

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT AND SUPPORT ALLOWANCE AND UNIVERSAL CREDIT
(MISCELLANEOUS AMENDMENTS AND TRANSITIONAL AND SAVINGS
PROVISIONS) REGULATIONS 2017

2017 No. 204

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 Following the passage of the Welfare Reform and Work Act 2016¹, this instrument makes consequential amendments to the Regulations below:

- the Employment and Support Allowance Regulations 2008 (S.I. 2008/794²);
- the Employment and Support Allowance Regulations 2013 (S.I. 2013/379³);
- the Universal Credit Regulations 2013 (S.I. 2013/376⁴); and
- the Housing Benefit Regulations 2006 (S.I. 2006/213⁵)

and other secondary legislation in order to omit references to the Employment and Support Allowance work-related activity component and the Universal Credit limited capability for work element which are no longer included in awards of these benefits from 3 April 2017.

2.2 The instrument also sets out certain circumstances in which claimants will retain the work-related activity component or the limited capability for work element.

2.3 Additionally, it amends the Universal Credit Regulations 2013 to require DWP work coaches to take into account the childcare responsibilities of responsible carers when setting an individual's work-related requirements.

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 and is not expected to be scheduled for debate, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

¹ <http://www.legislation.gov.uk/ukpga/2016/7>
² <http://www.legislation.gov.uk/uksi/2008/794>
³ <http://www.legislation.gov.uk/uksi/2013/379>
⁴ <http://www.legislation.gov.uk/uksi/2013/376>
⁵ <http://www.legislation.gov.uk/uksi/2006/213>

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 will no longer be included in awards of these benefits from 3 April 2017, when sections 15 and 16 of the Welfare Reform and Work Act 2016 are commenced. As well as making consequential amendments, the instrument provides for claimants receiving the work-related activity component or the limited capability for work element at the point of change (3 April 2017), and certain others such as Incapacity Benefit claimants who are in the conversion process to ESA, to continue to be entitled to the extra elements.
- 4.2 UC replaces income-related ESA once fully rolled out. As a result, the relevant legislation has been amended so that the ESA work-related activity component and the UC limited capability for work element will no longer be payable to claimants who make a claim on or after 3 April 2017 who are found to have limited capability for work following a work capability assessment. This instrument will protect existing ESA and UC claimants claiming on limited capability for work grounds before 3 April 2017 from reductions in benefit. These claimants will continue to be entitled to the ESA work-related activity component or UC limited capability for work element as long as they continue to be entitled to ESA or UC and have limited capability for work.
- 4.3 Section 17 of the Welfare Reform and Work Act 2016 amends Chapter 2 of Part 1 of the Welfare Reform Act 2012⁶ (claimant responsibilities) so that: responsible carers with a child aged 3 or 4 are subject to all work-related requirements⁷; and responsible carers with a child aged 2 may be required to undertake work-focused interview requirements⁸ and work preparation requirements⁹.
- 4.4 Regulation 88 of the Universal Credit Regulations 2013 (expected hours) is clarified to ensure work coaches take into account the childcare responsibilities of responsible carers of a child below compulsory school age when setting work-related requirements. This is intended to provide a safeguard to ensure that parents with a child below compulsory school age have requirements set as part of their benefit conditionality which take into consideration their caring responsibilities.

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 Subject to the agreement of the Northern Ireland Assembly, the Department for Communities in Northern Ireland will be introducing its own corresponding legislation for Northern Ireland.

⁶ <http://www.legislation.gov.uk/ukpga/2012/5/contents>

⁷ All Work Requirement will support claimants to meet their requirements as set out in their Claimant Commitment to search for and secure work.

⁸ Work Focused Interviews will help claimants focus on their future in work and the steps they can take to prepare for this.

⁹ Work Preparation will keep the claimant motivated by preparing them to return to work as soon as they are able, taking into account their capability.

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 Employment and Support Allowance (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 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 the existing policy is not working as intended.
- 7.2 The Government announced in Summer Budget 2015¹⁰, 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 are being made to Universal Credit (UC). Aligning the rate of benefit paid in respect of new claims for ESA and UC on the grounds of having limited capability for work, with the standard rate paid to claimants who are capable of work, from 3 April 2017, will remove the financial disincentives that could otherwise discourage claimants from taking steps back to work.
- 7.3 Additional employment support worth £60m a year in 2017/18 rising to £100m by 2020/21 is being made available; details are set out in the Work, Health and Disability Green Paper¹¹. 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 limit¹² 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 entitled 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, would be affected by the changes. In addition, existing UC claimants whose circumstances change such that they will be claiming because of a health condition or disability and are then determined as having limited capability for work will not receive the additional element.

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

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

¹² 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>

- 7.6 This instrument sets out the circumstances in which Employment and Support Allowance (ESA) and Universal Credit (UC) claimants will be protected. This includes claimants:
- already receiving the work-related activity component or limited capability for work element;
 - who have made or are treated as having made their claim for ESA or UC before 3 April 2017 but who are awaiting an assessment on their capability for work or work-related activity;
 - who have made their claim before 3 April 2017 and have requested a mandatory reconsideration or appealed a decision that they are fit for work and as a result found to have limited capability for work.

- 7.7 The Department estimates around 55,000 new claimants will be affected by the changes to ESA and UC on the grounds of a health condition in 2017/18. This rises to: 110,000 in 2018/19; 160,000 in 2019/20; and 190,000 in 2020/21.

Parental conditionality

- 7.8 The Government is committed to ensuring that all households are able to participate fully in society. Providing additional support for parents to move into work, and conditionality requiring them to engage with it enables them to take financial responsibility for themselves and their children. Employment among lone parents increased as conditionality was extended to those with children aged 5 and over, but it remains low for parents of younger children.
- 7.9 Since 2010, over 100,000 additional parents moved into work. Evidence finds that parents who have conditionality are more likely to move into work¹³. Extending support to parents of children below compulsory school age will enable more households to move into work. The changes are intended to provide a safeguard to ensure that parents with a child below compulsory school age have requirements set as part of their benefit conditionality which take into consideration their caring responsibilities.

Consequential amendments

- 7.10 This instrument makes a number of consequential amendments to Departmental and non-Departmental secondary legislation that arise due to 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

13 Lone Parent Obligations: a review of evidence on the work-related requirements within the benefit systems of different countries, Finn, D and Gloster, R, 2010, DWP Research Report 632;

- Lone Parent Obligations: early findings of implementation as well as experiences of the Income Support and Jobseeker's Allowance regimes, by Gloster R et al, 2010, DWP Research Report 645;
- Lone Parent Obligations: destinations of lone parents after Income Support eligibility ends, Casebourne et al, 2010, DWP Research Report 710;
- Lone Parent Obligations: supporting the journey into work, Coleman, N and Lancelley, L, 2011, DWP Research Report 736;
- Lone Parent Obligations: work, childcare and the Jobseeker's Allowance regime, Lane et al, 2011, DWP Research Report 782;
- Lone Parent Obligations: following lone parents' journeys from benefit to work, Coleman, N and Riley, T, 2012, DWP Research Report 818;
- Lone Parent Obligations: an impact assessment, Avram et al, 2013, DWP Research Report 845.

benefits will be based on whether or not a claimant has limited capability for work, rather than receipt of the Employment and Support Allowance (ESA) work-related activity component and the Universal Credit (UC) limited capability for work element.

Consolidation

- 7.11 Informal consolidated text of instruments is available to the public free of charge via “the National Archive” website - legislation.gov.uk.

8. Consultation outcome

- 8.1 The Department has not formally consulted on the proposed protections for existing ESA and UC claimants from the removal of the additional amounts for those with limited capability for work. The provisions were contained in the Welfare Reform and Work Act 2016 and have been subject to extensive parliamentary scrutiny. The Department has also informally consulted the Social Security Advisory Committee. Departmental officials attended meetings with the Committee and have considered points made by the Committee about making sure that people who are claiming before 3 April 2017 are able to retain access to the additional payments thereafter.
- 8.2 In addition, to help determine how the new additional employment support of £60m in 2017/18 will be spent on those affected by the proposed changes, the Government established a Task Force of experts from:
- disability charities;
 - disabled people’s user-led organisations;
 - employers;
 - think tanks;
 - provider representatives; and
 - local authorities.
- 8.3 Detail of the employment support package were published in “Improving Lives, the Work, Health and Disability Green paper¹⁴”. The support will comprise a mixture of contracted provision, new support delivered through jobcentres, as well as new work to continue to build the evidence base for this group.
- 8.4 The Local Authority Associations were consulted about the effects of the proposed changes on the Housing Benefit Regulations and had no comments.
- 8.5 On the parental responsibility related changes, consultation with members of the Lone Parent Voluntary Group, made up of external stakeholders has informally taken place. Stakeholders are supportive of the change as it provides a safeguard for responsible carers caring hours when setting expected hours of work preparation and work search. More formally the provisions for the policy change to which this amendment relates were contained in the Welfare Reform and Work Act 2016. The proposals were subject to extensive parliamentary scrutiny. The Department has also informally consulted the Social Security Advisory Committee on this issue, and the Committee was content with the proposal to provide safeguarding of responsible carers caring responsibilities.

¹⁴ <https://consultations.dh.gov.uk/workandhealth/consult/>

9. Guidance

9.1 Guidance is under development to support advisers and decision makers. The Advice for Decision Making and the Decision Makers Guide are published on the DWP website and will be updated prior to the coming into force of the Regulations.

10. Impact

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

10.2 The impact on the public sector is negligible. There will be minor costs relating to changes in guidance to Department staff.

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

Paul Robinson: UC.DISABILITYPOLICY@DWP.GSI.GOV.UK

Universal Credit – limited capability for work element changes

Paul Lapraik: UC.DISABILITYPOLICY@DWP.GSI.GOV.UK

Universal Credit – parental conditionality changes

Rebecca Hepplestone: UC.DISABILITYPOLICY@DWP.GSI.GOV.UK