EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT AND SUPPORT ALLOWANCE AND UNIVERSAL CREDIT (CORONAVIRUS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2020 S.R. 2020 No. 217

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Articles 11(3) and (6) and 74(1) and (5) of the Social Security (Northern Ireland) Order 1998 and section 25(2) of, and paragraphs 1(a) and 2 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative resolution procedure.

2. Purpose

2.1. These Regulations amend the Employment and Support Allowance and Universal Credit (Coronavirus) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 33) in order to extend provisions from eight to fourteen months from the date on which they came into operation (i.e. 13 March 2020), for those claiming or entitled to Employment and Support Allowance (ESA), in response to the continuing Coronavirus pandemic. 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.

2.2. The Regulations will now will now expire on 12 May 2021.

2.3. 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. The Regulations also remove the need for them to serve waiting days, enabling ESA to be paid from day one of the claim.

3. Background

3.1. There remains considerable uncertainty about when the Covid-19 pandemic will come to an end, but this is unlikely to be before the current regulations are due to expire. We continue to receive ESA claims under the current regulations, 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.

3.2. This extension of the original regulations 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.

3.3. By not extending the regulations, people may be deterred from claiming ESA and instead they may 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.

4. Consultation

4.1. Given the urgency of these Regulations no consultation has been carried out.

5. Equality Impact

5.1. An equality impact assessment has not been carried out in relation to this Statutory Rule because of the need to make and lay urgently to provide support and give certainty to those affected by the Covid-19 pandemic.

6. Regulatory Impact

6.1. The legislation applies to activities which are undertaken by small businesses and owing to the urgent nature of the requirement for this legislation it is not appropriate to carry out a Regulatory Impact Assessment.

7. Financial Implications

7.1. None anticipated.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that the Rule –

(a) is not incompatible with any of the Convention rights;

(b) is not incompatible with Community law;

(c) does not discriminate against a person or class of person on the ground of religious belief or political opinion; and

(d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. These Regulations are equivalent to the Employment and Support Allowance and Universal Credit (Coronavirus Disease) (Amendment) Regulations 2020 (S.I. 2020/1097) in Great Britain which were made on 9th October 2020, laid before Parliament on 12th October 2020, and come into force on 12th November 2020.

11. Additional Information

11.1. Guidance will be issued to Department for Communities staff prior to this Statutory Rule becoming operational.