

# **EXPLANATORY MEMORANDUM TO THE**

## **THE EMPLOYMENT AND SUPPORT ALLOWANCE AND UNIVERSAL CREDIT (CORONAVIRUS) REGULATIONS (NORTHERN IRELAND) 2020**

**2020 No. 33**

### **1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Communities (DfC) on behalf of the Department for Work and Pensions and is laid before Parliament by the Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

### **2. Purpose of the instrument**

- 2.1 The purpose of this instrument is, to make provision for those claiming or entitled to employment and support allowance and/or universal credit so as to provide additional support which helps both individuals and the wider economy weather the financial impacts arising from the Covid-19 outbreak.
- 2.2 The changes are also designed to remove the need for any face to face contact with those who are self-isolating or who have contracted the virus, and to reduce incentives to continue working or not comply with advice to self-isolate.

### **3. Matters of special interest to Parliament**

- 3.1 Matters of special interest to the Joint Committee on Statutory Instruments
- 3.2 These are emergency regulations in relation to the Government's response to Covid-19. These regulations will invoke the urgency procedure and will be made without first submitting to the Social Security Advisory Committee.
- 3.3 This SI will breach the 21day rule as it will come into force on the day after it is made. This SI will give certainty to individuals who satisfy the conditions of entitlement that they will be eligible for payment of Employment and Support Allowance and/or Universal Credit if they are unable to work because they are following government advice. We are bringing the SI into force as soon as possible after it has been made and laid to ensure that it benefits as many people affected by Covid-19 as possible. If the SI was not brought into force immediately people who claim employment and support allowance would have to serve waiting days, and would not be entitled to benefit for the first 7 days of their claim. This may deter people claiming employment and support allowance and instead they may be inclined to continue working, against government advice to self-isolate. This in turn has implications for the wider general public and the government is trying to contain the spread of the virus as far as possible. The SI also enables claimants to be treated as having limited capability for

work if one of the conditions applies. If this provision was not brought into force immediately then claimants would be required, by legislation, to provide medical evidence to support their claim for benefit. This again would have implications for the general public as claimants would need to visit their doctor's surgery to obtain medical evidence putting other members of the public at risk of infection.

- 3.4 The impact of delaying these regulations in order to comply with 21-day rule is that people may be inclined to continue working rather than claim benefit or would visit their GP to obtain medical evidence which means that the virus could be spread to other members of the public.

***Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)***

- 3.5 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is Northern Ireland.  
4.2 The territorial application of this instrument is Northern Ireland.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

**6. Legislative Context**

- 6.1 The instrument makes provision in relation to persons who claim or are entitled to employment and support allowance or universal credit and who have Covid-19, are in isolation because of Covid-19 or are caring for a child who has Covid-19 or is in isolation.

**7. Policy background**

***What is being done and why?***

- 7.1 As part of the Government's strategy of supporting people affected by Covid-19, several changes included in the instrument. These include:
- a. Removing waiting days in Employment and Support Allowance for those affected by the virus. This ensures that support is provided as early as possible to those who are affected and seeks to remove incentives for people to keep working and/or fail to isolate.
  - b. Ensuring that claimants to Employment and Support Allowance and/or Universal Credit can be treated as having Limited Capability for Work without the requirement for any medical evidence or to undergo a work capability assessment. This ensures that those affected by the virus can be paid Employment and Support Allowance, if they otherwise would not be eligible, because they were not able to

work because of a health condition or disability. It also ensures that work search and work availability requirements within Universal Credit are switched off, and provides access to other support within Universal Credit such as a work allowance and childcare support for those with partners who are still able to work. By treating claimants as having Limited Capability for Work, those that are self-employed will also not have the Universal Credit Minimum Income Floor applied for the period of time that they are treated as having Limited Capability for Work.

- c. Providing additional flexibility to continue to revise the application of the Minimum Income Floor for those self-employed people for a period of time that is at the discretion of the Secretary of State. This ensures that any longer term effects to those who are self-employed is reduced.
- 7.2 Section 87 of the [Northern Ireland Act 1998](#) (“the 1998 Act”) places a statutory duty on the Minister for Communities and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for the United Kingdom. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.
  - 7.3 Underpinning the parity principle is the argument that, as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain, they are entitled to the same rights and to benefits paid at the same rate.
  - 7.4 The Welfare Reform Act 2012<sup>1</sup> provides for the introduction of a new working age income-related social security benefit, Universal Credit, and the abolition of JSA(IB), ESA(IR), IS, Housing Benefit (HB), Working Tax Credit and Child Tax Credit (CTC).
  - 7.5 On 17 November 2015 “[A Fresh Start: The Stormont Agreement and Implementation Plan](#)” was agreed by the main political parties in Northern Ireland. Included in this agreement was the approach agreed by the Executive and HM Government to implementing welfare reform in Northern Ireland. The [Northern Ireland \(Welfare Reform\) Act 2015](#) provided a time-limited power for Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council could then confer power on the Secretary of State or a Northern Ireland department to make further provision regarding these matters by regulations or order.
  - 7.6 In line with the consent given by the Northern Ireland Assembly in relation to the 2015 Act, in recognition of the urgency to provide specific statutory cover for claims from those affected by the Coronavirus including those who are not themselves unwell, the Department for Work and Pensions will be laying this instrument on behalf of Northern Ireland in order to deliver the change equally across both Great Britain and Northern Ireland.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

---

<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2012/5/contents>

## **9. Consolidation**

9.1 As this is a temporary measure consolidation is not being undertaken.

## **10. Consultation outcome**

10.1 Given the urgency of these regulations, no consultation has been undertaken.

## **11. Guidance**

11.1 The instrument will refer to guidance issued by the Chief Medical Officers in relation to coronavirus

## **12. Impact**

12.1 This change does not negatively impact claimants. A full Impact Assessment has not been produced for this instrument as no, or no significant, impact on business, or the private, voluntary or public sector, is foreseen.

## **13. Regulating small business**

13.1 The legislation may apply to small business, where they are self-employed and come to UC, as outlined above.

## **14. Monitoring & review**

14.1 The Department is firmly committed to evaluating and monitoring the impact of its policies. To do this the Department will constantly consider whether further changes are required in line with CMO guidance while the Covid-19 outbreak continues.

## **15. Contact**

15.1 Anne McCleary at the Department for Communities can answer any queries regarding the instrument. Email: Anne.McCleary@communities-ni.gov.uk

15.2 Kerstin Parker at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Thérèse Coffey, Secretary of State at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.