

EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (EXCEPTIONS TO THE REQUIREMENT NOT TO BE RECEIVING EDUCATION) (AMENDMENT) REGULATIONS 2021

2021 No. 1224

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 The purpose of this instrument is to amend one of the exceptions to the requirement to not be receiving education which determines entitlement to Universal Credit (UC). This amendment provides that a person who is entitled to attendance allowance (AA), disability living allowance (DLA), child disability payment (CDP) or personal independence payment (PIP) must have been determined to have limited capability for work (LCW) **before** the person starts undertaking a course of education.
- 2.2 Following a review by the Secretary of State, this amendment closes off a ‘workaround’ whereby an *existing* disabled student, who does not have a pre-existing LCW determination, can make a claim to new-style (contributory) employment and support allowance (NS ESA) in order to be referred for a work capability assessment (WCA) so that, if the person is subsequently determined to have LCW, they could then claim and be entitled to UC - but this is contrary to the policy intent, as set at paragraphs 7.1 to 7.5 below.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments OR the Select Committee on Statutory Instruments OR the Sifting Committees]

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

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

This instrument amends regulation 14(1)(b) of the UC Regulations 2013¹ to require that a person who is entitled to AA, DLA, CDP or PIP will only satisfy the exception under this regulation if they were determined to have LCW on a date before the date

¹ <https://www.legislation.gov.uk/uksi/2013/376/regulation/14>

they started undertaking a course of education. Consequently, a person who has claimed NS ESA and been determined to have LCW will only meet this exception and be entitled to UC if they were determined to have LCW **before** they started undertaking a course of education, in the same way that a person on UC will only meet the exception if they were determined to have LCW before starting their course.

- 6.1 This instrument also amends regulations 19(2) and 19(4) of the Universal Credit (Transitional Provisions) Regulations 2014² to ensure that a disabled student who moves to UC from old-style (income related) ESA (OS ESA) is treated as having LCW for the purposes of regulation 14(1)(b) of the UC Regulations.

7. Policy background

What is being done and why?

- 7.1 The workaround, referred to at paragraph 2.2 above, is being closed off because it is contrary to the longstanding policy intent, which is that an existing UC claimant who is entitled to a qualifying disability benefit such as PIP and who has **already** been determined to have LCW can retain entitlement to UC if they subsequently start a course of education. The policy intention is that this will hopefully give such claimants who are already within the benefits system better future prospects of work, or better paid work, and help to reduce, or end, reliance upon UC support. The policy is to also provide ongoing support for disabled students who move to UC from OS ESA, in recognition of the different rules which applied under that benefit.
- 7.2 The primary source of financial support for all students comes from the student support system of loans and grants. This includes support which recognises a person's disability, such as the Disabled Students Allowance for those in higher education and discretionary bursaries and grants if undertaking further education. Disabled students also have access to discretionary Hardship Funds which are made available by universities and colleges.
- 7.3 Any disabled student who is not entitled to UC should continue to rely on financial help from the system of loans and grants, the level of which is determined by the Department for Education (DfE) in England and the Welsh and Scottish Governments. Students cannot normally satisfy the entitlement conditions for UC and exceptions are generally made where they have additional needs or responsibilities that are not met through the student support system, such as those responsible for a child.
- 7.4 If a person enters education before they make a claim for UC or NS ESA, they will not be entitled to UC but they may be entitled to NS ESA if they have paid sufficient national insurance contributions. Some UC claimants who receive a qualifying disability benefit, such as PIP, and entered education **after** being determined to have LCW may, depending upon their individual circumstances, be able to continue to receive an amount of UC in addition to their student finance. This will better the future prospects of work for this existing claimant group and to help reduce, or end, their reliance on UC support.
- 7.5 Whilst it is the case that the amending regulations will close the workaround and end a route to UC which a limited number of disabled students have been using to date, the Government nevertheless continues to support all disabled students through the

²<https://www.legislation.gov.uk/uksi/2014/1230/regulation/19>

system of loans and grants which includes support which recognises a person's disability.

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 Informal consolidated text or instruments is available to the public free of charge via the 'National Archive' website: www.legislation.gov.uk

10. Consultation outcome

- 10.1 The Department presented the draft regulations to the Social Security Advisory Committee (SSAC) on 13th October 2021. The Committee did not take the regulations on formal reference.

11. Guidance

- 11.1 Existing guidance will be reviewed and updated as necessary.

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 this change restores the policy intent. 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 that the Department is firmly committed to continuously evaluating and monitoring the impact of its policies.
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Mark Vidic at the Department for Work and Pensions, Telephone: 0113 3668072 or email: Mark.Vidic1@dwp.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Graeme Connor, Deputy Director for Universal Credit Policy at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Chloe Smith, Minister of State for Disabled People, Health and Work at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.