

To: **Secretary of State**

From: **NR** Benefit Cap Policy; and
NR Universal Credit and
Housing Support Team Lawyer



Department
for Work &
Pensions

SCS Clearance: **NR** Universal Credit Policy Division

Date: 25th September 2020

Benefit Cap

Summary

1. Due to the risks we face there is a case for reviewing the benefit cap levels soon and there may be an opportunity following your Uprating Review to agree an announcement on that with HMT. This submission provides further advice on this.
2. You have also asked for advice on the benefit cap, in particular advice on:
 - a. the logistics and timescales needed to undertake the statutory review of the benefit cap levels; and
 - b. the options to extend the grace period.

Timing

3. Urgent – if you agree with our recommendation we will need to begin early discussions with HMT about the potential for a review depending on the outcome of your Uprating Review and the decisions around the £20 per week uplift.

Recommendation

4. In light of the risks linked to the level of the benefit cap we recommend that you consider reviewing the benefit cap levels soon after decisions have been taken on uprating and the £20 per week uplift in the UC Standard Allowance and equivalents. Due to the delivery issues linked to extending the grace period we do not recommend taking this forward.

Key Information

Reviewing the benefit cap levels:

5. The aim of the benefit cap policy is to incentivise work and provide fairness by limiting working age benefit awards to ensure people do not get more from benefits than full-time work.
6. Each Parliament you are required to review the benefit cap levels unless an early election is called, i.e. the reason that last year's intended review did not go ahead. (See Annex A for more information on the statutory requirements)
7. There has been a lot of external pressure for the cap to be raised or even lifted altogether – both in light of hardships that families suffer as a result of COVID and more particularly because of the temporary increase in the Standard Allowance (SA) by the weekly equivalent of £20. There has been a recent increase in households in scope of the cap. This is not unexpected given:
 - The increases in UC SA, Working Tax Credits and the LHA rates.
 - The 4yr benefit freeze ending.
 - An unprecedented increase in the UC caseload.
8. In terms of timing there are two options available to review the levels:
 - a) you could ask the Chancellor to agree to a review of the benefit cap levels soon after up-rating decisions have been made;
 - c) you could leave the review to a later point in the parliamentary cycle.
9. We would recommend option a, for the reasons set out in the Legal considerations below.
10. A number of Pre Action Protocol letters have been received suggesting the decision not to increase the cap levels in line with the COVID related benefit increases was irrational and/or discriminatory. We will, of course, continue to defend challenges.

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because the combination would bring more households into the scope of the cap and there are also cases where, for example, standard allowance increases interact with the cap in such a way that claimants see a decrease in their UC payment. Also, in 2016 it seemed likely that Parliament envisaged that a review of the levels would be carried out within the following 5 years.
11. These risks relate to the procedural obligation to carry out a review of the levels. The risks involved in any particular decisions taken as part of that review is a separate question and will depend on the evidence available and the factors set out at Annex A as at the time of the review. Although initial indications are that

the evidence is likely to point to an increase in levels, you will want to consider all the available evidence before reaching a conclusion.

12. The as yet unpublished evaluation of the lower cap levels found that, although we see a positive additional work impact for capped households, the work incentive does not necessarily increase if the cap levels are reduced and the associated cap deduction increases above £150 per week. As such if Ministers are minded to increase benefits because claimants need more money, it becomes more difficult to argue that the cap levels set in 2016 are still appropriate.
13. It is worth noting that the obligation applies to a review of the levels. However, the review could also consider other changes to the benefit cap policy as well as, or instead of, changes to the levels if you so minded.
14. The risk of not undertaking a review of the benefit cap levels following your Up-rating Review and decisions around the £20 per week uplift, or if you consider the economic position still to be too volatile, could be mitigated if there was an announcement of when a statutory review would eventually take place. If the department planned to review the levels and effect changes from Summer 2021, for example, there may be little incentive in bringing a challenge. However, the sooner the review takes place after any potential changes to benefit rates, the more effective it will be as a mitigation tool.

Logistics of a review:

15. A review of the benefit cap levels does not need to be a lengthy process because, as previously mentioned, we have already begun detailed evidence gathering and analysis. In terms of the duration of the review, we just need to be able to show full and proper consideration of the issues. There are no prescribed requirements other than those set out at Annex A.
16. If you decide to increase the levels, both affirmative and negative legislation will be required. Last year the plan was to incorporate the changes in the up-rating legislation and implement them at the same time as the benefit rate changes took effect. If timings allow it would be preferable, for handling and logistical purposes, to work to similar timescales. If, however, the timing of the review activities does not align with this we will need to seek separate PBL agreement and identify separate operational implementation timescales (across both Universal Credit and Housing Benefit).

Extending the Grace Period for the benefit cap:

17. At the budget meeting on the 8th September, you expressed an interest in extending the benefit cap grace period and also in lowering the earnings threshold. While policies that involve changing rates of elements in UC are still possible, any change that involves a more complex adjustment is not currently deliverable. We have explored this option and changing the grace period or earnings threshold would fall into the category that would require significant build work and is not therefore deliverable at this time.

Financial Implications

18. There are no financial implications from reviewing the benefit cap, but any proposed changes to the levels or structure of the benefit cap with AME implications would need to be agreed with HMT. More generally, HMT officials will likely take a keen interest in any review of the benefit cap.

Handling Considerations

19. Since the pandemic there has been added media, parliamentary and stakeholder interest in the benefit cap and reasons why it has remained unchanged during the current situation. We continue to work with press office colleagues to ensure lines are up to date.

Service Delivery Implications

Review of benefit cap levels

20. There are no service delivery implications at this stage

Extending the grace period

21. As above this would require significant build work and is not therefore deliverable at this time

Public Sector Equality Duty

22. There are no equality implications to consider at this time however a detailed Equality Analysis will be provided as part of any review in due course.

Devolution Implications

23. There are no devolution implications.

Next steps

24. If you agree we will ensure your preference is flagged to Treasury colleagues at every available opportunity. Once up-rating decisions, and decisions relating to the £20 per week uplift, are taken and you are minded to review the benefit cap levels, we will provide further advice and evidence to support the review together with an implementation timetable.

Annex

Statutory obligation

- Under section 96A of the Welfare Reform Act 2012, the Secretary of State must, at least once in each Parliament (i.e. by December 2024), review the benefit cap limits to determine whether it is appropriate to change them. Following the review, affirmative regulations are required to amend the Welfare Reform Act 2012 with consequential 'negative' amendments to the HB Regulations and the UC regulations.
- The cap levels have not been reviewed since they were lowered from November 2016. The duty to review does not apply if an early election is called. In carrying out the review, the Secretary of State must take into account "*(a) the national economic situation; and (b) any other matters that [she] considers relevant*".
- The '*national economic situation*' is not defined in legislation however during debates on the Welfare Reform and Work Bill in 2015-16, Ministers told Parliament that the review would be sensitive to the key objectives of the cap, and could take into account factors such as:
 - The wider impacts of the cap on families, children, disabled people and carers;
 - Earnings;
 - Housing costs;
 - Inflation;
 - Benefit rates;
 - The strength of the labour market.
- "*other matters that the Secretary of State consider relevant*" may be the stated welfare priorities:
 - addressing poverty and overall benefit sufficiency,
 - Improving financial resilience
 - incentivising work and supporting labour market recovery and
 - boost consumption and providing economic stimulus.