

## EXPLANATORY MEMORANDUM TO

### THE UNIVERSAL CREDIT AND EMPLOYMENT AND SUPPORT ALLOWANCE (TERMINAL ILLNESS) (AMENDMENT) REGULATIONS 2022

2022 No. 260

#### 1. Introduction

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

#### 2. Purpose of the instrument

- 2.1 These regulations amend the definition of ‘Terminal Illness’ for Employment and Support Allowance and Universal Credit from the current 6-month definition, to a 12-month definition. This definition determines whether a claimant can make a fast-track claim to Employment and Support Allowance and Universal Credit under the terminal illness provisions (hereafter referred to as the Special Rules) within those benefits. Claims made under the Special Rules are not subject to a face-to-face assessment, waiting periods and in the majority of cases receive the highest rate of benefits.

#### 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 and Wales and Scotland.  
4.2 The territorial application of this instrument is England and Wales and Scotland.

#### 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 The current Regulation 2 of the Employment and Support Allowance Regulations 2008, Regulation 2 of the Universal Credit Regulations 2013, Regulation 2 of the Employment and Support Allowance Regulations 2013 and Regulation 2 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 provide definitions of who can be regarded as “terminally ill” for the purposes of making a benefit claim.<sup>1</sup> These regulations amend these definitions so that a person whose death is reasonably expected within 12 months can claim under the Special

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2008/794/regulation/2;>  
<https://www.legislation.gov.uk/ukdsi/2013/9780111531877/regulation/2;>  
<https://www.legislation.gov.uk/uksi/2013/376/regulation/2/made> and  
<https://www.legislation.gov.uk/uksi/2013/381/regulation/2/made>

Rules within Employment and Support Allowance and Universal Credit, as opposed to the current timeframe of 6 months.

- 6.2 The changes will mean that people who are reasonably expected to die within 12 months will be eligible to claim under the Special Rules, bringing a more consistent policy in line with the definition used within the NHS and across Government. This will mean that more people will be able to benefit from the Special Rules and receive fast-track access to the relevant benefits 6 months earlier than they can under the current definitions.

## **7. Policy background**

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

- 7.1 The DWP provides fast-track access to Universal Credit and Employment and Support Allowance for people nearing the end of their lives. The relevant benefits have specific provisions relating to people who are terminally ill. The current definition of terminal illness applies to people with 6 months or less to live, which has been used across the benefits system since 1990.
- 7.2 In 2019, the Secretary of State for Work and Pensions announced that the DWP would undertake an evaluation into how the benefits system in Great Britain supports those nearing the end of their lives. The evaluation recognised that there have been considerable changes in the 30 years since the Special Rules were first implemented. Based on the outcomes Ministers decided to replace the 6-month definition with a 12-month definition, which aligns the welfare system more closely with the definition commonly used in end of life care provided by the NHS. The DWP has previously announced that it would replace the current 6-month definition for determining who can claim under the Special Rules with a 12-month approach. Please see written statement UIN: HCWS166 made on 8<sup>th</sup> July 2021.<sup>2</sup>
- 7.3 Alongside the legislative changes, the DWP will also update the language and terminology that is used operationally and in external communications to reflect the current practice in the palliative and end of life care sector. This will include terms like ‘final year of life and ‘end of life’ and will mean that DWP is more closely reflecting current clinical practice.

### *Explanations*

#### *What did any law do before the changes to be made by this instrument?*

- 7.4 The current legislation defines a terminally ill claimant as a person who is suffering with a progressive disease and that death in consequence of that disease can reasonably be expected within 6-months. Where an individual meets that definition, other provisions provide an exemption from face-to-face assessments, serving waiting periods and in the majority of cases, entitle the claimant to the highest rates of award.

#### *Why is it being changed?*

- 7.5 The Department conducted an evaluation of the support provided through the benefits system to people nearing the end of their lives. The DWP considered the outputs from this evaluation before deciding to replace the current 6-month with a 12-month

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<sup>2</sup> <https://questions-statements.parliament.uk/written-statements/detail/2021-07-08/hcws166>

definition. This approach will align the welfare system more closely with the current medical practice in the NHS.

*What will it now do?*

- 7.6 The proposed amendments will replace the 6-month eligibility definition with a 12-month definition meaning that people in their final year of life will be able to have fast-tracked access to Employment and Support Allowance and Universal Credit if their death can reasonably be expected within 12 months.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union

## **9. Consolidation**

- 9.1 Informal consolidated text of the 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 The Department engaged with people nearing the end of their lives, organisations and charities that support them, clinicians and DWP staff through the evaluation. The evaluation was launched in July 2019 and the Department published the findings of the evaluation in July 2021. This report includes findings from Northern Ireland conducted by the Department for Communities who worked with the DWP throughout the evaluation.<sup>3</sup>
- 10.2 Following this evaluation, Ministers have acted to remove the current 6-month definition, extend eligibility, and bring it into line with definitions currently used in clinical practice.

## **11. Guidance**

- 11.1 The Department will provide updated guidance to reflect the change to the Special Rules for DWP staff involved in delivering Employment and Support Allowance and Universal Credit. This guidance will ensure that DWP staff, internal and external processes are ready to deliver the new approach from 4<sup>th</sup> April 2022.
- 11.2 Before these changes come into force on 4 April 2022, we are engaging key end of life charities and clinical bodies to enable them to review and help shape supporting guidance. Proactive communications will also be sent to key external stakeholders to ensure that they fully understand the changes being made and who is able to claim under the amended regulations. These will target groups who support people nearing the end of their lives and those clinicians (such as specialist nurses, consultants, and GPs) who provide medical evidence in support of claims made under the Special Rules as well as claimants.

## **12. Impact**

- 12.1 There is no impact on business. There may be an impact on charities or voluntary bodies who support people nearing the end of their lives to claim Employment and Support Allowance and Universal Credit to reflect the changes to the eligibility for the

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<sup>3</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1003955/findings-from-the-evaluation-of-the-special-rules-for-terminal-illness-process.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003955/findings-from-the-evaluation-of-the-special-rules-for-terminal-illness-process.pdf)

Special Rules. We will communicate the change to charities and voluntary bodies to enable them to review and amend any guidance they provide to the public which references the Special Rules.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no significant impact on business 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 this legislation will be to engage with stakeholder and clinical groups to ensure that those who meet the new definition are able to claim under the Special Rules. We will also monitor existing channels that claimants can use to provide feedback to the DWP.

14.2 Following the amendments to regulations, the Department intends to bring forward a Bill to replicate the changes in Personal Independence Payment, Disability Living Allowance and Attendance Allowance subject to Parliamentary processes and time. The Department will continue to monitor the impact on Employment and Support Allowance and Universal Credit of the changes in the run up to the Bill being introduced.

### **15. Contact**

15.1 Daniel Gatland at the Department for Work and Pensions Telephone: 020 4563 2073 or email: Dan.Gatland@DWP.GOV.UK can be contacted with any queries regarding the instrument.

15.2 Louise Everett, Deputy Director for Employment and Support Allowance, Industrial Injury Schemes, and Decision Making and Appeals Policy and Performance, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chloe Smith MP at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.