Annex 1B: Opportunities around Statutory Instrument 2020/522

Richard Pope's Universal Credit report[1] highlighted how the benefits of digitalisation have often accrued to the state, and not to citizens. As some of the changes under COVID-19 have now demonstrated, this was always a *choice* rather than a necessity.

In one example, even though many people's earnings are variable, DWP will normally end your UC claim / award as soon you receive a £0 assessment for any month, for any reason. At the best of times this is unhelpful, but in the highly variable conditions of 2020 (and likely 2021) it is excessively so.

In laying a regulation before Parliament in May that nominally covered how to treat the Self-Employment Income Support Scheme lump sum payments,[2] DWP has created a new rule[3] which allows the Secretary of State to create criteria to persist claims when earnings are fluctuating, for up to five months – something that was not possible under the previous regulations.[4]

The new regulation provides that this period be extended over five months, according to criteria specified by the Secretary of State:

> *32A.—(1) This regulation applies where—*
>
> *(a) a claim is made for universal credit, but no award is made because the condition in section 5(1)(b) or 5(2)(b) of the 2012 Act (condition that the claimant's income, or joint claimants' combined income is such that the amount payable would not be less than the prescribed minimum) is not met; or*
>
> *(b) entitlement to an award of universal credit ceases because that condition is not met.*
>
> *(2) The Secretary of State may, **subject to any conditions the Secretary of State considers appropriate**, treat the claimant (or joint claimants) as making a claim on the first day **of each subsequent month, up to a maximum of 5**, that would have been an assessment period if an award had been made or, as the case may be, if the award had continued.*

On a purely practical level, the change to this new language from the old language helps DWP by saving it from having to administrate a large number of new (re-opened) claims – and it also helps claimants, because they don't keep having to make new claims when their personal circumstances are unchanged.

What this also means is that **functionality to continue £0 awards is now operational within Universal Credit, implementing the conditions of the Secretary of State.** And, given the "highly automated" nature of DWP's systems, this rule-based capability *will remain present in UC* after the coronavirus measures have ended.

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[1] https://pt2.works/blog/2020/04/02/universal-credit-report/
[2] https://www.legislation.gov.uk/uksi/2020/522/made
[3] Crucially, in system terms, if a rule has been implemented *for some*, it can be made available *to all*.
[4] https://www.legislation.gov.uk/uksi/2013/380/regulation/32/made

The previous *status quo* is indefensible, given the criteria the Secretary of State could choose

It is, of course, entirely within the power of the Secretary of State to decide that those who receive Universal Credit and who are in work with variable hours should be *required* to create a greater workload for DWP every month, rather than every six months. That is her choice.

And whether it is the intention of DWP's monster factory to punish those recipients *who it knows are in work* for working 'too much' in any one particular month is up to DWP. Though it must also know this creates unnecessary burdens, both for claimants and for itself in responding to those requests.

Who determines "any conditions the Secretary of State considers appropriate"?

It is not necessarily the case that DWP will know the full consequences of complex actions – see, for example, the two recent substantive yet contradictory responses to this FOI request[5] – in which case, it will be up to civil society (and Parliament) to bring that information to Government in context.

The criteria introduced under s3 of the 2020/522 Regulations,[6] are policy applied at the discretion of the Secretary of State. There is no sunset clause on this Regulation, although it is possible that DWP could choose to use Parliamentary time to repeal the Regulation.

The Secretary of State is empowered to issue conditions that do not require the regular re-opening of claims; these conditions should, however, be the default for <u>all</u> claimants in work, not only those who are self-employed (subject to exceptions, of course). The SI laid in May allows this to happen.

Such conditions may also address the most harmful effects of Johnson and Pantellerisco.[7]

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[5] https://www.whatdotheyknow.com/request/identity_verification_processes#incoming-1651540 – answered first on 6 October 2020, and then again on 22 October.
[6] https://www.legislation.gov.uk/uksi/2020/522/made
[7] See Annex 1A: https://medconfidential.org/2020/universal-credit/