EXPLANATORY MEMORANDUM TO

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

2023 No. 1017

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. Purpose of the instrument

2.1 The instrument is being made to implement the second means-tested additional payment of £300 ("the £300 Cost of Living Payment") which was legislated for by the Social Security (Additional Payments) Act 2023[1] ("the Act"). The instrument specifies that the second qualifying day for the purposes of the Act is 17 September 2023.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The laying date for the Social Security Additional Payments (Second Qualifying Day) Regulations 2023 is 20 September 2023 and this date falls within Conference Recess. The £300 Cost of Living Payment has been publicised as an autumn payment. The laying date must be after the qualifying day has passed, to minimise potential fraud and incentives for claimants not to enter work. The gap between the qualifying day and payment dates needs to be as small as possible, whilst allowing enough time to process payments, to ensure those in most immediate need receive the payments. Additionally, we are not able to deliver Winter Fuel Payments and Cost of Living Payments at the same time due to operational/IT restrictions. Therefore, there was no other suitable laying date that met the above criteria and avoided impacting the delivery of the 2023 Winter Fuel Payments.

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, Wales, Scotland, and Northern Ireland.

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

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

6. Legislative Context

6.1 Eligibility for the Cost of Living Payments was legislated for by the Act, except for specific qualifying days for each of the payments. To limit the possibility of fraud and minimise incentives not to go into work, 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 7.5 below, be eligible for the £300 Cost of Living Payment if they are entitled to a payment of a social security benefit listed in the Act, or a tax credit, relating to 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 17 September 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 £300 Cost of Living Payment. Paragraphs 7.2 to 7.7 below explain further what is meant by having a qualifying entitlement to a means-tested benefit or tax credit in respect of 17 September 2023.

6.4 The Act allows for the specified qualifying day for the £300 Cost of Living Payment to pre-date the date these Regulations come into force. The Regulations come into force on 11 October 2023.

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 2023/2024. The first £301 Cost of Living Payments were made between 25 April and 17 May 2023. This follows on from the 2022/2023 support package, which included a £650 Cost of Living Payment for means-tested benefit claimants, split into two payments, to over eight million households.

Explanations

7.2 This instrument specifies that the second qualifying day, which relates to the £300 Cost of Living Payment, is 17 September 2023.

7.3 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 17 September 2023 will receive the £300 Cost of Living Payment.

7.4 To have a qualifying entitlement to Universal Credit a person must be entitled to a payment of at least 1p of Universal Credit for an assessment period that ended between 18 August 2023 and 17 September 2023.

7.5 To have a qualifying entitlement to Pension Credit, income based Jobseeker's Allowance, income-related Employment and Support Allowance or Income Support,

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

in respect of 17 September 2023 a person must be entitled to a payment of at least 1p of these benefits (subject to one limited exception where Pension Credit is not payable if the amount due is less than 10p per week, unless the claimant is in receipt of another benefit (for example State Pension) which is payable with Pension Credit) in respect of any day from 18 August to 17 September 2023.

7.6 To have a qualifying entitlement to tax credits in respect of 17 September 2023, a person must receive a payment of Child Tax Credit or Working Tax Credit in respect of any day from 18 August 2023 to 17 September 2023. Exceptions to this include persons paid a lump sum in advance for the period 18 August 2023 to 17 September 2023 but whose entitlement to tax credits has ceased prior to that period.

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 £300 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 17 September 2023 as the qualifying day. The amended guidance will be available from 20 September 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 £300 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.

[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

14. Monitoring & review

14.1 The Department will publish management information on Gov.uk[6] throughout each payment window.

15. Contact

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

15.2 Graeme Connor, Deputy Director for Universal Credit Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mims Davies, Parliamentary Under-Secretary of State, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

[6] https://www.gov.uk/government/collections/cost-of-living-payment-management-information