

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT AND SUPPORT ALLOWANCE AND UNIVERSAL CREDIT
(CORONAVIRUS DISEASE) (AMENDMENT) REGULATIONS 2020

2020 No. 1097

1. Introduction

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

2. Purpose of the instrument

2.1 This Statutory Instrument extends the provisions in the [Employment and Support Allowance and Universal Credit \(Coronavirus Disease\) Regulations 2020 \(S.I. 2020/289\)](#)¹, from eight to fourteen months from the date on which they came into force (i.e. 13 March 2020), for those claiming or entitled to Employment and Support Allowance (ESA), in response to the continuing outbreak of Coronavirus disease in Great Britain. This Statutory Instrument applies to ESA only and does not extend the regulations in respect of Universal Credit².

2.2 The extension of these Regulations means they will now expire on 12 May 2021.

2.3 The Regulations ensure that ESA claimants who meet the eligibility conditions and are:

- infected with Covid-19, or
- self-isolating in line with government guidance, or
- are looking after a child (or qualifying young person) who falls into either of these categories,

can be treated as having Limited Capability for Work for the purposes of ESA without the requirement to provide medical evidence or undergo a Work Capability Assessment. The Regulations also remove the need for them to serve waiting days, enabling ESA to be paid from day one of the claim.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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)

3.2 As the instrument is subject to the 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.

¹ <https://www.legislation.gov.uk/ukSI/2020/289/contents>.

² Subsequent provision in regulation 10(3) of the Social Security (Coronavirus) (Further Measures) Regulations 2020 ([S.I. 2020/371](#)), which came into force on 30 March 2020, abolished the Universal Credit aspects of these Regulations.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England, Wales and Scotland only.
- 4.2 The territorial application of this instrument is England, Wales and Scotland only.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020, which came into force on 13 March 2020, will expire on 12 November 2020. This extension will ensure that ESA claimants who satisfy the eligibility conditions and have Covid-19, or are self-isolating because of Covid-19, or are caring for a child (or qualifying young person) who has Covid-19 or is self-isolating, in line with government guidance, will continue to be supported.
- 6.2 This instrument extends these provisions until 12 May 2021.

7. Policy background

What is being done and why?

- 7.1 There remains considerable uncertainty about when the Covid-19 pandemic will come to an end, but this is unlikely to be before the current Regulations are due to expire. We continue to receive ESA claims under the current Regulations, which play an important role in supporting people who might otherwise not be entitled to ESA because they do not have a health condition or disability, to self-isolate in accordance with public health guidance. In addition, people who are infected with Covid-19 would not receive payment of ESA until day 8 of their claim.
- 7.2 This extension of the original Regulations will allow us to continue to provide support and give certainty to those affected by the Covid-19 pandemic, as part of the Government's strategy.
- 7.3 By not extending the Regulations, people may be deterred from claiming ESA and instead they may be inclined to continue working, against government and public health advice to self-isolate. This in turn has implications for the wider general public and the Government who are trying to contain the spread of the virus as far as possible.

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.

9. Consolidation

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

10. Consultation outcome

- 10.1 The Social Security Advisory Committee decided that it did not require the proposed changes to be formally referred to it and, accordingly, the Committee did not conduct a public consultation exercise on them.

11. Guidance

- 11.1 Guidance will be issued to DWP staff to reflect the provisions in the Statutory Instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on business, or the private, voluntary or public sector, is foreseen.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to constantly consider whether further changes are required in line with Chief Medical Officers' guidance while the Covid-19 outbreak continues.

15. Contact

- 15.1 Joanne Ward at the Department for Work and Pensions can answer any queries regarding the instrument. Telephone: 020 7449 5039 Email: joanne.ward@dwp.gov.uk
- 15.2 James Wolfe 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.