

EXPLANATORY MEMORANDUM TO
THE CARE AND SUPPORT (CHARGING AND ASSESSMENT OF RESOURCES)
(AMENDMENT) REGULATIONS 2017

2017 No. 555

1. Introduction

- 1.1 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 Care and Support (Charging and Assessment of Resources) Regulations 2014 (“the 2014 Regulations”) set out how a local authority must carry out a financial assessment of an individual’s financial resources, before it may charge that individual for meeting their care and/or support needs under the Care Act 2014 (“the Care Act”).
- 2.2 This instrument amends the 2014 Regulations to change the way in which payments to armed forces veterans under the War Pension Scheme (“WPS”) must be treated in that financial assessment.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 An administrative error has meant that this SI breaches the 21 day rule.
- 3.2 Local Authorities, and the veterans who receive war disablement pension, are expecting the Regulations to take effect on 10th April 2017 so that any war disablement pension can be disregarded from a recipient’s income when carrying out a financial assessment for the purposes of charging for social care services.
- 3.3 However, due to an oversight, there was a failure to comply with the normal rules relating to the making and laying etc. of instruments. As a result of this error, the Regulations are expressed to have been laid and to come into force on Monday 10th April 2017. Technically, therefore the Regulations will have come into force prior to being laid before Parliament. As a consequence of that, in compliance with the proviso to section 4(1) of the Statutory Instruments Act 1946, the Department has written to the Speakers of the House of Lords and the House of Commons, notifying them of the administrative error referred to in paragraph 3.1 and its impact on the date for the laying and coming into force of the Regulations.
- 3.4 The Department has begun investigations into how the error in this case occurred with a view to preventing any repetition of it..

Other matters of interest to the House of Commons

- 3.5 As this instrument is subject to 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 2014 Regulations set the rules for the financial assessment that local authorities carry out to determine how much individuals receiving residential care under the Care Act can afford to contribute towards the cost of care and support arranged under that Act.
- 4.2 In particular, the 2014 Regulations specify what sums must be disregarded by local authorities when calculating an individual's income and capital. They currently allow local authorities to take all but the first £10 per week of payments to armed forces veterans under the WPS into account when assessing an individual's contribution to the cost of residential care. The effect of the amendment made by this instrument is that payments to armed forces veterans under the WPS (other than constant attendance allowance) are to be disregarded in full.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England only.
- 5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

- 6.1 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 have the power to charge for care and support arranged under the Care Act. They use the 2014 Regulations to assess how much individuals can afford to pay towards the cost of their care.
- 7.2 There are two compensation schemes for armed forces veterans. The WPS covers veterans injured before 6 April 2005 and the Armed Forces Compensation Scheme (AFCS) covers veterans injured on or after that date. Personal injury compensation payments under both schemes are fully disregarded in the financial assessment for charging. However, until October 2012 other types of payments under the two schemes were taken into account.
- 7.3 Since October 2012 all payments under the AFCS have been disregarded but only the first £10 per week of WPS payments are disregarded. This is inequitable and the change to the regulations brings the treatment of payments to veterans under the two schemes into line.
- 7.4 As part of the Armed Forces Covenant, this Government has committed to making sure veterans are not disadvantaged by their service and when appropriate, they are given special consideration. The Royal British Legion (RBL) raised the inconsistency about the way payments to veterans under the WPS and AFCS were treated in its "Insult to Injury" campaign. The Government made a commitment in the 2016 Budget statement to address the issue by disregarding most WPS payments, with the exception of constant attendance allowance which the RBL agreed are specifically intended to pay for care.

Consolidation

- 7.5 As this instrument only makes a minor amendment to the 2014 Regulations, consolidation is not applicable.

8. Consultation outcome

- 8.1 In deciding to make this change in the treatment of earnings, the Department of Health worked with the RBL which represents veterans.
- 8.2 Disregarding WPS payments would reduce local authority income for charges which would be a new burden. The Department obtained funding from the Treasury to cover the cost of the WPS disregard.
- 8.3 The Department also consulted local authorities about options to address the impact on their budgets from lost income from charging. Through this consultation, the Department was able to agree local authorities' preferred option and has allocated additional funding to local authorities to cover this cost by using the Relative Needs Formula to weight the number of war pensioners and allocate funding to local authorities.

9. Guidance

- 9.1 The Department's "Care and Support Statutory Guidance" provides guidance for local authorities, individuals using care and support under the Care Act, and others, on the operation of the 2014 Regulations. This will be updated to reflect the change in time for the instrument coming into force.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector. There would be a negative impact, in the form of reduced income to local authorities from veterans. However, this has been addressed through the provision of additional funding (see paragraphs 8.2 and 8.3).
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

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

- 13.1 Katy Lindfield at the Department of Health, Telephone: 0113-254-6166 or email: katy.lindfield@dh.gsi.gov.uk can answer any queries regarding the instrument.