EXPLANATORY MEMORANDUM TO

THE CARE AND SUPPORT (CHARGING AND ASSESSMENT OF RESOURCES) (AMENDMENT) (NO. 3) REGULATIONS 2022

2022 No. 1038

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 His 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 an assessment to calculate the level of an adult's financial resources, and what an adult can afford to contribute towards the cost of their care and support. The new category is payments made by particular methods (see 6.2 below) by energy suppliers to consumers under the Energy Bills Support Scheme ('EBSS'). Getting the Energy Bills Support Scheme discount - GOV.UK (www.gov.uk)[1]

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

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 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 an assessment must be undertaken to determine the level

[1] https://www.gov.uk/guidance/getting-the-energy-bills-support-scheme-discount

of the person's financial resources, and how much the person is likely to be able to contribute towards the cost of their care themselves.

6.2 The Principal Regulations set out, among other things, how the 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: the payments payable from the EBSS in the circumstances set out paragraph 7.2. Therefore, any payments made are to be disregarded by a local authority when calculating a person's capital for adult social care charging purposes under the Principal Regulations.

7. Policy background

What is being done and why?

7.1 On 26 May 2022, the Government announced a policy initiative to help households with the rising cost of energy over a six-month period starting in October 2022. On 22 September 2022 the Secretary of State for Business, Energy and Industrial Strategy issued a Direction[2] requiring energy supply companies to make payments to customers totalling £400 under the EBSS. Energy suppliers will deliver the scheme to households in Great Britain with a domestic electricity contract.

7.2 The Energy Bills Support payments would increase an adult's available capital in the following circumstances. The first circumstance is where a voucher for the purchase of energy is addressed to a prepayment customer which is redeemable for cash. The second circumstance is where a customer pays for their energy supply through a monthly direct debit and a capital refund payment is made to their bank account following a direct debit collection during each month of EBSS delivery.

Explanations

What did any law do before the changes to be made by this instrument?

7.3 Before the changes made by this instrument, local authorities would not have been required or able to disregard these payments when they carry out financial assessments. They would have had to take them into account.

Why is it being changed?

7.4 The change gives effect to the Government's policy intention that individuals should benefit fully from support being made available under the EBSS

What will it now do?

7.5 As a result of the change, local authorities will be required to disregard EBSS payments when they carry out an assessment of a person's financial resources. This means that the full amount of the payment remains available to be used by a consumer to meet the increased cost of energy supplied to households. This aligns with the Government policy intention.

[2] https://www.gov.uk/government/publications/energy-bills-support-scheme-ministerial-direction

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 As the impact of this regulation is low, a consultation on this Statutory Instrument has not been undertaken.

11. Guidance

11.1 Guidance on the EBSS discount is available on the Gov.UK website at Getting the Energy Bills Support Scheme discount - GOV.UK (www.gov.uk)[3]

11.2 Additional guidance is not needed for this instrument which enables care users to retain payments to meet energy costs.

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 prepared for this instrument because there is no, or no significant impact on local authorities in allowing an adult to benefit from the discounted energy costs in order to ease the financial burden as intended, rather than having the sum 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 provide support to ease the rising cost of living.

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 Team, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

[3] https://www.gov.uk/guidance/getting-the-energy-bills-support-scheme-discount

15.3 Neil O’Brien, Parliamentary Under Secretary of State, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.