

EXPLANATORY MEMORANDUM TO
THE CARE AND SUPPORT (CHARGING AND ASSESSMENT OF RESOURCES)
(AMENDMENT) REGULATIONS 2022

2022 No. 243

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care ('DHSC') and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Care and Support (Charging and Assessment of Resources) Regulations 2014 (S.I. 2014/2672), which set out how local authorities calculate the amounts individuals are required to contribute towards their care and support.

2.2 Firstly, it increases the personal expenses allowance and minimum income guaranteed amounts. These are the weekly amounts a person is allowed to retain from their income, after they pay charges for domiciliary care received at home or for their care and accommodation in a care home.

2.3 Secondly, the instrument increases the sums to be disregarded when a local authority calculates a person's income where the person receives savings credit under the State Pension Credit Act 2002.

2.4 Thirdly, the instrument adds to the categories of capital which must be disregarded by local authorities when carrying out a financial assessment to calculate what an adult can afford to contribute towards the cost of their care and support. The additional category is:

- Financial redress payments made to survivors of historical child abuse whilst in care in Scotland, or, in some circumstances, their next of kin. The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 established a non-departmental public body, known as 'Redress Scotland'. The scheme is time limited and was open for applications before the end of 2021 from those who experienced abuse prior to 1 December 2004 in eligible residential care settings.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instrument

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 14 of the Care Act 2014 provides a local authority with the power to charge a person for meeting their care and support needs under sections 18 to 20 of the Care Act. Where a local authority chooses to charge a person, section 17 of the Care Act sets out that a financial assessment of the person's resources must be undertaken to determine what they can afford to contribute towards the cost of their care.
- 6.2 The Care and Support (Charging and Assessment of Resources) Regulations 2014 (the "Principal Regulations") set out, in Part 2, the services to be provided free of charge and the detail of how the financial assessment should be undertaken. In particular it sets out how different types of income and capital should be treated and the minimum amount of income a person must be left with after charging.
- 6.3 Regulations 6 and 7 of the Principal Regulations set out weekly amounts of income with which individuals must be left when local authorities calculate how much they can afford to contribute to their care and support. For those in care homes, this amount is the personal expenses allowance set out in regulation 6 of the Principal Regulations, and for those receiving care and support outside a care home, these are the minimum income guaranteed amounts, which are set out in regulation 7. This amending instrument increases these amounts.
- 6.4 Schedule 1 to the Principal Regulations provides for certain types of income to be disregarded when local authorities calculate people's incomes for the purposes of charging. Paragraph 40 of that schedule applies to those receiving savings credit under the State Pension Credit Act 2002 and disregards certain sums. This amending instrument increases these amounts.
- 6.5 Schedule 2 to the Principal Regulations sets out the categories of capital which must be disregarded for calculating someone's assets for charging purposes. This instrument adds one additional category of capital to Schedule 2: any redress payment made under Part 4 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. The amendment ensures that certain payments made in relation to those receiving payments in respect of being a victim of historical child abuse in Scotland are also disregarded.

7. Policy background

What is being done and why?

- 7.1 As part of wider social care reform measures, it was announced that, in order to allow people receiving means-tested support to keep more of their own income, the government would unfreeze the Minimum Income Guaranteed amounts for those receiving care in their own homes and Personal Expenses Allowance for care home residents, and update these in line with inflation. This amending instrument will up-rate these allowances. In addition, for those who qualify, an additional Saving Credit disregard is allowed in addition to the Minimum Income Guarantee and Personal Expense Allowance. These amounts are also being up-rated.
- 7.2 The policy to set up the compensation scheme referred to in sub-section 6.4 was agreed by the Scottish Government. Compensation awards from this scheme, paid to citizens of Scotland, are not considered when a means test is carried out to assess what someone can afford to contribute towards their social care costs. To allow for equality of treatment should some compensation recipients now be resident in England, the

compensation amounts are to be disregarded when a means test is undertaken within an English local authority area.

7.3 Amending legislation to permit a disregard of the compensation awards means the recipient of the compensation (as well as a nominated person where the recipient is deceased) can retain the sum awarded, rather than it potentially being used as a contribution toward the costs of care.

7.4 This disregard allows former residents of Scotland who receive redress awards to retain these, should they now reside in England and need to access social care.

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 2018.

9. Consolidation

9.1 There are currently no plans for consolidation.

10. Consultation outcome

10.1 A formal public consultation has not been undertaken due to the low impact of this regulation on local authorities.

11. Guidance

11.1 A local authority circular was published on 28 February 2022, showing the amounts of in the minimum income guarantee, personal expense allowance and savings credit disregard applicable when a financial assessment is undertaken.

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 draft, Social Care Charging Reform Impact Assessment, IA No: 9583 was published on 5 January 2022, this is relevant to paragraph 7.1. There is no, or no significant impacts on local authorities in allowing a person to retain more of their income or their compensation amount instead of using it as an offset against care costs.

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 approach to monitoring this legislation is centred on the need to review annually what, if any, uprating needs to be applied. Or if DHSC is informed of any policy changes by the Devolved Administration of Scotland, which sub-section 7.2 refers to.

15. Contact

15.1 Maureen Rafferty at the Department of Health and Social Care, Tel: 020 7972 3395 email: Maureen.Rafferty@dhsc.gov.uk can be contacted with any queries regarding this instrument.

- 15.2 Victoria Dare, Deputy Director for Charging Policy and Reform, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.
- 15.3 Gillian Keegan, Minister for Care and Mental Health at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.