EXPLANATORY MEMORANDUM TO

THE SOCIAL SERVICES AND WELL-BEING (WALES) ACT 2014 AND THE REGULATION AND INSPECTION OF SOCIAL CARE (WALES) ACT 2016 (CONSEQUENTIAL AMENDMENTS) ORDER 2017

2017 No. 901

1. Introduction

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

2. Purpose of the Order

2.1 The purpose of this instrument is to amend various sets of existing secondary legislation in consequence of the coming-into-force, from 6 April 2016, of the Social Services and Well-being (Wales) Act 2014[1] ("the SSWbWA 2014") so as to include reference to the SSWbWA 2014 in provisions which refer to the Children Act 1989[2] ("the 1989 Act"), which no longer applies in relation to Wales, and the Care Act 2014[3] ("the 2014 Act") which doesn't apply in relation to Wales.

2.2 This instrument makes other miscellaneous amendments to secondary legislation, to tidy up existing provisions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The SSWbWA 2014 makes provision in relation to the needs of people who need care and support, and carers who need support, in Wales. The Act was given Royal Assent on 21 May 2014, and came into force on 6 April 2016.

4.2 The legal framework for the provision of care and support for adults in England is contained in the 2014 Act, while provision for the care and support for children and their families in both England and Wales was contained in the 1989 Act.

4.3 The majority of the provisions in this instrument reflect the coming-into-force of the SSWbWA 2014. They are necessary to ensure continuing parity of treatment, for

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[1] http://www.legislation.gov.uk/anaw/2014/4. For the Explanatory Notes see http://www.legislation.gov.uk/anaw/2014/4/pdfs/anawen_20140004_en.pdf

[2] http://www.legislation.gov.uk/ukpga/1989/41/contents

[3] http://www.legislation.gov.uk/ukpga/2014/23/contents

social security purposes, between those who provide and receive care and support in Wales under the terms of the SSWbWA 2014, and their English counterparts.

4.4 The Interpretation Act 1978[4] enables references to the Children Act 1989 and to primary legislation relating to the provision of care and support for adults and carers in Wales to be read as references to the SSWbWA 2014 from the date the SSWbWA 2014 came into force until the date this instrument comes into force.

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is Great Britain.

5.3 Subject to the agreement of the Northern Ireland Assembly, separate but corresponding provisions will be made for Northern Ireland by statutory rule, by the Northern Ireland Department for Communities.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 In recognition of their particular circumstances, special treatment is afforded to people who need care and support, and to carers who need support, within a wide range of social security legislation.

7.2 Following the introduction of the SSWbWA 2014, this instrument amends secondary legislation, as appropriate, to maintain parity of treatment between those receiving care and support under the terms of the 2014 Act or the 1989 Act, and those receiving care and support under the terms of the SSWbWA 2014.

7.3 Amongst other provisions, the SSWbWA 2014 outlines the framework within which local authorities in Wales may be allowed or required to make payments to a person (including carers) towards the cost of meeting needs for care and support (or support in the case of carers).

7.4 In determining a person's entitlement to income-related social security benefits, the DWP currently takes no account of ("disregards") any payments the person receives from a local authority in relation to the authority's duty to meet the care and support needs of adults or young people. This instrument duly amends the appropriate secondary legislation so as to disregard any such payments made by a local authority in Wales under the terms of SSWbWA 2014 in the calculation of a claimant's income and capital.

7.5 Additionally, the instrument mirrors and extends the pre-existing arrangements and exceptions by –

[4] Section 17(2) http://www.legislation.gov.uk/ukpga/1978/30/contents

- providing that a single, full-time student is treated as responsible for housing costs and allowed to claim housing benefit in the circumstances where a child is placed with them under the terms of the SSWbWA 2014;
- providing that a child in the care of a local authority who is allowed to live with their parent under provisions in the SSWbWA 2014 is a "special case" for Child Support purposes;
- allowing a person being looked after by a local authority under the SSWbWA 2014 to claim jobseeker's allowance on the grounds of hardship (in the circumstances where their benefit award has been sanctioned because they have been convicted of a benefit offence or accepted an administrative penalty or caution as an alternative to prosecution for a benefit offence);
- providing that, if a claimant undertakes any duties caring for a person accommodated with them under the terms of the SSWbWA 2014, they are not to be treated as "working" for the purposes of employment and support allowance; and
- making other amendments of a similar nature, all designed to retain the status quo.

7.6 This instrument also -

- updates the definition of "registered social worker" in the Jobseeker's Allowance Regulations 1996[5] ("the 1996 Regulations") to reflect a change introduced by the Regulation and Inspection of Social Care (Wales) Act 2016[6];
- corrects out-of-date references in secondary legislation to section 23(2)(a) of the 1989 Act so as to refer, instead, to section 22C(2) of that Act[7]; and
- corrects an error made by the Employment and Support Allowance (Miscellaneous Amendments and Transitional and Savings Provision) Regulations 2017[8], by amending paragraph 17(2)(b)(iv) of Schedule 4 to the Housing Benefit Regulations 2006[9] to clarify the qualifying conditions for a disregard when a claimant is a member of a couple. This change restores the regulation to reflect the policy intent that the person working is also the one who meets the qualifying conditions by being the one who is entitled to a disability premium or is receiving the support component as part of their award of Employment and Support Allowance (ESA) or is in the work-related activity group for ESA.

Consolidation

7.7 Informal consolidated text of instruments is available to the public free of charge via 'the National Archives' website http://www.legislation.gov.uk/.

[5] http://www.legislation.gov.uk/uksi/1996/207
[6] http://www.legislation.gov.uk/anaw/2016/2/contents
[7] Section 22(C)(2) was substituted for section 23 by section 8(1) of the Children and Young Persons Act 2008 http://www.legislation.gov.uk/ukpga/2008/23/section/8#section-8-1 with effect from 6 April 2016, by virtue of article 2 of the Children and Young Persons Act 2008 (Commencement No. 8 and Saving Provision) (Wales) Order 2016 http://www.legislation.gov.uk/wsi/2016/452/contents/made
[8] http://www.legislation.gov.uk/uksi/2017/581/regulation/5/made
[9] http://www.legislation.gov.uk/uksi/2006/213

8. Consultation outcome

8.1 The SSWbWA 2014 was introduced by the National Assembly of Wales in the exercise of its legislative competence under Part 4 of the Government of Wales Act 2006[10] following a public consultation exercise which ran between 1 February 2013 and 15 March 2013. The summary of responses to the consultation can be found at http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=5961

8.2 Separate public consultation has not been carried out on this instrument, as the amendments are considered to be technical and comprise, principally, changes to secondary legislation to accommodate the coming-into-force of the SSWbWA 2014. There are no changes of policy.

8.3 A number of the proposed changes were scrutinised by the Social Security Advisory Committee under the provisions of section 173 of the Social Security Administration Act 1992 ("the Administration Act") http://www.legislation.gov.uk/ukpga/1992/5. The Committee decided that it did not require the proposed changes to be formally referred to it and, accordingly, it did not conduct a public consultation exercise on the proposals.

8.4 As required by section 176 of the Administration Act, the Local Authority Associations were consulted on certain proposals relating to Housing Benefit. They raised no concerns.

9. Guidance

9.1 The DWP has developed appropriate instructions for staff relating to the handling of claims, decisions and awards which are affected by this instrument. Guidance will be issued to local authority staff ahead of this instrument coming into force.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this Order.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 This legislation is not subject to any formal monitoring and review.

13. Contact

13.1 David Crowther at the Department for Work and Pensions (Tel: 0114 293 4835; e-mail: david.crowther@dwp.gsi.gov.uk) can answer any queries regarding this instrument.

[10] http://www.legislation.gov.uk/ukpga/2006/32/contents)