



ESA: CORONAVIRUS MEASURES

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INTRODUCTION

1. This memo gives guidance on the ESA and UC (Coronavirus Disease) (Amendment) Regulations 2020, which come into force on 12.11.20¹.

1 ESA & UC (CD) (Amdt) Regs; SI 2020 No. 1097

2. The regulations extend the period for which the provisions¹ set out in Memo ADM 2/20 remain in force. The provisions now cease to have effect on 12.5.21². The guidance in that memo in relation to UC has been replaced by Memo ADM 4/20. This memo therefore replaces Memo ADM 2/20, which is **cancelled** and should no longer be followed.

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

3. The amended regulations

1. remove the requirement to serve waiting days before ESA entitlement begins – see paragraphs 7 - 8 **and**

2. allow a person who on or after 13.3.20 claims or has an existing award of ESA to be treated as having LCW - see paragraphs 9 - 15



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 4.

4. A person is affected by Coronavirus disease if they are¹

1. infected or contaminated with Coronavirus disease **or**

2. in isolation (see paragraphs 5 - 6) **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"

5. 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 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)

6. 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.



WAITING DAYS

7. 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)

8. 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 4, 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.

TREATED AS HAVING LCW

9. Where on or after 13.3.20

1. a person¹

1.1 claims or has an existing award of ESA **and**

1.2 is affected by Coronavirus as in paragraph 4 **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: DMs are reminded that the claimant must satisfy all the conditions of entitlement to ESA as normal.

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



10. Where a person is treated as having LCW as in paragraph 9, 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, and to existing awards where the claimant has been providing evidence of LCW while awaiting assessment for another health condition.

11. Where

1. the claimant is treated as having LCW as in paragraph 9 **and**
2. an existing award of ESA is superseded

the LCW determination is regarded as having been made under existing ESA 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

CLAIMANT NO LONGER AFFECTED BY CORONAVIRUS

12. Claimants who have been awarded ESA and who are treated as having LCW as in paragraph 9 will be contacted at intervals for information about whether they are still affected by Coronavirus.

13. 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 ESA Regs, Part 4



14. 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

15. 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.

ANNOTATIONS

Please annotate the number of this memo (ADM 25/20) against the following ADM paragraphs:

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: October 2020

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