

**EXPLANATORY MEMORANDUM TO**  
**THE EMPLOYMENT AND SUPPORT ALLOWANCE AND UNIVERSAL CREDIT**  
**(CORONAVIRUS DISEASE) (AMENDMENT) REGULATIONS 2021**

**2021 No. 1158**

**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, from 12 November 2021 until 24 March 2022, for those claiming or entitled to Employment and Support Allowance (ESA). This Statutory Instrument does not extend the regulations for Universal Credit<sup>1</sup>.

2.2 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 any medical evidence or undergo a Work Capability Assessment and removes 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.

**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 negative resolution procedure and does not amend primary legislation, no statement is required.

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<sup>1</sup> Subsequent provision in regulation 10(3) of the Social Security (Coronavirus) (Further Measures) Regulations 2020 which came in to force on 30 March 2020, abolished the UC aspects of these regulations and introduced more sweeping measures to provide support to UC claimants affected by Covid-19  
[https://www.legislation.gov.uk/ukxi/2020/371/contents?sm\\_au=iVV7fH7rSQP30J2rW2MN0K7K1WVjq](https://www.legislation.gov.uk/ukxi/2020/371/contents?sm_au=iVV7fH7rSQP30J2rW2MN0K7K1WVjq)

## **6. Legislative Context**

- 6.1 The Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020 (S.I. 2020/289<sup>2</sup>), which came into force on 13 March 2020, expired after eight months on 12 November 2020. These were subsequently extended for six months via SI 2020/1097<sup>3</sup> and a further six months via SI 2021/476<sup>4</sup>. They are now due to expire on 12 November 2021.
- 6.2 This instrument extends these provision until 24 March 2022

## **7. Policy background**

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

- 7.1 The Department continues to receive ESA claims under the Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020, 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 The Regulations, which came into force on 13 March 2020 and were further extended from 12 November 2020 and 12 May 2021, will expire on 12 November 2021. Further extending the expiry date in the regulations to 24 March 2022 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. 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.
- 7.3 By not extending the regulations, people who may not otherwise be entitled to ESA because they do not have a health condition or disability which limits their capability for work, and may instead 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 and Future Relationship**

- 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 As this is a temporary measure no consultation has been undertaken.

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<sup>2</sup> <https://www.legislation.gov.uk/ukxi/2020/289/contents/made>

<sup>3</sup> <https://www.legislation.gov.uk/ukxi/2020/1097/made>

<sup>4</sup> <https://www.legislation.gov.uk/ukxi/2021/476/contents/made>

## **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 continuously consider whether further changes are required in line with Chief Medical Officer's guidance while the Covid-19 outbreak continues.

## **15. Contact**

- 15.1 Martin Alcroft at the Department for Work and Pensions can answer any queries regarding the instrument. Email: [martin.alcroft@dwp.gov.uk](mailto:martin.alcroft@dwp.gov.uk)
- 15.2 Louise Everett Deputy Director at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Chloe Smith Minister for Disabled People at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.