

ESA AND UC: CORONAVIRUS

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[SEE ADM MEMO 04/20]

INTRODUCTION

1. This memo gives guidance on the Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations¹, which came into force on 13.3.20.

Note: The regulations cease to have effect on 12.11.20².

1 ESA & UC (CD) Regs; SI 2020 No. 289; 2 reg 5(2)

2. The regulations

1. remove the requirement to serve waiting days before ESA entitlement begins – see paragraphs 6-7 **and**
2. allow a person who on or after 13.3.20 claims or has an existing award of ESA or UC to be treated as having LCW - see paragraphs 8-15 **and**
3. suspend the minimum income floor - see paragraphs 16-18



where the Secretary of State is satisfied that it would be appropriate to do so because the person is affected by Coronavirus disease (also known as COVID-19) as in paragraph 3.

3. A person is affected by Coronavirus disease if they are¹
 1. infected or contaminated with Coronavirus disease **or**
 2. in isolation (see paragraphs 4-5) **or**
 3. caring for a child or qualifying young person² who is a member of the person's household and who is
 - 3.1 in isolation or
 - 3.2 infected or contaminated with Coronavirus disease.

Note: For the purposes of 3., a child or qualifying young person is a member of the person's household if they live with the person caring for them.

1 ESA & UC (CD) Regs, reg 2(2) & 3(2); 2 SS C&B Act 92, s. 142; UC Regs, reg 5

MEANING OF "ISOLATION"

4. A person is in isolation if they are separate from any other person so as to prevent infection or contamination with Coronavirus disease¹. DMs should have regard to the latest UK Government advice to the public on when they should self-isolate on a case by case basis.

Note: A person can be in isolation when they live with other people such as family members or in multiple occupancy dwellings.

1 ESA & UC (CD) Regs, reg 1(2)

5. This does not include where a person
 1. has not been advised to isolate **or**
 2. is looking after a child or qualifying young person whose school or nursery has been closed as a precautionary measure, and the child or qualifying young person has not been advised to isolate.

ESA: WAITING DAYS

6. Normally a claimant is not entitled to ESA for the first seven days of a PLCW¹, unless any of the exceptions in U1103 – U1111 apply².

1 WR Act 07, Sch 2, para 2; ESA Regs, reg 85(1); 2 reg 85(2)

7. For claims made on or after 13.3.20, the requirement to serve waiting days does not apply from 13.3.20 to a person who is affected by Coronavirus disease as in paragraph 3, where the DM is satisfied that it should not apply¹.

Note: If a claim is made after 13.3.20, but is in time for claiming for a period before that date, any waiting days before 13.3.20 have to be served as normal unless any of the exceptions in U1103 – U1111 apply.

1 ESA & UC (CD) Regs, reg 2

Example

Penny claims ESA on 16.3.20, and says that she wishes to claim from 10.3.20 when she returned to the UK and followed Government advice to self-isolate. The DM determines that Penny's ESA entitlement to ESA begins on 13.3.20, as the waiting days for the period 10 – 12.3.20 still have to be served.

ESA AND UC: TREATED AS HAVING LCW

8. Where on or after 13.3.20

1. a person¹
 - 1.1 claims or has an existing award of ESA or UC **and**
 - 1.2 is affected by Coronavirus as in paragraph 3 **and**
2. the DM has not already determined that the claimant has, or is treated as having, LCW as part of the WCA process²

the claimant can be treated as having LCW³ if the DM is satisfied that they should be so treated, having regard to the latest Government advice.

Note 1: DMs are reminded that the claimant must satisfy **all** the conditions of entitlement to ESA or UC as normal.

Note 2: A determination that the claimant is treated as having LCW as above applies as normal, for example when considering work-related requirements or UC child care costs.

*1 ESA & UC (CD) Regs, reg 3(1) & (2); 2 ESA Regs, reg 15, 16, 21, 22 & 25; UC Regs, reg 39; 3 WR Act 07, s 1(4);
WR Act 12, s 37(1)*

9. Where a person is treated as having LCW as in paragraph 8, they are not required to

1. provide evidence of LCW by means of self-certification or a statement from a doctor (fit notes) **or**
2. complete a questionnaire or attend a medical examination as part of the WCA process.

Note: This applies to new claims for ESA or UC, and to existing awards where the claimant has been providing evidence of LCW while awaiting assessment for another health condition.

10. Where

1. the claimant is treated as having LCW as in paragraph 8 **and**
2. an existing award of ESA or UC is superseded

the LCW determination is regarded as having been made under existing ESA and UC legislation¹. This is because the supersession rules refer to the existing legislation.

*1 ESA & UC (CD) Regs, reg 3(3); UC, PIP, JSA & ESA (D&A) Regs, reg 26 & 35;
ESA Regs, reg 16; UC Regs, Part 5*

Claimant no longer affected by Coronavirus

11. Claimants who have been awarded ESA or UC and who are treated as having LCW as in paragraph 3 will be contacted at intervals for information about whether they are still affected by Coronavirus.

12. Where the claimant states that they or the child or qualifying young person they are caring for

1. are no longer in isolation **or**
2. have recovered from an infection or contamination with Coronavirus disease



and they have no other health condition or disability affecting their capability for work, the DM should determine that on the balance of probabilities the claimant does not have, and cannot be treated as having, LCW¹.

1 UC Regs, Part 5; ESA Regs, Part 4

13. For ESA claimants, the award should be superseded and terminated from the date of the decision as normal¹.

1 SS Act 98, s 10(5); UC, PIP, JSA & ESA (D&A) Regs, reg 26

14. For UC claimants, the DM should consider whether the claimant remains entitled to UC, and if so, what effect the LCW determination has on their award including work-related requirements.

15. For both ESA and UC, where the claimant had previously provided evidence of LCW for a health condition or disability, or states that, although they are no longer affected by Coronavirus, they are not fit for work, their award should **not** be superseded and terminated, and they should be referred for the WCA. Operational instructions on temporary changes to the referral process should be followed.

UC: MINIMUM INCOME FLOOR

16. The minimum income floor normally applies from the start of the award or at the end of the start-up period to UC claimants who¹

1. are gainfully self-employed **and**
2. would otherwise fall within the all work-related requirements group.

Note: See Chapter H4 (Earned income – self-employed earnings) for detailed guidance on the minimum income floor, and Chapter J2 (Work related groups) for guidance on work-related requirements.

1 UC Regs, reg 62

17. A claimant who has, or is treated as having, LCW is not subject to all work-related requirements¹, so where a claimant is treated as having LCW as in paragraph 8, the minimum income floor does not apply.

1 WR Act 12, s 22

Claimant no longer affected by Coronavirus

18. From 13.3.20, where

1. a claimant has been treated as having LCW as in paragraph 8 **and**
2. the DM determines that the claimant should no longer be so treated

the DM may determine that the minimum income floor does not apply for the assessment period in which the determination in **2.** is made, and for further assessment periods as considered appropriate¹.

1 ESA & UC (CD) Regs, reg 4

ANNOTATIONS

Please annotate the number of this memo (ADM 02/20) against the following ADM paragraphs:

G2010, H4060 heading, U1100, U2030 heading

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in Memo [7/19](#) Requesting case guidance from DMA Leeds for all benefits.

DMA Leeds: March 2020

The content of the examples in this document (including use of imagery) is for illustrative purposes only