EXPLANATORY MEMORANDUM TO

THE CARE AND SUPPORT (CHARGING AND ASSESSMENT OF RESOURCES) (AMENDMENT) REGULATIONS 2021

2021 No. 717

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 to add to the categories of capital which must be disregarded by local authorities when carrying out a financial assessment to calculate what an adult can afford to contribute towards the cost of their care support. These additional categories are:

- Payments made under the Victims' Payments Regulations 2020 – to those injured during the troubles conflict in Northern Ireland. This scheme acknowledges the harm caused to those injured between January 1966 – April 2010 through no fault of their own during the troubles.
- Compensation payments made under the Redress Board (Northern Ireland) as set up under the Historical Abuse (Northern Ireland) Act 2019 for survivors of historical child abuse. This Board was set up to make awards following an inquiry into historic abuse of children under age 18, who live in any of the 22 residential institutions run by religious, charitable and state organisations across Northern Ireland over a 73 year period between 1922 and 1995.

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 and Wales.

4.2 The territorial application of this instrument 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 The Care and Support (Charging and Assessment of Resources) Regulations 2014 (the "Principal Regulations") set the rules for the financial assessments that local authorities must carry out to calculate what a person can afford to contribute towards the cost of their care and support. Under the Principal Regulations, specified types of income and capital must be disregarded for the purpose of those financial assessments.

6.2 Schedule 2 to the Principal Regulations sets out the categories of capital which must be disregarded. This instrument adds two additional categories of capital to Schedule 2:

- Any payment made to an adult under the Victims' Payments Regulations 2020 (S.I. 2020/103), for a 'Troubles' related incident where that payment would be disregarded under regulation 26 of those Regulations. The disregard in regulation 26 applies to social security calculations and some other categories of calculation.
- Any payment made to an adult under Part 1 of the Historical Institutional Abuse (Northern Ireland) Act 2019 (c. 31).

6.3 The amendments ensure that payments made in relation to the Victims Payments Scheme, or in respect of being a victim of historical child abuse in Northern Ireland are also disregarded.

7. Policy background

What is being done and why?

7.1 Compensation awards from these schemes, when paid to residents of Northern Ireland, are not considered when a means test is carried out to assess what someone can afford to contribute towards their social care costs. To allow for equality of treatment should some compensation recipients be resident in England, the compensation amounts are to be disregarded when a means test is undertaken in an English local authority area.

7.2 Amending legislation to permit a disregard of the compensation awards means the recipient of the compensation (as well as a nominated person where the recipient is deceased) can retain the sum awarded, rather than it potentially being used as a contribution to the costs of care.

7.3 The disregards when applied in English local authority areas allows for consistency in equality of treatment across England and Northern Ireland.

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 these Regulations on Local Authorities.

11. Guidance

11.1 The Care and Support Statutory Guidance will be updated to reflect the changes at the earliest opportunity.

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 An Impact Assessment has not been prepared for this instrument because there is no, or no significant impacts on local authorities in allowing a person to retain their compensation amount instead of using it 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 based on being inclusive of any policy changes taken by the Devolved Administration of Northern Ireland.

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 Victoria Dare, Deputy Director for Charging Policy and Reform, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Helen Whately MP, Minister of State for Care, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.