ADM Memo 8/26

Universal Credit transitional element – Changes to erosion rules

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Introduction

1. This memo provides guidance on the Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2026 ("the SS (Misc Amdts) Regs (NI) 26"), in so far as they relate to the transitional element of Universal Credit[1]. The regulations come into operation on 30/10/26[2].

1 SS (Misc Amdts) Regs (NI) 26, reg 9; 2 reg 1

2. The change relates to how the interplay between the limited capability for work and work-related activity element or limited capability for work element and carer element impacts upon the erosion of the transitional element.

Limited capability for work and work-related activity element or limited capability for work element and the carer element

3. One cannot be in receipt of the limited capability for work and work-related activity element, or the limited capability for work element, at the same time as the carer element. When the claimant is entitled to the limited capability for work and work-related activity element and the carer element at the same time the claimant keeps payability of the limited capability for work and work-related activity element only. When the claimant is entitled to the limited capability for work element and the carer element at the same time the claimant keeps payability of the carer element only[1].

Note: The limited capability for work element is only available to those claimants in certain circumstances.

1 UC Regs (NI) 16, reg 30(4); UC (Misc Amdts & Trans and Savings Provs) Regs (NI) 17, Sch 2

Erosion of the transitional element

4. The transitional element erodes when there is an increase in any elements of the Universal Credit award (except the childcare costs element), including where a new element is introduced. The effect of erosion is that the Universal Credit award does not increase until the transitional element is eroded to nil[1].

1 UC (TP) Regs (NI) 16, reg 56(4)

5. However, due to the automatic loss of

    1. the carer element, where the limited capability for work and work-related activity element is also awarded **or**

2. the limited capability for work element, where the carer element is also awarded

the claimant could have their overall Universal Credit award decreased. They lose payability of one element entirely, and the increase of the new element could be absorbed through erosion of the transitional element.

6. This problem was addressed in the Great Britain Upper Tribunal judgment SSWP v MJ [2025] UKUT 035 (AAC), dated 29/1/25. The Judge found this interplay between the elements was discriminatory[1].

1 SSWP v MJ: [2025] UKUT 35 (AAC), para 139

Note: A similar effect may also occur where the claimant in **5.1** subsequently loses the limited capability for work and work-related activity element and regains the underlying carer element, or where the claimant in **5.2** subsequently loses the carer element and regains the underlying limited capability for work element. They lose one element but there may be no gain from the new element due to erosion of the transitional element.

The regulation change

7. These regulations solve the problem by eroding the transitional element by the amount of the element that is being added in the Universal Credit award minus the amount of the element being removed (if that total amount is positive) in these circumstances[1].

1 UC (TP) Regs (NI) 16, reg 56(5B)

Example

The claimant has the carer element (£209.34 per assessment period) and a transitional element (£500), these two elements totalling £709.34. They are later awarded the limited capability for work and work-related activity element, at the higher rate (£429.80). Therefore, the claimant loses payability of the carer element.

Using the old approach this claimant would have been left with £500 - they lose the carer element (minus £209.34), gain the limited capability for work and work-related activity element (plus £429.80), but the transitional element is eroded by the amount of the limited capability for work and work-related activity element (leaving a transitional element of £70.20). They are £209.34 worse off for gaining the limited capability for work and work-related activity element.

Using the new approach the transitional element erodes only by the amount of the added element (£429.80) minus the removed element (£209.34), so only by £220.46 (therefore leaving a transitional element of £279.54). The claimant ends up with £709.34. The same amount they started with.

Later, the claimant is found to not have limited capability for work. Therefore, they lose the limited capability for work and work-related activity element (minus £429.80). As they still have underlying entitlement to the carer element, payability is reinstated (plus £209.34).

Using the old approach the reinstatement of the carer element is an increase that would be eroded from the transitional element (leaving a transitional element of £70.20). The claimant would have £279.54.

Using the new approach the transitional element is eroded only by the amount of the added element (£209.34) minus the removed element (£429.80) if that results in a positive figure. As it does not result in a positive figure here the transitional element is not eroded at all. The claimant would have £488.88 (£209.34 carer element plus £279.54 transitional element).

The date of application

8. These regulations come into operation on 30/10/26. However, please see Dear DMA Team Leader Letter 6/25 (Rev) for guidance on applying the MJ Judgment directly in the period between 29/1/25 and 29/10/26.

Annotations

The number of this memo should be annotated against the following ADM paragraph: M7501

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