant on the Secretary of State's judgment. It should be for parents to decide and notify.

86. *Reg 79(2)(b):* The threshold of caring responsibilities required to come under this provision is very unclear.

87. *Reg 80:* It is not clear how the threshold will be applied in cases of fluctuating earnings or hour, or where a claimant only works for part of the year (e.g. school terms). The meaning of 'a sustained period' in regulation 80(1) is also very unclear. The definition of the threshold in terms of weekly earnings does not sit easily with UC's monthly assessment period.

88. *Reg 81:* The flexibilities for main carers of children have been reduced. For example at present under the JSA regime they can restrict their hours of availability to 16 as long as they can show they have a reasonable chance of getting a job. In this reg the only flexibility is for those with children under 13 who can restrict availability to school hours. No justification has been given for the removal of flexibilities for parents, and those that exist in the current JSA regime should be reinstated.

89. *Reg 81 (2)(c).* The flexibilities for disabled people have been reduced. At present a disabled claimant of JSA can place any restrictions on availability for work that are reasonable in the light of their condition. This regulation requires that they have a substantial long term impairment that affects their ability to work 35 hours a week, and further that it is what the SoS considers reasonable. Given that claimants who are found to have LCW and LCWRA , i.e. have only a limited capability for work, will not need to use this provision as they will not be subject to full conditionality, it is hard to imagine who, if anyone, will be able to benefit from this provision. At present any thousands of disabled claimant fall the WCA and have problems coping with JSA conditionality. The removal of the existing protection will only make this worse.

90. *Reg 81(2)(c):* It is unclear why this provision only applies to claimants with long-term impairments. Short-term acute impairments can equally affect a claimant's ability to work for 35 hours.

91. *Reg 82:* It is vital that kinship carers are included in this provision.

92. *Reg 83:* We note that the Committee has particularly asked for views on the rules and arrangements for EU migrants. We believe that this provision is unreasonable, discriminatory and may be unlawful. It will affect EEA jobseekers who because of their circumstances, (eg caring responsibilities, children under 5)

would normally not be subject to full conditionality. Applying full conditionality to them will cause hardship and an increased risk of sanctions, and treat them differently to UK jobseekers. It may also be incompatible with the case of *SSWP v Elmi* [2011] EWCA Civ 1403. Paragraphs 17-20 of the EM makes some disturbing and, in our opinion, potentially unlawful policy proposals, including restricting entitlement to work seekers to the standard allowance only, and not applying the exemptions from conditionality in the case of work seekers and former workers.

93. *Reg 86:* This constitutes an impossibly onerous requirement to meet and administer, with a default mandate of spending 35 hours per week looking for work, regardless of local employment conditions, or the abilities and resources of claimants. It is difficult to envisage how it is going to be enforced and how a decision-maker and tribunal will be able to decide whether the requirement is met in an individual case.

94. *Reg 87(2)(b)* The maximum 48 hours allowed to attend an interview is unduly inflexible. Claimants may reasonably need more time to arrange child care, alternative care for a disabled person, or time off from existing employment.

95. *Reg 88(2):* It is unclear why this provision only applies to claimants with long-term impairments. Short-term acute impairments can equally affect a claimant's ability to work for 35 hours.

96. *Reg 89(3)(d):* The maximum period of one month allowed to obtain the required notification is too inflexible and should be extendable where there are delays due to pressure of work in hard pressed services such as the Police or Social Services.

97. *Reg 90(3)(a):* The scope of this exemption is unclear (see paragraph 245 of the EM). It is also unclear how this regulation fits with regulation 10(4) which appears to apply to part-time students. We believe it is vital that claimants should be able to study and gain qualifications to improve their employment prospects without onerous conditionality requirements.

98. *Reg 90(3)(i)(iv):* This would exclude those who were caring for the deceased before s/he entered a hospital or hospice prior to death.

99. *Reg 90(3)(j):* See the comments above relating to reg 80.

100. *Reg 90(5):* We believe this exemption is unduly restrictive. Claimants who are unfit for work for longer than 14 days are more likely to be unable to fulfil work-related requirements. This provision should be extended to claimants awaiting assessment of whether they have LCW and are providing medical statements.

Sanctions and hardship

101. *Regs 95 & 96:* We are concerned that the amount of sanction is particularly punitive where a claimant is not entitled to maximum UC, so that the sanction effectively eats into elements for child allowances and housing costs.

102. *Reg 98:* This regulation should also apply where a claimant is no longer subject to conditionality for reasons other than having LCW or LCWRA (e.g. becoming a carer or parent).

103. *Reg 99:* We would suggest that it is statutory requirement that no sanction is applied until the claimant has received notification of a possible sanction which includes an invitation to make representations within a specified time limit on whether there was good reason for the alleged failure. This will ensure decisions are based on all the relevant evidence, and there is proper opportunity for representations to be made before, rather than after, a sanction is imposed.

104. *Reg 99:* The Government has consistently claimed that UC will ensure that claimants will always be better-off in paid work. We believe that this should be reflected in the sanctions regulations, by providing that if this is not the case, a claimant will automatically have 'good reason' for voluntarily giving up a job, or failing to apply for a job to accept a job offer. This can be tested by requiring a 'better-off calculation' to be undertaken before a sanction is imposed, which takes into account work-related expenses including child care and transport, as well as the loss of UC and council tax support. Under the current system, there is a requirement to take into account the availability and cost of child care, and given the Government's acceptance of the importance of child care to work incentives, we are strongly critical of the removal of this statutory safeguard.

105. *Regs 100 & 103:* We fear that some vulnerable claimants (e.g. those with mental health problems or personality disorders) could face repeated sanctions for failures to cooperate. We believe there should be a statutory duty to interview claimants and review cases where there are repeat failures before further sanctions can be imposed with a view to arranging specialised advice and assistance through the work programme.

106. *Reg 108:* The requirement to have been in paid work for a continuous period is unduly restrictive and does not cater for situations where a claimant has lost employment through no fault and shortly after secured further employment, or has completed more than one short-term engagement. We would suggest provision is made for this by deleting the word 'continuous' in sub-paragraph (b).

107. *Reg 110:* The implication is that there will need to be re-applications every month, even where there has been no change of circumstances. This would place an unnecessary administrative burden on claimants and decision-makers.

108. *Reg 112:* Making hardship payments recoverable mean that claimants subject to a sanction would continue to receive reduced rate UC for months after the sanction period expired, while deductions were being made for recovery.

Claims and Payments Regulations

109. *Reg 5 and sch 2 para 6:* Proof of delivery will be crucial in disputes about claims and notifications. The sole criteria of whether the communication is recorded on the DWP computer system does not provide for system failures, or problems with ISPs and security software, as well as human error

110. *Reg 9(1):* We are sceptical about the Government's assumption that the vast majority of claimants will be able to claim UC and manage their awards online and we believe there should be provision for paper claims and notifications. Page 17 of the Government's EM justifies the retention of clerical claims for personal independence payments (PIP) on the basis of the 'diversity of PIP claimants', but this applies equally to UC.

111. *Reg 10(1):* See the comments above relating to reg 3 of the UC Regulations.

112. *Reg 10(4):* The scope of this provision is unclear, particularly the meaning of the word 'unable' in this context.

113. *Reg 10(5):* It is unclear which claimant will be awarded UC as a single claimant without making a new claim. We do not understand why it is not possible for both claimants to be given an award without the need to claim.

114. *Reg 11.* Additional provision should be made for the date of claim to be the date the claimant make initial contact or notifies the DWP of their intention to make a claim

115. *Reg 23.* This reg should be amended to include treating a claim for UC as a claim for CA and vice versa.

116. *Reg 24:* This represents a substantial cut in entitlement to some of the most vulnerable claimants who fail to claim earlier because of illness, disability, mental health problems, bereavement, or wrong advice. The meaning of the term 'language disability' is unclear.

117. *Reg 30:* This provision is unduly restrictive (the EM states it will only apply to prisoners). We do not see why responsible claimants planning ahead in anticipation of a change of circumstances should not be able to make an advance claim.

118. *Regs 33 and 34:* These do not deal with evidence and information relating to earnings. The Government has said that information relating to an employee's earnings will be provided by HMRC's real time data system, but there appears to be no provision for what happens if there is a system failure, or an employer fails to input the required data. The link between these regulations and regulation 31 of the Decisions and Appeals Regulations and regulation 56 of the UC Regulations is unclear

119. *Regs 39 and 40(3):* The Government has claimed that administration of UC will be more efficient. In these circumstances, we are disappointed that the term 'as soon as reasonably practicable', which has sanctioned long delays in the current system, has been retained. In practical terms, reg 40(3) means that new claimants will have to wait 38 days for their first payment.

120. *Reg 41:* We are extremely concerned that monthly payments will cause hardship to many claimants who will have difficulty budgeting on a monthly basis, and that payment to the household will disempower many women and remove safeguards that payments for children and housing costs are used for that purpose, where one partner in a couple acts irresponsibly. We would like to see more detailed provision in the regulations for variance from default monthly payments to the household, rather than reliance on the discretion of decision-makers, but at the very least there should be comprehensive and publically available guidance.

121. *Reg 41:* We are concerned that monthly assessments and payments provided for in reg 41, together with reg 25(2)(d) and schedule 2 Part 3 of the Decisions and Appeals Regulations which states that changes of circumstances will normally be treated as occurring on the first day of the assessment period, will cause arbitrary injustice and hardship. Where entitlement ends during an assessment period (for example because a claimant starts full-time education on the last day of her assessment period), UC will be lost for the whole month.

Crisis loans will have been abolished by the time UC is introduced, it is not clear what claimants who lose complete entitlement due to a change in circumstances late in the assessment period are meant to live on.

122. Similarly, a change which results in reduced entitlement will result in the loss of money for the whole month, regardless of when the change occurred. We believe this is grossly unfair where claimants have no choice about the date of a change of circumstances, and it is unreasonable to expect them to postpone changes to preclude loss of income.

123. *Regs 52 & 53:* Direct payments to landlords are vital for the viability of many social housing schemes, and where there are rent arrears in private and social tenancies. We would like to see more detailed provision for mandatory and discretionary direct payments to landlords in the regulations, rather than reliance on the discretion of decision-makers, but at the very least there should be comprehensive and publically available guidance. We also believe that there should be a right of appeal against decisions made under regs 52 and 53, which is excluded under para 1(m) of schedule 4 to the Decisions and Appeals Regulations.

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