EXPLANATORY MEMORANDUM TO

THE NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS AND ASSESSMENT OF RESOURCES) AMENDMENT (ENGLAND) REGULATIONS 2013

2013 No. 518

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The National Assistance (Assessment of Resources) Regulations 1992 (SI 1992/2977), as amended, currently allow local authorities to take earnings into account when assessing a person's contribution to the cost of residential care provided under the National Assistance Act 1948. This instrument changes the rules to allow individuals to keep their earnings.

2.2 Where a local authority arranges residential care for a person it must charge the person an amount they have been assessed as being able to pay. Section 22(4) of the National Assistance Act 1948 requires local authorities to ensure that, after charges have been deducted, the person is left with a weekly sum for personal expenses, the Personal Expenses Allowance (PEA). This amount is set out in regulations. This instrument uprates the PEA.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 These regulations amend two statutory instruments. The National Assistance (Assessment of Resources) Regulations 1992 ("the assessment regulations") set the rules for the financial assessment that local authorities carry out to determine how much individuals receiving residential care under the National Assistance Act 1948 should contribute. These rules take into account different sources of income and wealth that people have. Currently, the Regulations allow local authorities to charge people against their earnings for their residential care.

4.2 The National Assistance (Sums for Personal Requirements) Amendment (England) Regulations 2012 (SI 2012/663) amended the National Assistance (Sums for Personal Requirements) (England) Regulations 2003 (SI 2003/628) to set the level of the PEA at £23.50 per week.

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 The assessment regulations also have effect in Wales and Scotland; however the amendments made by this instrument only apply in England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Local authorities use financial assessments to determine how much individuals should pay towards their care. For residential care, local authorities must charge residents in accordance with the assessment regulations. These provide that earned income should be included in the residential care financial assessment, subject to some disregards.

7.2 This results in any earned income above the PEA, being taken by the local authority to pay for residential care thereby creating a barrier to those who could take up employment, given they are not monetarily better off working.

7.3 Current government policy is to enable all those who can work to do so and changes to employment benefits look to encourage working by ensuring individuals are no worse off from working than from being unemployed. The change to the treatment of earnings when charging for residential care has the same objective of enabling people to benefit from employment, to create the right government framework to support individuals back into employment.

7.4 Further, there is interest from stakeholder groups such as Disability Rights UK to consider changing the treatment of earned income, and the Joint Committee on Human Rights (JCHR) recommended in their recent report:

"There appears to be an anomaly in the charging policy for residential care which creates a significant work disincentive, thus impeding access to independent living. The Government also appear not to recognise the extent to which people living in residential care are able to engage in paid work. We urge the Government to take action to remove this disincentive as soon as possible." (Joint Committee on Human Rights, Implementation of the right of Disabled People to Independent Living, 1st March 2012, London: The Stationery Office ltd)

7.5 The scale of the impact of this change is uncertain, but likely to be small. We do not think that everyone in residential care of working age can work due their disability. The JCHR heard evidence from individuals currently prevented from working, but did not indicate the extent of the problem.

7.6 We estimate the number of individuals discouraged from working to be small and therefore any change may be more important in setting out government intent rather than affecting large numbers of people.

7.7 The PEA is uprated annually to ensure the allowance maintains its value over time.

Consolidation

7.7 As this amendment simply uprates the PEA amount and introduces a disregard for earnings, consolidation is not applicable.

8. Consultation outcome

8.1 In deciding to make this change in the treatment of earnings, the Department worked with various individuals who are currently affected by the regulations, in the months leading up to publication of the Care and Support White Paper in July 2012.

8.2 The Department worked with care users and their representatives and heard evidence from the Joint Committee on Human Rights. These groups were favourable to the change, seeing it as one step in the wider context of creating equal opportunities for people to access employment.

8.3 The Department also consulted local authorities about the impact on their budgets from lost income. Through this consultation, the Department was able to identify the impact on local authorities through the New Burdens process and, to address this New Burden, DH has allocated additional funding to local authorities to cover this cost, through a portion of the additional NHS transfer announced in the White Paper. This took place in during preparation of the Care and Support White Paper, published in July 2012.

8.4 In determining the correct way to exempt earnings, the Department consulted informally with appropriate local authority representatives in December 2012, to ensure that there would be no unforeseen impacts on local authorities. Apart from the potential for lost income (which they agreed would be small, and is incorporated in the new burdens process), these discussions did not identify any other impacts on local authorities.

9. Guidance

9.1 The Charging for Residential Accommodation Guidance (CRAG) is guidance for local authorities on the operation of the National Assistance (Assessment of Resources) Regulations 1992, as amended. This will be updated to reflect the change in time for the instrument coming into force.

10. Impact

10.1 The main impact of the earnings disregard will be on individuals in residential care who are able to work but are currently disincentivised since

they will not gain financially. By making the change, it is hoped that such individuals will want to gain employment, and as such, will offer business, charities or voluntary bodies a greater set of skills to employ.

10.2 There is a negative impact on the public sector in the form of reduced income to local authorities from those who are currently in residential care and working, and where the local authority charges an individual based on this income. This has been quantified in the Impact Assessment that accompanies the Care and Support White Paper. The new burdens process is being followed according to the Department for Communities and Local Government Guidance.

10.3 The appropriate extract of the full Impact Assessment for the Care and Support White Paper is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk

10.4 The PEA uprating will ensure the value of the PEA to individual residents is maintained.

11. Regulating small business

11.1 The legislation does not apply to small business, since it does not apply to any businesses, only local government.

12. Monitoring & review

12.1 The impact of this change will be monitored as part of the general process of working with local authorities.

13. Contact

Alan Probett at the Department of Health (Tel: 020 7210 5593 or email: SCPI-Enquiries@dh.gsi.gov.uk) can answer any queries regarding the instrument.

Impact Assessment

Below is an Impact Assessment. The Impact Assessment was cleared by Ministers and is an up to date assessment of the impacts of the SI.

The full document is published on the Department of Health website, available here: http://www.dh.gov.uk/health/2012/07/careandsupportwhitepaper/

Specific pages that refer to the policy are: 1, 2, 19, 32-34

Title:	Impact Assessment (IA)
Independence, choice and control **Accompanying IA for the White Paper "Caring for our future: reforming care and support"** **IA No:** 7062 **Lead department or agency:** Department of Health **Other departments or agencies:**	**Date:** 03/07/2012 **Stage:** Consultation **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** Caroline Allnutt, Department of Health

Summary: Intervention and Options

RPC Opinion: AMBER

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In,**	**Measure qualifies as**
N/A	£0m	£0m	No	NA

What is the problem under consideration? Why is government intervention necessary?

Care and support is too focused on intervention at the point of crisis, rather than helping individuals to maintain independence and prevent the onset of care needs. Rather than being shaped around the needs of individuals, services have developed on the basis of systems, structures and funding flows. There are still significant barriers preventing people from having choice and control over how their needs are met. In particular, access to high quality information and advice is variable in terms of quality and access across the country. The extent to which care and support is personalised and integrated with other public services has implications for quality of outcomes, user experience and efficient use of public resource.

What are the policy objectives and the intended effects?

To improve outcomes and experience of care and secure a more effective use of public and community resources. Specifically to improve the evidence base for preventative approaches; incentivise innovative approaches to investment in prevention; promote the welfare of older people through a wider range of housing options; enable all care users to have independence, choice and control and to achieve their desired outcomes; ensure that health, care and other public services work together to improve outcomes and experience; enable people to understand what support is available and how to access it; enable people to make informed choices and provide access to transparent information about available services.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

As set out in the White Paper, take forward the following policy proposals: Improve the focus on prevention by accelerating the roll-out of assistive technology, developing an evidence base for investment in prevention and exploring new investment approaches; provide capital funding to support the specialised housing market; set out in legislation an entitlement to personal budgets for people eligible for care and support; develop direct payments for people in residential care; exempt earnings from residential financial assessment; ensure that outcome measures support integration; provide a national information and signposting service including a directory of services; introduce a statutory duty on local authorities to provide information and advice; improve local authorities' web-based information and advice services; make available additional provision of advice and support; make clearer the duty for local authorities to share information; and develop best practice models for support and representation services.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** No	**< 20** No	**Small** No	**Medium** No	**Large** No
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**	**Non-traded:**	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: [signature] Date: 3/7/12

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
	2012	10	Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional	4	Optional	Optional
Best Estimate	50		61	559

Description and scale of key monetised costs by 'main affected groups'

The recurring costs are mainly the costs to local authorities of information, advice and support services and of disregarding earned income in the means test for residential care and capital costs over 5 years to Department of Health for specialised housing. The transitional costs comprise mainly costs to councils for proposals to promote greater personalisation and to DH for proposals to improve information and advice.

Other key non-monetised costs by 'main affected groups'

The direct costs are monetised. There will be opportunity costs where councils decide to re-prioritise their budgets to promote prevention measures and more integrated care. There may also be additional costs arising from increased demand for services as a result of improved information provision and some additional low costs as a result of the duty to share information with individuals, carers and their families. Those investing in social impact bonds will experience costs and benefits.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0		5	42

Description and scale of key monetised benefits by 'main affected groups'

The benefits could not be monetised, with the exception of the cash gains to care users in care homes whose earned income will be disregarded in the means test (but part of these gains will be offset by costs to councils).

Other key non-monetised benefits by 'main affected groups'

Non-monetised benefits relate mainly to welfare gains to users and carers from the proposals to promote a greater focus on prevention, integration, personalisation and improved information, advice and support services. Depending on the scheme, there may be potential for savings, especially in the long run, associated with integration.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

There is uncertainty about some of the costs, in particular the costs of advice and support services. There is limited evidence on the benefits of some of the proposals. Social impact bonds are dependent on external investment. The impact of the proposal on specialised housing will be examined in a further impact assessment.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits:	Net:	No	NA

Rationale for Intervention (pg 19)

People in employment who are supported by local authorities in residential care currently have all of their earned income charged to pay for care. This creates a disincentive for individuals to take up employment since the individual is financially no better off working than not working. Government intervention is required to remove the current legislative barriers to people in residential care taking up employment. This would support more disabled people to take up employment and pursue their desired goals.

Further description of the benefits and costs of exempting earnings (pg 32-34)

Proposal H: Exempt earned income from the residential care financial assessment

By removing earned income from the financial assessment for residential care, individuals will be able to realise monetary gains from working. This should act as an incentive for disabled people to take up employment where possible.

Individuals in residential care affected by this policy fall into two categories: those who are currently working and those who will take up employment as a result of the change. The effect of the policy on these two groups determines its costs and benefits.

Costs

There will be additional costs to local authorities where they no longer take into account the earned income of those individuals currently working in charging for residential care costs.

A survey carried out by Disability Rights UK estimated that 1% of working age adults in residential care currently work. Since there are around 54,000 people aged 18-64 in residential care, this corresponds to around 500 individuals currently working. We have assumed they work 20 hours a week, at a median wage of £11 per hour, again based on discussions with Disability Rights UK. Individuals are allowed to keep £22.60 per week out of their earned income as their Personal Expenses Allowance (PEA). Therefore, the financial loss to the local authority as a result of this policy change is the individual's wage minus PEA (£22.60 per week). Taking into account demographic pressures, this gives an upper estimate of an additional cost of £5.35 million per year to local authorities.

However, conversations with local authorities suggest the amount of charges received from earned income is currently limited. Few individuals earn more than £22.60, so there is no significant income from earnings for local authorities. Therefore, the lower range of the estimate is nil.

Our range of cost estimates is therefore from nil to £5.35 million, giving us a central estimate of £2.67 million costs in the first year of implementation, 2013/14. Costs will rise over the years due to demographic pressures.

As this is a transfer of resources from local authorities to working residential care recipients, the costs to local authorities correspond exactly to the benefits that would be realised by those currently working in residential care.

We believe there will be some small administration costs to local authorities as a result of financial assessors changing protocol and updating charging arrangements for those currently earning. Individuals already have their care package and financial situation reviewed on a regular basis. The application of the change to charging rules can be applied at no additional cost to the local authority during these reviews. There may be

some small fixed cost to local authorities to learn and understand the new rule and how to apply it.

There is a complex interaction between individuals taking up employment, local authority charges and the benefit liability of Department for Work and Pensions. Individuals who choose to take up employment may see their benefits decrease as a result, although this should be limited through the introduction of Universal Credit. When earned income is exempt, local authorities will still take account of income from benefits. If this decreases as a result of taking up employment, the local authority receives less income but DWP saves the same amount in less benefit payments. The total amount of this transfer between DWP and councils cannot be estimated reliably since it will depend on individual circumstances.

Benefits

The main monetised benefit is to those taking up employment as a result of the legislative barrier being removed. This may be those currently working increasing their level of employment, or those not working taking up a job.

The monetary benefit gained from increased employment is uncertain. There is little information on the numbers who currently do not work but would do so if earnings were ignored in the charging system for residential care. We have assumed that some 400 to 500 care home residents will take up employment if earnings are disregarded and that they would work on average 20 hours per week at a wage of £11 per hour. This is highly tentative and illustrative only. The estimated monetary benefit to these residents is up to £5 million per annum.

An additional benefit accrues to individuals who are currently working in residential care and contribute their earnings towards their care. The cost to the local authorities estimated above would be the exact benefit to those currently working in residential care. Therefore, it is a transfer from local authorities to working residential care recipients.

Monetised costs and benefits per year are outlined below, based on upper estimates calculated and excluding the transfer between local authorities and DWP. Because we envisage individuals taking up employment as a result of the proposal, there will always be a positive net benefit. This net benefit comprises the earnings from work that would not be realised without the exemption of earnings from the means test for residential care. This is on the assumption that the additional work is a slight increase in productive output in the economy.

The assumptions underlying these costs are to illustrate the maximum loss and gain. Despite these assumptions, the resulting costs identify the small scale and distribution of impacts. For simplicity, we have used a central estimate of costs and benefits in summary analysis.

Table 6: Monetised costs and benefits per year

	Current Earnings		**New Earnings**
	Loss to the local authority	Gain to the individual	Gain to the individual
Exempt all earnings	£2.67m	£2.67m	£2.67m

The assumptions underlying these costs are to illustrate the maximum loss and gain. Despite these assumptions, the resulting costs identify the small scale and distribution of

impacts. For simplicity, we have used a central estimate of costs and benefits in summary analysis.

Non-monetised impacts

Individuals who are currently prevented from taking up employment will realise the non-monetary benefits of employment. These are currently realised by those who currently choose to take up employment, but do not see any cash benefit. These are varied, including social interaction, purpose and mental agility. They can be summarised through measuring social wellbeing, which finds that employed individuals have on average higher social wellbeing than the unemployed**.**

Costs over ten years use the same assumptions and are presented below in table 7, which shows the effect of demographics, reflecting that we expect there to be more individuals in residential care in the future who could work or will be working.

Table 7: Costs and benefits of Proposal H, with net impacts for exempting earned income

	2013/14	**2014/15**	**2015/16**	**2016/17**	**2017/18**	**2018/19**	**2019/20**	**2020/21**	**2021/22**	**2022/23**
Cost to local authorities	-£2.7m	-£2.7m	-£2.7m	-£2.8m	-£2.8m	-£2.8m	-£2.9m	-£2.9m	-£2.9m	-£2.9m
Benefit to individuals currently working in residential care	£2.7m	£2.7m	£2.7m	£2.8m	£2.8m	£2.8m	£2.9m	£2.9m	£2.9m	£2.9m
Benefit to individuals who choose to take up employment	£2.7m	£2.7m	£2.7m	£2.8m	£2.8m	£2.8m	£2.9m	£2.9m	£2.9m	£2.9m