EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND ASYLUM (PROVISION OF SERVICES OR FACILITIES) (AMENDMENT) REGULATIONS 2023

2023 No. 1373

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 To amend the level of the one-off maternity payment that pregnant women may receive if they are supported under section 4 of the Immigration and Asylum Act 1999 from £250 to £300. This instrument also increases the amount of time an individual can apply for a maternity payment, from eight weeks before the expected date of birth to six weeks after the birth, to 11 weeks before the expected date of birth to six months after the birth. The additional weekly payments pregnant women and children under the age of three supported under section 4 may receive are also amended by this instrument. For pregnant woman and children aged at least one and under three the level of additional support is increased from £3.00 to £5.25, and eligibility is being expanded to include children aged three. For children aged under one, the level of additional support is increased from £5.00 to £9.50.

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 the United Kingdom.

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

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 Home Office provides support to failed asylum seekers, persons whose asylum claims are declared inadmissible, and their dependants who would otherwise be destitute if they meet certain eligibility criteria under the powers set out in section 4 of the Immigration and Asylum Act 1999. Support to these individuals is usually provided in the form of fully-furnished accommodation (including utilities bills paid), plus a weekly allowance to enable individuals to meet other "essential living needs". The Home Office is not required to set out the rate of the weekly allowance for individuals supported under section 4 in legislation, but additional provisions are set

out in the Immigration and Asylum (Provision of Services or Facilities) Regulations 2007.

6.2 Regulation 6 of the Immigration and Asylum (Provision of Services or Facilities) Regulations 2007 allows for the one-off supply, on application, of additional vouchers to pregnant women and new mothers in the period from eight weeks before the expected date of birth to six weeks after birth. Regulation 7 allows for the weekly supply, on application, of additional vouchers to pregnant women and children under three years of age.

7. Policy background

What is being done and why?

7.1 As part of the annual review into the subsistence rates provided by the Home Office to asylum seekers supported under section 4 and section 95 of the Immigration and Asylum Act 1999, a review was undertaken into the additional levels of support available to ensure they are at a sufficient level to meet the purpose of those allowances.

7.2 Following the review, Home Office Ministers have decided to increase the level of the maternity payment provided to eligible women supported under section 4 of the Immigration and Asylum Act 1999 from £250 per pregnancy to £300 per pregnancy to align with the payment provided to pregnant asylum seekers who are supported under section 95 of the Immigration and Asylum Act 1999. The period in which individuals can apply for this payment is also being increased from eight weeks before the expected date of birth to six weeks after the birth, to 11 weeks before the expected date of birth to six months after the birth.

7.3 Home Office Ministers have also decided to increase additional support for pregnant women and children under three. For pregnant woman and children aged at least one and under three the level of additional support is increased from £3.00 to £5.25, and children aged three will now be eligible for these payments. For children aged under one, the level of additional support is increased from £5.00 to £9.50. These changes are to align the payments with the 'Healthy Start' payments provided for a similar purpose by the Department for Health and Social Care, with an additional allowance on top of this for individuals to buy vitamins.

7.4 In undertaking the review, full consideration has been given to Section 55 of the Borders, Citizenship and Immigration Act 2009, which requires the Home Office to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK.

Explanations

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

7.5 The Immigration and Asylum (Provision of Services or Facilities) Regulations 2007 currently allows for the one-off supply, on application, of additional vouchers to pregnant women and new mothers to the value of £250 in the period from eight weeks before the expected date of birth to six weeks after the birth. Under Regulation 7, it also allows for the weekly supply, on application, of additional vouchers to pregnant women and children under three years of age, to the value of £3 per week to a pregnant woman and children aged one to under three, and of £5 per week to children under one.

Why is it being changed?

7.6 The level of the rates has been reviewed and it has been determined that they should be increased to ensure that the Home Office is able to continue to meet its statutory obligations. The maternity payment has been increased to align with the section 95 payment, as needs are the same. The additional payments for pregnant women and young children have been increased to align with 'Healthy Start' payments, as they are provided for a similar purpose to a different cohort.

What will it now do?

7.7 The statutory instrument will amend Regulations 6 and 7 of the Immigration and Asylum (Provision of Services or Facilities) Regulations 2007 so the level of the one-off maternity payment is increased to £300 and the level of the weekly additional payments to pregnant women and children aged at least one and under three, and children under one, are increased to £5.25 and £9.50 respectively. Children aged three will also be eligible for the lower weekly payment. It will also amend the definitions of "ante-natal eligible period" from eight weeks before the expected date of birth to the date of birth, to 11 weeks before the expected date of birth to the date of birth and "post-natal eligible period" from the date of the birth to six weeks after the birth to the date of the birth to six months after the birth.

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 The Home Office is changing the rate of the allowances in regulations 6 and 7 of the Immigration and Asylum (Provision of Services or Facilities) Regulations 2007. Rather than amending policy or procedure substantively, therefore we consider there to be no requirement for consolidation text.

10. Consultation outcome

10.1 The Home Office reviews the level of the allowances provided to supported asylum seekers annually. This year, we also reviewed additional payments that are available. In line with our standard practices, leading voluntary sector groups with an interest in asylum support were invited to submit their views for consideration. Most responses received considered that the rate of maternity payment paid to asylum seekers on section 4 should be aligned with the rate received by those supported under section 95 of the 1999 Act.

11. Guidance

11.1 Asylum support payments guidance will be published noting the levels of allowance available to asylum seekers and each of any of their dependants supported under section 4 of the Immigration and Asylum Act 1999.

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 impact on businesses and the public sector.

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 of this legislation is that the level of cash allowance provided is reviewed regularly by the Home Office.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Jonah Sanders at the Home Office, email jonah.sanders@homeoffice.gov.uk can be contacted regarding the instrument.

15.2 Miv Elimelech, Deputy Director for Asylum and Protection Unit, at the Home Office can confirm this explanatory Memorandum meets the required standard.

15.3 Tom Pursglove, Minister of State at the Home Office can confirm this explanatory Memorandum meets the required standard.