EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CORONAVIRUS) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2021

2021 No. 476

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 In response to the continuing outbreak of Coronavirus disease in Great Britain, this instrument ensures:

Employment and Support Allowance

2.2 The expiry date of the provisions within the Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020 (S.I. 2020/289)[1] is further extended until 12th November 2021. For those claiming or entitled to Employment and Support Allowance (ESA), 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,

this instrument ensures that they can be treated as having Limited Capability for Work for the purposes of ESA without the requirement to provide 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.

Jobseeker's Allowance (Periods of Sickness)

2.3 This instrument further extends the expiry date of regulation 8 of the Social Security (Coronavirus) (Further Measures) Regulations 2020 (S.I. 2020/371)[2] until 31st August 2021 so that certain persons affected by Covid-19 can continue in receipt of Jobseeker's Allowance without any period of sickness/isolation counting as short or as an extended period of sickness.

Carer's Allowance

2.4 This instrument further extends the expiry date of regulation 9 of the Social Security (Coronavirus) (Further Measures) Regulations 2020 (S.I. 2020/371)[3] until 31st August 2021. These changes are designed to ensure financial support continues during the pandemic for claimants receiving Carer's Allowance (CA) so that they are not penalised for following government advice.

[1] https://www.legislation.gov.uk/uksi/2020/289/contents.
[2] https://www.legislation.gov.uk/uksi/2020/371/contents.
[3] https://www.legislation.gov.uk/uksi/2020/371/contents.

2.5 As Carer's Allowance is devolved to Scotland, the Scottish Government have laid mirroring legislation to maintain parity.

Prisoners on Temporary Release

2.6 This instrument further extends the expiry date of the Social Security (Coronavirus) (Prisoners) Regulations 2020 (S.I. 2020/409)[4] until 31st August 2021. In addition to extending the duration of the Regulations, the aim of these Regulations is to be more targeted and qualify the current provisions, which temporarily remove the restriction that prohibits claims to specified income-related benefits, for those prisoners released on temporary licence (ROTL). It is to only allow access to benefits where the Secretary of State decides that is necessary due to Covid-19, for example where that release has been approved by the Ministry of Justice and Her Majesty's Prison and Probation Service, as part of the response to reduce the spread of Covid-19 within the prison estate.

2.7 This narrower provision has not been necessary up to now as ordinary use of temporary release has been suspended. However, in anticipation that temporary release may be resumed for reasons other than Covid-19 related risks, it is considered appropriate to narrow this provision.

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 England, Wales and Scotland only, except for the Carer's Allowance provision, which applies to England and Wales only as Carer's Allowance is devolved in Scotland.

4.2 The territorial application of this instrument is England, Wales and Scotland only, except for the Carer's Allowance provision, which applies to England and Wales only as Carer's Allowance is devolved in 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 In response to the continuing outbreak of Coronavirus disease in Great Britain, these Regulations extend the expiry date of the Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020 (S.I. 2020/289) to 12th

[4] http://www.legislation.gov.uk/uksi/2020/409/contents/made

November 2021, as well as amending both the Social Security (Coronavirus) (Prisoners) Regulations 2020 (S.I. 2020/409) and regulations 8 and 9 of the Social Security (Coronavirus) (Further Measures) Regulations 2020 (S.I. 2020/371) ("the Further Measures Regulations") so that they expire on 31st August 2021.

7. Policy background

What is being done and why?

Employment and Support Allowance (ESA)

7.1 This continues to be a fast-paced situation with frequent changes to public health guidance, and uncertainty about when the pandemic may end. The Department continues to receive ESA claims under the Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020, 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.

7.2 The Regulations, which came into force on 13th March 2020 and were further extended from 12th November 2020, will expire on 12th May 2021. Further extending the expiry date in the regulations to 12th November 2021 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. 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.

7.3 By not extending the regulations, people who may not otherwise be entitled to ESA because they do not have a health condition or disability which limits their capability for work, and may instead 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.

Jobseeker's Allowance (JSA)

7.4 Regulatory provision was made on 13th March 2020 to prevent people from losing their entitlement to JSA if they are infected with coronavirus, self-isolating or caring for a child who is infected or self-isolating. The regulations were further extended from 12th November 2020, will expire on 12th May 2021.

7.5 This provision treats such claimants as not having limited capability for work and excludes periods of sickness or self-isolation due to Covid-19 from the maximum permitted number of sickness periods applicant to recipients of old style or new style JSA.

7.6 Currently, claimants awarded JSA can have the following before losing entitlement to JSA:

- two short periods of sickness of up to 2 weeks in any jobseeking period, within each successive 12-month period, if their jobseeking period lasts longer than 12 months, or

- a third or longer period of sickness of up to 13 weeks in a fixed 12-month period starting from the first date of their sickness.

7.7 By extending this regulation beyond 12th May 2021 to 31st August 2021, means that claimants will continue to have their entitlement to JSA protected despite any periods where they are infected with Covid-19 or where they are self-isolating.

Carer's Allowance (CA)

7.8 In March 2020, temporary changes were made to extend the Government's support for those in receipt of CA affected by Covid-19. These changes were further extended in November 2020. This further amendment extends the date to 31st August 2021 on which this temporary amendment will cease. The provision treats a person who is in receipt of CA and has only temporarily ceased providing care for the severely disabled person because either they or the cared for person are infected or contaminated with Covid-19 or are self-isolating, as continuing to meet the conditions.

7.9 Where an alternative carer claims benefit for providing the necessary care and meets the qualifying conditions, they will receive the carer benefit instead and the original carer will be advised to claim another benefit, such as Universal Credit.

Prisoners on Temporary Release

7.10 In March 2020, as part of the Government's strategy of supporting people affected by Covid-19, the Ministry of Justice made provision for the temporary release of prisoners, where necessary, to prevent the spread of Covid-19 on the prison estate. This measure was further extended in November 2020. The Ministry of Justice anticipates the continued need of the scheme in appropriate cases. This instrument responds to that, by extending the removal of restrictions which otherwise prevent prisoners on temporary release from claiming means tested benefits until 31st August 2021. The effect of this instrument is to continue to provide the same financial support to these prisoners, while on temporary release, as other comparable claimants of these benefits, which helps these individuals weather the financial impacts arising from the Covid-19 outbreak.

Rationale for the difference in extension periods

7.11 The JSA, CA and Prisoners measures are due to end in August 2021 and reflect the expected date for completion of the Government's vaccination roll-out, whereas the ESA measure is being extended until November 2021 to support the test and trace programme.

ESA measure

7.12 For ESA the changes are related to the wider economic and fiscal impacts of the virus and the ESA regulations are playing an important function in supporting people, who might otherwise not be entitled to ESA, to self-isolate in accordance with public health guidance. The changes support the test and trace programme which is likely to be in place until at least November as part of the Government's measures against the spread of Covid-19.

JSA measure

7.13 The expiry date of the JSA measure exempting periods of sickness and self-isolation due to Covid-19 reflects the expected date of completion for the Government's vaccination roll-out, after which the public health risk of Covid-19 is expected to be significantly reduced. The fundamental condition of entitlement for JSA is that claimants be available for work and take reasonable steps to look for work, which means claimants are not eligible for JSA if they have an illness or disability which stops them from working. The expiry date of August 31st reflects a return to business as usual and this requirement will apply equally to Covid-19 as to all other illnesses and health conditions. JSA claimants who then exceed the maximum permitted periods of sickness will be treated as having limited capability for work and may transition to claiming either Universal Credit or New Style ESA depending on their circumstances.

CA measure

7.14 The Government has committed to vaccinating all adults in England by the end of July 2021 which will enable carers and the disabled person they care for to return to normal patterns of care with greater confidence. As part of ensuring that those with the most need are vaccinated as early as possible, the Department has worked closely with NHS England to ensure that carers who are entitled to CA receive an invitation to be vaccinated as part of priority group 6. The Scottish and Welsh Governments have made their own separate arrangements. The vaccine has a direct and quick impact on the sorts of care people can confidently provide.

Prisoners on Temporary Release measure

7.15 The roll-out of the vaccination programme means vulnerable low-risk prisoners will have protection from Covid-19. This will allow the Ministry of Justice to end their use of temporary release for medically vulnerable prisoners at risk from the virus, and recall such prisoners who still have part of their prison sentence to serve. In turn, this will enable the Ministry of Justice to re-commence normal business as usual temporary release of other prisoners, mostly day release, for example to gain work experience.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 As this is a temporary measure consolidation is not being undertaken.

10. Consultation outcome

10.1 The Department has a statutory duty to consult on amendments to Housing Benefit regulations with the Local Authority Associations. They were consulted on the provisions regarding prisoners on temporary release in regulation 4 but had no comments.

10.2 The Social Security Advisory Committee decided that it did not require the proposed changes to be formally referred to it and, accordingly, the Committee did not conduct a public consultation exercise on them.

11. Guidance

11.1 Guidance will be issued to DWP staff to reflect the provisions in the statutory instrument.

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 A full Impact Assessment has not been produced for this instrument as no, or no significant, impact on business, or the private, voluntary or public sector, is foreseen.

13. Regulating small business

13.1 This 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 to continuously consider whether further changes are required in line with Chief Medical Officer's guidance while the Covid-19 outbreak continues.

15. Contact

15.1 Daniel Brooks at the Department for Work and Pensions (Email: daniel.brooks1@dwp.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Victoria Hogan, Deputy Director at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Thérèse Coffey, Secretary of State at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.