EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY ADDITIONAL PAYMENTS (FIRST QUALIFYING DAY) REGULATIONS 2023

2023 No. 361

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.

2. Purpose of the instrument

2.1 The instrument is being made to implement the first Means-Tested Additional Payment of £301 ("the £301 Cost of Living Payment") which was legislated for by the Social Security (Additional Payments) Act 2023[1] ("the Act"). The instrument specifies that the first qualifying day for the purposes of the Act is 25 February 2023.

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 extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

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

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 Eligibility for the Cost of Living Payments was legislated for by the Act, with the exception of specific qualifying days for each of the payments. To limit the possibility of fraud and minimise incentives not to go into work or increase earnings around the qualifying days, each of the qualifying days will be legislated for after they have passed and therefore after a claimant's eligibility is already determined.

6.2 A person will, subject to a limited exception explained in paragraph 7.7 below, be eligible for the £301 Cost of Living Payment if they are entitled to a payment of a social security benefit listed in the Act, or a tax credit, in respect of a particular qualifying period (this is referred to in the Act as having a qualifying entitlement).

6.3 The qualifying day, which these Regulations state is 25 February 2023, read in conjunction with sections 2 and 3 of the Act, determines the qualifying period, and therefore whether a person has a qualifying entitlement, for the £301 Cost of Living

[1] https://www.legislation.gov.uk/ukpga/2023/7/contents/enacted

Payment. Paragraphs 7.4-7.8 below explain further what is meant by having a qualifying entitlement to a means-tested benefit or tax credit in respect of 25 February 2023.

6.4 The Act allows for the specified qualifying day for the £301 Cost of Living Payment to pre-date the date these Regulations, or the Act, came into force. The Act came into force on 23 March 2023 and the Regulations come into force on 17 April 2023. The choice of 25 February 2023 as the qualifying date mitigates potential fraud and work disincentives by reducing the likelihood that claimants change their behaviours to qualify for the £301 Cost of Living Payment, as the qualifying day will have passed by the time it has been publicised.

7. Policy background

What is being done and why?

7.1 Through a package of measures announced on 17 November 2022[2], the Government will provide additional support to millions of households across the UK to mitigate continuing cost of living pressures. This includes Cost of Living Payments of up to £900 to households in receipt of eligible means-tested benefits or tax credits at a total cost to the Exchequer of around £7.5 billion in 2023/24.

Explanations

7.2 The Cost of Living Payments of up to £900 will be made in three payments starting with the first payment of £301.

7.3 This instrument specifies that the first qualifying day, which relates to the £301 Cost of Living Payment, is 25 February 2023.

7.4 A person who has a qualifying entitlement to Universal Credit, Pension Credit, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Child Tax Credit or Working Tax Credit in respect of 25 February 2023 will receive the £301 Cost of Living Payment.

7.5 Sections 2 and 3 of the Act define what is meant by a qualifying entitlement.

7.6 To have a qualifying entitlement to Universal Credit in respect of 25 February 2023 a person must be entitled to a payment of at least 1p of Universal Credit in respect of an assessment period that ended between 26 January 2023 and 25 February 2023.

7.7 To have a qualifying entitlement to Pension Credit, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or Income Support in respect of 25 February 2023 a person must be entitled to a payment of at least 1p of these benefits (subject to one limited exception where payment of under 10p would not normally be made due to a *de minimis* rule) in respect of any day from 26 January 2023 to 25 February 2023.

7.8 To have a qualifying entitlement to tax credits in respect of 25 February 2023, a person must receive a payment of Child Tax Credit or Working Tax Credit in respect of any day from 26 January 2023 to 25 February 2023. Exceptions to this include persons paid a lump sum in advance for the period 26 January 2023 to 25 February 2023 but whose entitlement to tax credits had ceased prior to that period, or where tax credit payments have been obtained as a result of fraud.

[2] https://www.gov.uk/government/publications/autumn-statement-2022-cost-of-living-support-factsheet

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 This instrument does not amend or consolidate any other instruments.

10. Consultation outcome

10.1 These Regulations specify the qualifying day for the £301 Cost of Living Payment, as part of the package of measures[3] announced by the Chancellor. As the Act is not a relevant enactment for the purposes of consulting the Social Security Advisory Committee, there was no need to refer these Regulations to it.

11. Guidance

11.1 Guidance on Gov.uk[4] will be updated to announce 25 February 2023 as the first qualifying day. The amended guidance will be available from 27 March 2023.

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 no or no significant impact on the private, public or voluntary sectors is foreseen. However, an Impact Assessment[5] was prepared for the Act which this instrument helps to implement. This sets out that over 8 million benefit units (a benefit unit is defined to be a single adult or a married or cohabiting couple and any dependent children) are expected to receive the £301 Cost of Living Payment. It also shows the estimated number of benefit units who are eligible to receive Cost of Living Payments by the qualifying benefit they receive, region, age, gender, parliamentary constituency and local authority.

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 Department will publish management information shortly after each payment window.

15. Contact

15.1 Peace Olajide at the Department for Work and Pensions, email: Peace.Olajide@dwp.gov.uk can be contacted with any queries regarding the instrument.

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[3] https://www.gov.uk/government/publications/autumn-statement-2022-cost-of-living-support-factsheet
[4] https://www.gov.uk/guidance/cost-of-living-payments-2023-to-2024
[5] https://publications.parliament.uk/pa/bills/cbill/58-03/0244/SocSec(AdditionalPayments)IA.pdf

15.2 Katy Roberts, Deputy Director for Family and Poverty Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mims Davies at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.