EXPLANATORY MEMORANDUM TO

THE SOCIAL FUND WINTER FUEL PAYMENT REGULATIONS 2024

2024 No. 869

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Emma Reynolds MP, Minister for Pensions at the Department for Work and Pensions, confirms that this Explanatory Memorandum meets the required standard.

2.2 Andrew Latto, Deputy Director for Devolution, Pensioner Benefits and Carer's Allowance at the Department for Work and Pensions, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Elisabeth Plunkett at the Department for Work and Pensions, telephone: 07795283722, email Elisabeth.plunkett@dwp.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes provision that, from 2024/25, Winter Fuel Payments will be made to pensioner households in England and Wales which are in receipt of a qualifying income-related benefit or tax credit. They were previously paid to pensioner households regardless of receipt of other benefits.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales. Regulation 7(1) and Schedule 2 also extend to Scotland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales. Regulation 7(1) and Schedule 2 also apply to Scotland.

5. Policy Context

What is being done and why?

5.1 On 29 July 2024, the Chancellor announced the new policy on Winter Fuel Payments to Parliament as one of the measures included as a government priority in "Fixing the

Foundations"[1]. The measure is in response to the substantial pressures faced by the public finances this year and next. Whilst making the necessary Exchequer savings, it retains support for pensioner households on the lowest incomes.

5.2 This legislation revokes and replaces the previous legislation, The Social Fund Winter Fuel Payment Regulations 2000[2], and makes provision for the means-testing of Winter Fuel Payments by reference to qualifying benefits and tax credits[3].

5.3 Regulation 2 provides that the Secretary of State must pay a Winter Fuel Payment to anyone who has reached State Pension age by the end of the qualifying week[4], and is resident in England and Wales, and is entitled to a qualifying benefit or tax credit.

5.4 Regulation 2 also provides, for winter 2024/25 only, that the Secretary of State must pay a Winter Fuel Payment to people in the European Economic Area and Switzerland who have reached State Pension age by the end of the qualifying week, are resident in a country that is covered by the Withdrawal Agreement[5] or other parallel agreements, are listed in Schedule 1 of the regulations, are in receipt of a benefit equivalent to Pension Credit or another qualifying benefit or tax credit, and are able to show a genuine and sufficient link to the United Kingdom[6]. The provisions for payments in the European Economic Area and Switzerland will expire on 1 April 2025.

5.5 Regulation 3 details the amount a household can receive, which is £200 for a household with someone of State Pension age and under 80, and £300 for a household with someone aged 80 and over.

5.6 Regulation 4 sets out that households will not be eligible for a Winter Fuel Payment if:

i) they are in a couple, or polygamous marriage, and the other member of the couple, or another partner in the polygamous marriage, has received a payment for the household as the lead claimant;

ii) they are in hospital getting free treatment for the whole of the qualifying week and for at least a year immediately before the qualifying week;

iii) they are in prison serving a sentence imposed by a court for the whole of the qualifying week;

iv) they are in residential care (a care home) for a period of 13 weeks, including the full week of the qualifying week.

5.7 Regulation 4 also ensures that a pensioner will not receive a duplicate payment if they move from England and Wales to Scotland or Northern Ireland during the qualifying week.

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[1] https://assets.publishing.service.gov.uk/media/66ab7c2fce1fd0da7b59319a/E03171937_-_Fixing_the_foundations_-_public_spending_audit_2024-24_-_Web_Accessible_v2.pdf

[2] https://www.legislation.gov.uk/uksi/2000/729

[3] Other qualifying benefits and tax credits are: Universal Credit; Income Support; income-based Jobseeker's Allowance; income-related Employment and Support Allowance; and Working Tax Credits and Child Tax Credits of no less than £26 in respect of the tax year 2024/25.

[4] The third week of September. In 2024 this is 16-22 September.

[5] https://www.legislation.gov.uk/eut/withdrawal-agreement/contents

[6] Previously, it was a requirement that the genuine and sufficient link be to the United Kingdom social security system. This instrument clarifies, following the judgment in the case known as Kavanagh & Anor v The Secretary of State for Work and Pensions [2019] EWCA Civ 272, that this is no longer a requirement. A genuine and sufficient link may be demonstrated by the relationship between the claimant and the United Kingdom, including family circumstances and other personal circumstances of the claimant.

5.8 Regulation 4 also details that a pensioner will not be eligible for a Winter Fuel Payment if they have not made a claim by 31 March 2025, subject to the exception set out in Regulation 5.

5.9 Regulation 5 allows for automated payments based on information held by the Department for Work and Pensions. It also allows for Winter Fuel Payments to be made if a household becomes entitled to a qualifying benefit or tax credit in the qualifying week where that entitlement is decided after 31 March 2025. This could happen, for example, when a claimant appeals a decision about benefit entitlement and a social security tribunal finds that they are entitled to a benefit.

5.10 Regulation 6 makes consequential amendments to the Social Security (Claims and Payments) Regulations 1987[7].

5.11 Regulation 7 revokes previous Winter Fuel Payment Regulations and provides for the expiry of the provisions relating to the European Economic Area and Switzerland on 1 April 2025.

What was the previous policy, how is this different?

5.12 The previous policy provided for a universal payment to all pensioner households, aside from the specific exemptions detailed above. This was originally introduced in 1997/98 through The Social Fund Winter Fuel Payment Regulations 1998[8] to help pensioners with the cost of heating in winter. The Regulations laid in 2000[9] superseded the 1998 Regulations. This instrument restricts payments to households in receipt of a qualifying benefit or tax credit in England and Wales, effectively applying a test of low income.

6. Legislative and Legal Context

How has the law changed?

6.1 The Social Fund Winter Fuel Payment Regulations 2000[10] are revoked by these Regulations, which make provision for the means-testing of Winter Fuel Payments by reference to qualifying benefits and tax credits.

Why was this approach taken to change the law?

6.2 Ministers decided to re-make the regulations rather than amend them as that is the clearest way to make the necessary changes to the legislation.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation was undertaken. As noted above, this is a measure in response to the substantial pressures faced by the public finances this year and next. Whilst making the necessary Exchequer savings, it retains support for pensioner households on the lowest incomes.

7.2 These regulations will be considered by the Social Security Advisory Committee on 11 September and come into force on 16 September. The urgency procedure under section 173 of the Social Security Administration Act 1992, to make and lay

[7] https://www.legislation.gov.uk/uksi/1987/1968/made
[8] https://www.legislation.gov.uk/uksi/1998/19/made
[9] https://www.legislation.gov.uk/uksi/2000/729
[10] https://www.legislation.gov.uk/uksi/2000/729

regulations before consideration by the Social Security Advisory Committee was approved by Ministers.

8. Applicable Guidance

8.1 Public information products will be updated to reflect these provisions where applicable on the gov.uk website[11] and corresponding guidance will be issued to operational staff.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is no significant new impact on business, charities or voluntary bodies.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies beyond their existing obligations, because they are out of scope of the legislation.

9.3 The legislation does not have an impact on small or micro businesses.

9.4 The impact on the public sector is that the overall Exchequer effect will be savings of £1.3 billion in 2024/25, and around £1.5 billion in subsequent years.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will be through the annual Winter Fuel Payment statistics that DWP publishes online[12]. These will allow us to monitor the number of households receiving a WFP.

10.2 The instrument does not include a statutory review clause. Existing operational processes will be adjusted to ensure that Winter Fuel Payments are made to eligible households, either automatically or in response to a claim.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Ministers are laying the Regulations during Parliamentary recess because they need to come into force on the first day of the qualifying week, 16 September 2024. Unless the preceding Regulations are repealed by then, these Regulations would not be able to supersede them.

12. European Convention on Human Rights

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

[12] https://www.gov.uk/government/statistics/winter-fuel-payment-statistics-for-winter-2022-to-2023

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does, however, relate to the withdrawal of the United Kingdom from the European Union because it refers to the Withdrawal Agreement and parallel agreements, as detailed above, which cover Switzerland and those countries in the European Economic Area whose residents can be entitled to a Winter Fuel Payment.