EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY BENEFITS (CLAIMS AND PAYMENTS) (MODIFICATION) REGULATIONS 2022

2022 No. 428

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 Existing regulations allow for DWP claimants to pay their energy bills directly from Income Support (IS), State Pension Credit (SPC), income-related Employment and Support Allowance (IR ESA), income-based Jobseeker's Allowance (IB JSA) and Universal Credit (UC). These are known as ongoing consumption payments. This instrument will introduce a temporary change to regulations, which will result in DWP no longer accepting requests for ongoing consumption payments from energy suppliers for either new arrangements or increased payments for DWP claimants. Claimants will still be able to request ongoing consumption payments if they choose to do so, or increase/alter any payments already in place.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is an urgent instrument to support the policy change described in paragraph 7 below, any delays in modifying legislation risks uncertainty about the Department's obligations as it would still be open to energy suppliers to apply for ongoing consumption payments or to increase existing ongoing consumption payments. The instrument will invoke the urgency provision under section 173(1)(a) of the Social Security Administration Act 1992[1].

3.2 Due to urgency, the Department sought the Social Security Advisory Committee's (SSAC) views on this instrument by correspondence. Having received SSAC's queries the Department provided further information and the Committee concluded that it needed further information and invited DWP to present these Regulations at its next meeting on 27 April 2022.

3.3 In its response, SSAC acknowledged that the underlying intent of these Regulations is to provide protection to claimants following the rise in the energy price cap on 1 April, and as such recognised that the Department would want to invoke the urgency provision to deliver that at the earliest opportunity.

[1] https://www.legislation.gov.uk/ukpga/1992/5/contents

4. Extent and Territorial Application

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

4.2 The territorial application is England and Wales and Scotland.

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 The instrument will temporarily modify the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968)[2] and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (S.I. 2013/380)[3] so that a new payment for ongoing consumption of fuel or an increase to an existing payment may only be made further to an application by the claimant.

6.2 The instrument only applies to applications relating to ongoing consumption payments for energy costs which are made after the instrument comes into force so that where there are existing ongoing consumption payments these may continue to be made. The changes made under this instrument are temporary and cease to have effect on 6 April 2023.

7. Policy background

What is being done and why?

7.1 Since 2019 the Office of Gas and Electricity Markets (Ofgem) has set an energy price cap, which is the maximum amount a utility company can charge an average customer in the UK per year for the electricity and gas they use. This price cap is in place to protect customers and to ensure they pay a fair price for the energy they use at home whilst recognising the cost of wholesale energy prices.

7.2 The energy cap increased in October 2021 due to the rising cost of gas and electricity. Due to a record increase in global gas prices, the energy cap will rise by 54%[4] from 1 April 2022. Another subsequent, significant increase is expected in October 2022.[5]

7.3 As energy prices increase, energy suppliers would have inevitably requested larger ongoing consumption payments directly from benefit awards when the new caps come into effect in April and then October 2022. This would mean DWP channelling potentially significant sums of a benefit award directly to energy suppliers before a claimant is paid themselves. Crucially, in many cases, a claimant's express consent is not required by the existing regulations.

7.4 Record energy prices are just one of a range of cost-of-living pressures that DWP claimants are facing. Given the increased proportion of income that energy bills are

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[2] https://www.legislation.gov.uk/uksi/1987/1968/contents
[3] https://www.legislation.gov.uk/uksi/2013/380/contents

[4] Data sourced from the Office of Gas and Electricity Markets- https://www.ofgem.gov.uk/publications/price-cap-increase-ps693-april
[5] Advice provided by the Department for Business, Energy and Industrial Strategy.

likely to represent in coming months, the Department is not content to continue to prioritise this particular need to the potential detriment of other essential needs - unless this is the express wish of a claimant.

7.5 These changes will come to an end on 6 April 2023. By then, the 2023 benefit uprating will have been considered and Government's full range of support to assist with energy prices will have been delivered.

What did any law do before the changes to be made by this instrument?

7.6 When a DWP claimant had energy arrears, the energy supplier could request a fixed deduction from IS, SPC, IR ESA, IB JSA or UC for arrears as well as ongoing consumption payments. Energy suppliers could only request ongoing consumption payments when the claimant had accrued arrears.

7.7 The amount of the deduction for energy arrears is fixed at 5% of the claimant's UC standard allowance or the applicable personal allowance for a claimant in receipt of a legacy benefit. However, the amount deducted for ongoing consumption would be based on an estimate by the energy supplier.

7.8 The amount deducted for ongoing consumption payments for energy and water may be up to 25% of the claimant's UC standard allowance and child element or, for a legacy benefit claimant, of their applicable amount, child benefit and child tax credit, without their consent. When the ongoing consumption level at which consent is required was originally set it was unlikely that requests for ongoing consumption would match or exceed this level, however with record energy prices that will no longer be the case.

7.9 The intent of allowing ongoing consumption payments from benefit was to ensure energy arrears do not continue to accrue and as a budgeting tool for those claimants it would support. Suppliers could also request an increase to the ongoing consumption payments when estimated bills increase.

Why is it being changed?

7.10 With record energy prices, paying energy bills in full is likely to place an unusually high strain on claimants' ability to meet other needs. With other inflationary pressures also present, the Department feels it is essential that claimants are fully in control of what could be significant payments from their benefit award.

What will it now do?

7.11 Energy suppliers may only request new deductions for energy debt arrears and not request new ongoing consumption payments or change existing ongoing consumption payments until 6 April 2023.

7.12 Claimants will continue to be able to request new deductions for arrears and ongoing consumption.

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 None.

10. Consultation outcome

10.1 No consultation has been undertaken. The existing regulations provide a discretion to the Secretary of State to accept or reject an application for deductions for fuel costs, these changes just restrict who may make an application for deduction for ongoing consumption of energy. Where claimants wish to have a deduction for ongoing consumption made from their benefit award, or an increase to an existing deduction, this may still be done.

11. Guidance

11.1 The Department has internal guidance which is being updated to reflect these changes. External guidance for energy suppliers and claimants will be made available on www.gov.uk by 26 April 2022.

12. Impact

12.1 There is an impact on businesses specifically energy suppliers. They will not be able to request new deductions for ongoing consumption payments or alter existing ones until 6 April 2023. However, existing arrangements will remain in place and claimants have the full autonomy to increase these arrangements or indeed establish new ones if claimants currently pay their energy bills in a different way. There is no, or no significant, impact on 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 of the relatively low impact.

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 of this legislation is to review the impact of these temporary modification in discussions with energy suppliers and other stakeholders during the one- year period. This will help determine how the Department will approach ongoing consumption payments in the future.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Rowena Fernandes at the Department for Work and Pensions email: Rowena.fernandes@dwp.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 David Rutley, Minister for Welfare Delivery at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.