EXPLANATORY MEMORANDUM TO

THE CARE AND SUPPORT (CHARGING AND ASSESSMENT OF RESOURCES) (AMENDMENT) (NO. 2) REGULATIONS 2022

2022 No. 743

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care ("DHSC") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Care and Support (Charging and Assessment of Resources) Regulations 2014 (S.I. 2014/2672) ("the Principal Regulations"), which set out how local authorities calculate the amounts individuals are required to contribute towards their care and support.

2.2 This instrument adds to the categories of capital which must be disregarded by local authorities when carrying out a financial assessment to calculate whether an adult has assets below the financial limit, and what an adult can afford to contribute towards the cost of their care and support. The new category is Additional Payments which are being made to recipients of means-tested benefits, tax credits and disability benefits. The Additional Payments, which are being made under the Social Security (Additional Payments) Act 2022 ("2022 Act"), include:

- Cost-of-Living Payments which are payable in two instalments, the first single payment of £326.00 is to be made to any person who has a qualifying entitlement on 25 May 2022. The second single payment of £324.00 is to be made to any person who has a qualifying entitlement on the second qualifying day which is to be set out in regulations, but it must not be later than 31 October 2022.
- Disability Cost-of- Living Payments are payable as a single £150.00 payment to each individual who was entitled to payment of a qualifying disability benefit on 25 May 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The 21-day laying period has not been met on this occasion because the 2022 Act was introduced into Parliament on 15 June and received Royal Assent on 28 June. As the drafting of this disregard relies on section 8 of the Act, it was not possible to lay this instrument prior to 28 June. Further to this, the first payment is due to be made on 14 July, as such this instrument must come into force by this date to ensure that the most vulnerable feel the full benefit of these payments.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 14 of the Care Act 2014 ("2014 Act") provides a local authority with the power to charge a person for meeting their care and support needs under sections 18 to 20 of the 2014 Act. Where a local authority chooses to charge a person, section 17 of the 2014 Act sets out that a financial assessment of the person's resources must be undertaken to determine whether they have assets below the financial limit, as that local authority may be required to meet all or some of the cost of their care, and what the person a can afford to contribute towards the cost of their care themselves.

6.2 The Principal Regulations set out, among other things, how the financial assessment should be undertaken. Part 5 deals with the calculation of capital and requires a local authority to disregard any capital specified in Schedule 2 to the Principal Regulations from its calculations.

6.3 This instrument adds a new category of capital to Schedule 2: any Additional Payments to recipients of means-tested benefits, tax credits and disability benefits which would be disregarded under section 8 of the 2022 Act. Therefore, any payments disregarded for the purposes of that section 8 (explained in section 2 above) are also to be disregarded by a local authority when calculating a person's capital for social care charging purposes under the Principal Regulations.

7. Policy background

What is being done and why?

7.1 The Government is introducing a new policy initiative which is to help families with the rising cost of living by making Additional Payments to those in receipt of certain benefits on specified dates. The initiative is being delivered by the Department for Work and Pensions through the benefits system.

7.2 To enable the capital sums awarded to be retained for the purpose intended, they need to be set outside (disregarded in) the means tested financial assessment to determine what someone needs to contribute towards care costs. This amendment to the Principal Regulations requires the Additional Payments awarded under the 2022 Act to be disregarded, thus they remain available to an individual to cover cost of living expenses which aligns with the policy initiative being introduced.

8. European Union Withdrawal and Future Relationship

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 There are currently no plans for consolidation.

10. Consultation outcome

10.1 A formal public consultation has not been undertaken due to the low impact of this regulation on Local Authorities.

11. Guidance

11.1 The Department for Work and Pensions published The Cost-of-Living Payment guidance on the www.gov.uk website on 26 May 2022. It will be further revised prior to 31 October 2022, in order to set out the second qualifying period for the cost-of-living payments.

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 There is no, or no significant impacts on local authorities in allowing a person to use the cost-of-living payments to ease their financial burden as intended rather than using them as an offset against care costs.

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 is centred on the need to consider what, if any, further initiatives the Government may introduce to ease cost-of-living pressures.

15. Contact

15.1 Maureen Rafferty at the Department of Health and Social Care, Tel: 020 7972 3395 email: Maureen.Rafferty@dhsc.gov.uk can be contacted with any queries regarding this instrument.

15.2 Linsey Craike and Megan Bradish, Deputy Directors for Adult Social Care Markets and Charging Reform, at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Gillian Keegan, Minister of State for Care and Mental Health at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.