

**EXPLANATORY MEMORANDUM TO**  
**THE EMPLOYMENT AND SUPPORT ALLOWANCE (MISCELLANEOUS**  
**AMENDMENTS AND TRANSITIONAL AND SAVINGS PROVISION)**  
**REGULATIONS 2017**

**2017 No. 581**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument makes minor amendments to the following regulations:

- The Employment and Support Allowance Regulations 2008;<sup>1</sup>
- The Employment and Support Allowance Regulations 2013;<sup>2</sup>
- The Social Fund (Cold Weather Payments) (General) Regulations 1988;<sup>3</sup>
- The Jobseeker's Allowance Regulations 1996;<sup>4</sup>
- The State Pension Credit Regulations 2002;<sup>5</sup>
- The Housing Benefit Regulations 2006;<sup>6</sup>
- The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006;<sup>7</sup> and
- The Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regulations 2017.<sup>8</sup>

to ensure that the policy intent across these regulations is clearly expressed following amendments made by the Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regulations 2017.

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

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2008/794>

<sup>2</sup> <http://www.legislation.gov.uk/uksi/2013/379>

<sup>3</sup> <http://www.legislation.gov.uk/uksi/1988/1724>

<sup>4</sup> <http://www.legislation.gov.uk/uksi/1996/207>

<sup>5</sup> <http://www.legislation.gov.uk/uksi/2002/1792>

<sup>6</sup> <http://www.legislation.gov.uk/uksi/2006/213>

<sup>7</sup> <http://www.legislation.gov.uk/uksi/2006/214/contents>

<sup>8</sup> <http://www.legislation.gov.uk/uksi/2017/204>

#### **4. Legislative Context**

4.1 The Employment and Support Allowance (ESA) work-related activity component and the Universal Credit (UC) limited capability for work element are no longer included in awards of these benefits from 3 April 2017, when sections 15 and 16 of the Welfare Reform and Work Act 2016<sup>9</sup> were commenced. This instrument makes amendments to the Employment and Support Allowance Regulations 2008, the Employment and Support Allowance Regulations 2013, the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 to remove any ambiguity around the amount of benefit that Employment and Support Allowance (ESA) claimants, including those that also claim Housing Benefit, under the age of 25 are entitled to, once they have undergone a work capability assessment and entered main phase ESA, that may have arisen from removing references to the work-related activity component.

4.2 They also:

- remove an incorrect reference to the Employment and Support Allowance Regulations 2013 in relation to cold weather payments;
- make minor amendments to delete an inert phrase in the Housing Benefit Regulations 2006;
- correct a typographical error in the State Pension Credit Regulations 2002;
- make clear that for the purposes of Schedule 2 of the Jobseeker's Allowance Regulations 1996 that someone in receipt of ESA and a member of the work-related activity group can be a disabled person; and
- amend the Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional Savings Provisions) Regulations 2017 to clarify
  - the definition of a claim; and
  - that claimants receiving Incapacity Benefit who are converted to ESA on or after 3 April 2017 continue to be entitled to the extra elements, including those who are initially placed in the Support Group.

#### **5. Extent and Territorial Application**

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is Great Britain.

5.3 Equivalent legislation will be taken forward for Northern Ireland in due course.

#### **6. European Convention on Human Rights**

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

#### **7. Policy background**

7.1 When ESA was introduced in 2008, the work-related activity component was originally intended to act as an incentive to encourage people to participate in employment related activity and therefore return to work more quickly. While over 50 per cent of Jobseeker's Allowance claimants leave the benefit within three months, the

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<sup>9</sup> <http://www.legislation.gov.uk/ukpga/2016/7>

Department's administrative data shows that only around 1 per cent of people in the work-related activity group leave ESA benefit each month, so that policy was not working as intended.

- 7.2 The Government announced in Summer Budget 2015,<sup>10</sup> reforms to ESA to provide greater incentives and additional funding to help claimants return to work and support the Government's commitment to halve the disability employment gap. Similar changes were made to Universal Credit (UC), which is replacing income-related ESA. Aligning the rate of benefit paid in respect of new claims for Employment and Support Allowance (ESA) and Universal Credit (UC) where the claimant has limited capability for work with the standard rate paid to claimants who are capable for work from 3 April 2017, removes the financial disincentives that could otherwise discourage claimants from taking steps back to work.
- 7.3 This change is made in tandem with additional employment support worth £60m a year in 2017/18 rising to £100m by 2020/21; details of which were set out in the Work, Health and Disability Green Paper.<sup>11</sup> Extra funding of £15m a year for the Flexible Support Fund in 2017/18 and 2018/19 is also being made available. This will specifically help claimants with limited capability for work with extra costs that can be involved in moving closer to the labour market and, where they are ready, into work.
- 7.4 To improve work incentives the 52-week permitted work limit<sup>12</sup> that exists in ESA is also being removed from 3 April 2017. This change will allow claimants to continue to undertake up to 16 hours part-time paid work and earn up to £120.00 a week in order to gain skills, experience and build their confidence whilst still receiving the benefit, over a longer period.

#### ESA work-related activity component and UC limited capability for work element

- 7.5 From 3 April 2017, everyone who makes a new claim to ESA (both contributory and income-related) or a new claim to UC on the grounds of a health condition and who is determined as having limited capability for work, is affected by the changes unless they are protected by the transitional protections in the Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional Savings Provisions) Regulations 2017.

#### Consequential amendments

- 7.6 The Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional Savings Provisions) Regulations 2017 made a number of consequential amendments to Departmental and non-Departmental secondary legislation arising from the removal of the ESA work-related activity component and the UC limited capability for work element. The policy intent is that new claimants in these two groups will continue to benefit from such provisions in the same way as existing claimants despite no longer receiving the additional elements. These references relate to the eligibility criteria for some DWP benefits such as Housing Benefit and Cold Weather Payments, as well as Council Tax Reductions and student support governed by other departments. Entitlement to these benefits is based on

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<sup>10</sup> Announced by the Chancellor of the Exchequer in his Summer Budget speech on 8 July 2015.

<sup>11</sup> <https://www.gov.uk/government/consultations/work-health-and-disability-improving-lives>

<sup>12</sup> See SI 2017/205 The Employment and Support Allowance (Exempt Work & Hardship Amounts) (Amendment) Regulations 2017 <http://www.legislation.gov.uk/uksi/2017/205/contents/made>

whether or not a claimant has limited capability for work, rather than receipt of the ESA work-related activity component and the UC limited capability for work element.

7.7 This instrument makes minor amendments to Regulations to:

- ensure that Employment and Support Allowance (ESA) claimants, including those that also claim Housing Benefit (HB), under the age of 25 receive the higher over-25 rate of benefit, as intended once they have undergone a work capability assessment and entered main phase ESA;
- remove an incorrect reference to Employment and Support Allowance Regulations 2013 in relation to cold weather payments. This is not required as the 2013 regulations only apply to contributory ESA;
- remove a duplicate, and therefore unnecessary phrase regarding being engaged in remunerative work, in the Housing Benefit Regulations 2006;
- remove a typographical error [“] in Schedule 2 of the State Pension Credit Regulations 2002;
- clarify that the definition of a claim for the purposes of the Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regulations is one that is made in accordance with the relevant regulations in the Social Security (Claims and Payments) Regulations 1987<sup>13</sup> and the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013;<sup>14</sup>
- clarify that for the purposes of Schedule 2 of the Jobseeker’s Allowance Regulations 1996 someone in receipt of ESA and a member of the work-related activity group can be a disabled person; and
- clarify that all Incapacity Benefit claimants, including those who are initially placed in the support group on conversion to ESA on or after 3 April 2017 continue to be entitled to the extra elements.

### ***Consolidation***

7.8 Informal consolidated text of instruments is available to the public free of charge via “the National Archives” website - [legislation.gov.uk](http://legislation.gov.uk).

## **8. Consultation outcome**

8.1 The Department has not formally consulted on these minor amendments which are being made to ensure that the policy intent across the regulations amended by the Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional Savings Provisions) Regulations 2017 are clearly expressed. The primary provisions were contained in the Welfare Reform and Work Act 2016 and have been subject to extensive parliamentary scrutiny. The Department also informally consulted the Social Security Advisory Committee on the Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional Savings Provisions) Regulations 2017.

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<sup>13</sup> <http://www.legislation.gov.uk/uksi/1987/1968>

<sup>14</sup> <http://www.legislation.gov.uk/uksi/2013/380/content>

8.2 The Local Authority Associations were consulted about the effects of the minor amendments to the Housing Benefit Regulations and their comments were taken into account.

## **9. Guidance**

9.1 Guidance was developed for the Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional Savings Provisions) Regulations 2017 to support advisers, decision makers and Local Authorities. The Advice for Decision Making and the Decision Makers Guide are published on the DWP website and have been updated. No further guidance changes are required for the amendments.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

12.1 The Department is committed to monitoring the impacts of its policies and will use evidence from a number of sources on the experiences and outcomes of the protected groups.

12.2 A Test and Learn approach has been implemented into Universal Credit which aims to continuously review and improve process, guidance and service. Within the Test and Learn approach, the effectiveness of guidance for work coaches relating to this change will be monitored, ensuring any improvements if necessary are implemented.

12.3 We will use administrative datasets, including the Department's Work and Pensions Longitudinal Study, to monitor trends in the benefit caseloads for the protected groups and in the level and distribution of benefit entitlements. The administrative data will provide robust material for age and sex although not, as a rule, for the other protected groups. Where it is practical we will endeavour to incorporate information for the other protected groups.

12.4 The Department will also use survey data, such as the Family Resources Survey (FRS) and Labour Force Survey (LFS), to assess trends in the employment outcomes of the protected groups. Both the FRS and LFS will collect information on age, disability, gender, ethnicity, sexual orientation, religion and civil partnerships.

12.5 The Department will:

- continue to monitor feedback from claimants through our normal feedback channels to assess whether there are unintended consequences or adverse consequences for protected groups and assess the broader impact of the policy changes;
- engage stakeholders through regular meetings to discuss progress of these measures and seek feedback about the changes and whether they are working as intended for claimants; and

- ask stakeholders to review the learning and development and operational guidance and any written communications to claimants that will support the change.
- 12.6 The Department is looking across its activities to identify and address further gaps in data provision, for protected groups, wherever reasonable.

### **13. Contact**

- 13.1 The following contacts at the Department for Work and Pensions can answer any queries relating to the following parts of this instrument:

Employment and Support Allowance changes

Fiona Dunn: [UC.DISABILITYPOLICY@DWP.GSI.GOV.UK](mailto:UC.DISABILITYPOLICY@DWP.GSI.GOV.UK)

Housing Benefit changes

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