

**EXPLANATORY MEMORANDUM TO**  
**THE UNIVERSAL CREDIT (CORONAVIRUS) (RESTORATION OF THE**  
**MINIMUM INCOME FLOOR) REGULATIONS 2021**

**2021 No. 807**

**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 give the Department flexibility to manage the re-introduction of the Gainful Self-Employment (GSE) test, the Minimum Income Floor (MIF) and Start-Up periods from 31st July 2021 for self-employed Universal Credit (UC) claimants. This will cover a 12-month period until 31st July 2022.

**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 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.

**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**

- 6.1 Regulation 62 of The Universal Credit Regulations 2013<sup>1</sup> relates to the MIF. The MIF applies an assumption that a claimant who is “gainfully self-employed” has earnings equivalent to the national minimum wage for the hours that they can be expected to work.  
6.2 When the coronavirus emergency began, the government introduced a general suspension of the Minimum Income Floor (MIF) in regulation 4 of The Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020 (2020/289)<sup>2</sup>. This came into force on 13<sup>th</sup> March 2020.

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2013/376/regulation/62>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2020/289/regulation/4/made>

- 6.3 That regulation in paragraph 6.2 above was subsequently replaced by regulation 2 of The Social Security (Coronavirus) (Further Measures) Regulations 2020 (2020/371)<sup>3</sup> which gave the Secretary of State the discretion to ease the effect of the MIF in a number of ways. These were (a) reducing the MIF to a lesser amount, including zero (b) delaying the determination as to whether a claimant is in gainful self-employment (c) treating a claimant as not being in gainful self-employment (d) extending a start-up period and (e) excepting claimants from work-related requirements that would otherwise have applied in the absence of the MIF<sup>4</sup>.
- 6.4 Regulation 10 of the regulations in paragraph 6.3 above, provided for the measures to expire on 13<sup>th</sup> November 2020. This date was extended to 30<sup>th</sup> April 2021 by The Social Security (Coronavirus) (Further Measures) (Amendment) and Miscellaneous Amendment Regulations 2020 SI 2020/1201<sup>5</sup> and further extended to 31<sup>st</sup> July 2021 by The Universal Credit (Extension of Coronavirus Measures) Regulations 2021 SI 2021/313<sup>6</sup>.
- 6.5 The effect of this instrument is to further extend the three measures that are currently being applied by Secretary of State, subject to some modifications, for a further 12 months. The measures being extended are the reduction of the MIF, the discretion to delay Gainful Self Employment (GSE) tests and the discretion not to apply work-related requirements that would otherwise have been lifted by the MIF. The modifications and conditions are fully explained in section 7.

## 7. Policy background

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

- 7.1 The Secretary of State has decided that, as the economy is starting to reopen and restrictions on business are eased, the Department should plan for the reintroduction of the GSE test, the MIF and Start-Up periods from 31<sup>st</sup> July 2021 until July 31<sup>st</sup> 2022 for self-employed Universal Credit (UC) claimants.
- 7.2 The aim of this policy change is to support economic recovery by ensuring claimants have the support they need to restart their businesses. It will therefore provide for the reintroduction of GSE tests and the MIF while allowing the current easements to be continued in appropriate cases.
- 7.3 Regulation 2(1) provides for the further extension of regulation 2 of the Social Security (Coronavirus) (Further Measures) Regulations 2020, apart from subparagraphs (1)(c) and (d) (discretion to treat a person as not in gainful self-employment and discretion to extend a start-up period). The Secretary of State may still reduce the Minimum Income Floor (MIF) (but in more limited circumstances), delay determining whether a claimant is in gainful self-employment (a precondition for the MIF) or ease conditionality, i.e. for self-employed claimants.
- 7.4 Regulation 2(2) provides for the claimants who had been determined to be in gainful self-employment on 13<sup>th</sup> March 2020 when the general MIF suspension first came into force. For these claimants the MIF has been reduced to zero (either at the outset or, if they were in a 12-month start-up period, on the expiry of that 12 months). The Secretary of State is to restore the MIF, but only after determining that the claimant

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<sup>3</sup> <https://www.legislation.gov.uk/ukxi/2020/371/regulation/2/made>

<sup>4</sup> <https://www.legislation.gov.uk/ukxi/2013/376/part/8/chapter/1/crossheading/the-workrelated-requirements>

<sup>5</sup> <https://www.legislation.gov.uk/ukxi/2020/1201/made>

<sup>6</sup> <https://www.legislation.gov.uk/ukxi/2021/313/regulation/3/made>

continues to be in gainful self-employment. Claimants must be given at least one full Assessment Period (AP) notice before the MIF is applied. If a claimant had been in a start-up period on 13<sup>th</sup> March 2020 a period equal to the balance of the start-up period outstanding on that date will be granted before restoring the MIF. This is subject to regulation 2(3), as explained below.

- 7.5 Regulation 2(3) allows for cases where the MIF may still be reduced to zero but only for those who are still financially impacted by COVID Government restrictions (and can demonstrate this). Work Coaches can award up to two-months discretionary suspension of the MIF, assessed on a case by case basis, reviewed at the end of the two months. Work Coaches can award up to a maximum of 3 suspensions, adding up to six months in total.
- 7.6 Under regulation 2(4) Secretary of State can choose to withdraw this discretion should public economic conditions improve to such a point where it is no longer appropriate to suspend the MIF. Any MIF suspension awarded prior to withdrawal date will not be affected.

## **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 of instruments is available to the public free of charge via the 'National Archive' website: [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **10. Consultation outcome**

- 10.1 No formal consultation was undertaken.

## **11. Guidance**

- 11.1 Internal guidance is being updated to support staff and will be made available closer to the date this instrument comes into force.

## **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 significant impact is foreseen on businesses.

## **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 Department is firmly committed to evaluating and monitoring the impact of its policies. These policies are being made in order to re-introduce conditionality to the self-employed in UC, in a phased way. The Department will continue to review the policy and its impacts and consider whether further changes are required in line with any change in the Government guidance, or to the schemes.

**15. Contact**

- 15.1 Ian Biggar at the Department for Work and Pensions, e-mail [ian.biggar@dwp.gov.uk](mailto:ian.biggar@dwp.gov.uk), can be contacted with any queries regarding the instrument.
- 15.2 Kerstin Parker, Deputy Director for UC Policy at the Department for Work and Pensions, e-mail [kerstin.parker@dwp.gov.uk](mailto:kerstin.parker@dwp.gov.uk), can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Employment, Mims Davies, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.