EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY BENEFITS (CLAIMS AND PAYMENTS) (AMENDMENT) REGULATIONS 2023

2023 No. 232

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.

2. Purpose of the instrument

2.1 Existing regulations allow for DWP claimants who are in debt to an energy supplier for their fuel costs to pay their ongoing energy bills directly from Income Support (IS), State Pension Credit (SPC), income-related Employment and Support Allowance (ESA(IR)), income-based Jobseeker's Allowance (JSA(IB)) and Universal Credit (UC). These are known as ongoing consumption payments.

2.2 The Social Security (Claims and Payments) (Modification) Regulations 2022 came into force on 26 April 2022. The Regulations gave effect to a temporary policy change, meaning that applications for ongoing consumption payments or increases of existing payments must be made by the claimant, rather than the energy supplier doing so. The Regulations cease to have effect on 6 April 2023.

2.3 This instrument will introduce permanent changes to the process for requesting deductions from benefit for ongoing consumption payments from 1 April 2023. It will require new requests, or requests for increased deductions, to be made by energy suppliers and such deductions will only be made with the claimant's consent.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 modify the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968)[1] and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (S.I. 2013/380)[2] so that a new request for deductions in relation to ongoing consumption of fuel or an increase to an existing deduction can only be made with the claimant's consent.

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. Existing ongoing consumption payments will continue. The changes made under this instrument are effective from 1 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 price cap was not designed to deal with extreme wholesale prices we have seen over the last year. To mitigate this and protect households from the high wholesale prices, the Government has introduced the Energy Price Guarantee (EPG). The EPG protects customers from increases in energy costs by limiting the amount suppliers can charge per unit of energy used. It currently brings a typical household energy bill in Great Britain for dual-fuel gas and electricity down to around £2,500 per year.

7.3 As announced in the 2022 Autumn Statement, the Energy Price Guarantee will be extended from April 2023 until April 2024. Over this period a typical household bill in Great Britain will be reduced to around £3,000. Based on projections of the undiscounted price of energy, this is expected to save the typical household in Great Britain around £500. [3]

7.4 Given the increase in energy prices a new approach to deduction requests will be introduced providing more control to claimants.

Explanations

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

7.5 Prior to the introduction of the temporary policy change, when a DWP claimant had energy arrears, existing regulations allowed a claimant or their energy supplier to contact the DWP and request a fixed deduction from Income Support (IS), State Pension Credit (SPC), Employment Support Allowance (ESA (IR)), Job Seeker's Allowance (JSA (IB)) or Universal Credit (UC), for arrears as well as ongoing consumption payments.

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

[3] https://www.gov.uk/government/publications/energy-bills-support/energy-bills-support-factsheet-8-september-2022.

7.6 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.

The temporary changes given effect by the Social Security Benefits (Claims and Payments) (Modification) Regulations 2022 until 6 April 2023, meant that energy suppliers could only request new deductions for energy debt arrears. Energy suppliers could no longer request new ongoing consumption payments or change existing ongoing consumption payments, but claimants could continue to do so.

7.7 In Universal Credit (UC), the amount of the deduction for energy arrears is fixed at 5% of the claimant's standard allowance. The amount of the deduction for energy arrears is fixed at 5% of the applicable personal allowance for a claimant in receipt of Income Support (IS), Employment Support Allowance (ESA (IR)), Job Seeker's Allowance (JSA (IB)) and State Pension Credit (SPC). However, the amount deducted for ongoing consumption would be based on an estimate provided by the energy supplier.

7.8 DWP is required to obtain consent from a claimant when the energy supplier has requested a total deduction amount for energy and water that is greater than 25% of the claimant's Universal Credit (UC), standard allowance and child element. For Income Support (IS), Employment Support Allowance (ESA (IR)), Job Seeker's Allowance (JSA (IB)) and State Pension Credit (SPC), consent must be obtained from the claimant if the energy supplier has requested an amount that is greater than 25% of the claimant's applicable personal allowance which includes, child benefit and child tax credit.

Why is it being changed?

7.9 The temporary regulations were due to end on 6 April 2023. Due to the current energy prices and other inflationary pressures, the Department feels it is right that claimants have more autonomy to budget their income as they see fit.

7.10 Making no change would mean the energy suppliers would once again be able to request ongoing consumption payments for new and existing arrangements to the DWP without evidencing claimant consent.

What will it now do?

7.11 Energy suppliers from 1 April 2023, can resume sending the DWP application requests for new and increased ongoing consumption payment arrangements, however the energy supplier must obtain claimant consent. This will allow claimants the opportunity to discuss their energy bills with their supplier before giving consent and agreeing ongoing consumption payments.

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.

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 1 April 2023. [4][5]

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 the impact of the change to the claimant is minimal, ultimately requiring claimant consent for ongoing consumption payments.

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 changes in discussions with energy suppliers and other stakeholders. This will help determine how the Department will approach ongoing consumption payments in the future.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Zaidah Chisty at the Department for Work and Pensions email: Zaidah.Chisty1@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 Guy Opperman, Minister for Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

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[4] https://www.gov.uk/government/publications/how-to-request-deductions-from-benefit-a-guide-for-creditors/third-party-deductions-from-benefits-a-guide-for-fuel-suppliers#who-can-apply

[5] https://www.gov.uk/bills-benefits