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Public Law Project House of Commons second reading briefing on the Social Security (Additional Payments) (No. 2) Bill

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Summary and recommendations

1. The Social Security (Additional Payments) (No. 2) Bill (“The Bill”) makes provision for additional payments to help vulnerable households with the soaring costs of living in the 2023/24 financial year. These payments will go to people receiving means-tested benefits and disability benefits. Equivalent legislation was passed for the 2022/23 year.
2. The Bill provides for three means-tested additional payments over 12 months totaling £900. Eligibility for each payment is determined separately and is conditional on the “qualifying entitlement” - individuals will only be eligible if they received a benefit within a month from a specified date. This condition means that certain groups will be excluded from receiving the payments.
3. The Bill provides much-needed support for those most impacted by the cost-of-living crisis, but it leaves out some of the most vulnerable for arbitrary or technical reasons. Changes should be made to ensure that the support offered is fair and reflects the needs of society.
4. PLP recommends that the Bill is amended to ensure that those who need it are not excluded from support by:
 - Extending the qualifying period for eligibility
 - Including sanctioned UC recipients within the scope of automatic entitlement
 - Creating a discretionary fund for groups not within the remit of the default scheme

Vulnerable groups excluded from support

5. PLP welcomes the Bill in that it will provide substantial support for over 8 million families in the UK.¹ However, as it currently stands, the Bill would exclude some vulnerable groups from support:

Sanctioned Universal Credit recipients

6. Universal Credit (“UC”) recipients can be sanctioned for minor failings, such as missing or being late to an interview (97.6% of all sanctions). These could result in the full UC entitlement being taken away for a certain time period. As the Bill currently stands, to qualify for the Cost of Living Payment, the claimant must be entitled to at least 1p in the month preceding the date specified by the Secretary of State.
7. Many of those who have a sanction imposed receive a “nil” award, which means they do not receive the payment, despite having an underlying entitlement to Universal Credit for that period. Although the most recent average sanctions’ length has not been published by the Government,² it was 30 days between August 2015 and November 2017.³ This suggests there would be a lot of people for whom the sanction period exceeds the qualifying month for the Cost of Living Payment. Last year, it

¹ <https://www.gov.uk/government/news/over-8-million-families-in-the-uk-to-receive-new-cost-of-living-payment-this-spring>

² <https://questions-statements.parliament.uk/written-questions/detail/2022-10-31/74765>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682635/benefit-sanctions-statistics-to-october-2017.pdf

was estimated that 6600 households missed out on the Cost of Living payment due to a sanction.⁴

8. When asked about the exclusion of this group, DWP's only explanation was that the unsophisticated character of the payment system made inclusion impossible.⁵ PLP's position is that the administrative difficulty of issuing the payment is not a sufficiently good reason for excluding those who need it from lifeline support. This issue was raised a year ago when the equivalent policy for 2022/2023 was introduced, which has provided sufficient time to adjust the system.
9. Depriving sanctioned UC recipients of the Cost of Living Payment effectively leads to a double punishment for whatever (usually minor) misstep was the basis for the sanction; first the person's UC entitlement is suspended, then they are excluded from additional vital support. In the criminal context, the right not to be tried/punished twice for the same offence is a fundamental human right.⁶
10. By definition, sanctioned claimants who have had their Universal Credit entitlement suspended are one of the most vulnerable groups; it is vital that these individuals are not excluded from life-line support.

People with fluctuating income

11. Those who earned more than a qualifying sum for means-tested benefits are excluded from entitlement to Cost of Living Payments under the Bill, even if this is caused simply by:
 - earning slightly more than usual in the qualifying month, which pushes them out of UC eligibility (e.g., by receiving a "one-off" bonus from their employer), or
 - the way in which they were paid (e.g. had more than a month's earnings captured in the qualifying assessment period).⁷

People on contributory Employment Support Allowance (ESA)

12. Those who receive contributory Employment Support Allowance ("ESA"), rather than Universal Credit, will not receive the Cost of Living Payment as it is not a means-tested benefit. The rationale for excluding this group is that they "may" have financial resources available to them. However, many people on contributory ESA have health problems or are disabled, which are the groups most affected by the cost of living crisis.⁸
13. PLP's position is that more should have been than to assess the impact of not including this group within the scheme. Below are questions Angela Eagle DBE asked the DWP concerning the reason why this group is left out and what impact assessment has been made in relation to this decision:
 - Rationale for Exclusion
 - Absence of Impact Assessment

⁴ <https://questions-statements.parliament.uk/written-questions/detail/2022-09-02/45953>

⁵ Question 18 <https://committees.parliament.uk/oralevidence/12500/pdf/>

⁶ Article 4 of the Protocol 7 to the European Convention of Human Rights
https://www.echr.coe.int/Documents/Convention_ENG.pdf

⁷ https://www.bath.ac.uk/publications/universal-credit-working-claimants-and-the-governments-cost-of-living-support/attachments/Universal_Credit__Working_Claimants_and_the_Govt_s_Cost_of_Living_Support.pdf

⁸ <https://www.economicsobservatory.com/how-is-the-cost-of-living-crisis-affecting-disabled-people-in-the-uk>

Recommendations

1. Extending the qualifying period for eligibility

14. There are three payments planned throughout approximately 12 months from Spring 2023 to Spring 2024. It is counterintuitive that only three out of the 12 months will have a bearing on eligibility. It would be preferable to extend the qualifying period to from one month to two for the qualifying periods.
15. This would constitute an adequate safeguard to ensure payments are not made to people in stable employment who no longer need it, whilst mitigating the risk that people on fluctuating incomes not receiving the payments because of short-term increase in pay. It would also reduce the risk that sanctioned claimants are excluded from support.

2. Including sanctioned UC recipients within the scope of automatic entitlement

16. Those who have a UC sanction imposed are often vulnerable and disengaged from the system. There is a possibility that, even if a discretionary fund was open, many sanctions claimants might not apply for this support due to lack of knowledge, support or administrative difficulties. It is, therefore, preferable that this group receives an automatic payment.

Proposed amendment:

Changing section 2(1)(a) to:

“2 Qualifying entitlements: social security benefits

(1) A person has a qualifying entitlement to a social security benefit in respect of a qualifying day if –
(a) in respect of universal credit:

(i) the person is entitled to a payment of at least 1p in respect of an assessment period ending during the period of one month ending with the qualifying day; or

(ii) the person would have been entitled to the 1p payment in the above period but is barred from receiving it due to a benefit sanction.”

3. Creating a discretionary fund for groups not within the remit of the default scheme.

17. We recommend the provision of an alternative scheme for those who, by virtue of fluctuating outcomes or benefit sanctions, miss out on the 2023/2024 Cost of Living Payments. We note that such a scheme has previously been used in similar contexts to address the limitations of a default policy. For the 2022/2023 payment, a Discretionary Assistance Fund (DAF) was introduced in Wales for those suffering financial hardship.⁹ Similarly, alternative funds have been available to those with alternative energy suppliers as a part of energy support packages.¹⁰ This alternative fund was provided even though the policy was developed at a rapid speed.

⁹<https://www.gov.wales/discretionary-assistance-fund-daf>

¹⁰ <https://www.gov.uk/government/news/households-businesses-and-organisations-off-the-gas-grid-to-receive-energy-bill-support-over-the-coming-weeks>



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