EXPLANATORY MEMORANDUM TO

THE CARE AND SUPPORT (CHARGING AND ASSESSMENT OF RESOURCES) (AMENDMENT) REGULATIONS 2023

2023 No. 277

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His 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) (the "Principal Regulations"), which set out how local authorities calculate the amounts individuals are required to contribute towards their care and support costs.

2.2 Firstly, this instrument increases the rates of the social care allowances - the minimum income guarantee (MIG) and the personal expenses allowance (PEA) - in line with CPI inflation at 10.1%. These are the weekly amounts a person receiving local authority-arranged care and support should retain from their income after they pay charges for care received in a care home (the PEA) or outside of a care home (the MIG).

2.3 Secondly, the instrument increases the Savings Credit disregard in line with CPI inflation at 10.1%. This is the sum 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.

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.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

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 Section 14 of the Care Act 2014 ("the Act") provides local authorities with the power to charge a person for meeting their care and support needs under sections 18 to 20 of the Act. Section 14(7) provides that a local authority may not make a charge for meeting needs if the income of the person concerned would, after the deduction of the charge, fall below an amount specified in regulations. Where a local authority chooses to charge a person for meeting their needs, section 17 of the 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 Principal Regulations include, in Part 2, provision relating to a local authority's power to charge for meeting a person's care and support needs. Regulations 6 and 7 of the Principal Regulations set out weekly amounts of income that a person should be left with for the purposes of section 14(7) of the Act. For those in care homes, this amount is the PEA, set out in regulation 6 of the Principal Regulations, and for those receiving care and support outside a care home, these are the MIG amounts, which are set out in regulation 7 of the Principal Regulations. Regulation 2(2) and (3) of this instrument increases these amounts in line with CPI inflation (10.1%).

6.3 Parts 3 to 5 of the Principal Regulations make provision in relation to financial assessments. In particular, they set out how different types of income and capital should be treated. Regulation 15 of, and Schedule 1, to the Principal Regulations provide for certain types of income to be disregarded when local authorities calculate a person's income for the purposes of the financial assessment. Paragraph 40 of that Schedule disregards certain amounts in respect of those receiving Savings Credit under the State Pension Credit Act 2002. Regulation 2(4) of this instrument increases these amounts in line with CPI inflation (10.1%).

7. Policy background

What is being done and why?

7.1 The MIG and PEA are the minimum amount of income a person should be left with each week, after a local authority has determined how much a person can afford to contribute towards their domiciliary and residential care costs and deducted any charge. Neither the MIG nor the PEA have a statutory uprating requirement. In April 2022, the social care allowances were unfrozen for the first time since 2015 and uprated in line with September 2021 CPI inflation at 3.1%. Given the high level of inflation, it has been decided that these allowances should again be uprated for the upcoming financial year (2023-2024) in line with CPI inflation of 10.1%. This is to ensure there is not a significant real terms reduction in the income individuals in receipt of local authority funded care and support retain following any charge made by the local authority.

7.2 Savings Credit is extra money paid each week to people who have an income below a certain threshold, as part of the Pension Credit system. For those who qualify, the Savings Credit disregard enables those individuals to keep an additional amount of money above the MIG or PEA as that amount is not taken into account by a local authority for the purpose of any financial assessment. It was uprated in April 2022 alongside the MIG and PEA, and it will be uprated again for the upcoming financial year (2023-2024) in line with CPI inflation at 10.1%.

Explanations

<u>What did any law do before the changes to be made by this instrument?</u>

7.3 Prior to this instrument, the PEA was £25.65 per week and the rates of the Savings Credit disregard were from up to £5.90 per week for an individual and from up to £8.85 per week for couples.

7.4 There are several different values of the MIG for different groups of adults. For example, prior to this instrument, the MIG was £94.15 per week for a single person aged 25 or older (but less than pension credit age) and a lone parent aged 18 or over. It was £194.70 per week for a single person who has attained pension credit age.

Why is it being changed?

7.5 The rates of the MIG, PEA and Savings Credit disregard are being increased in line with CPI inflation (10.1%). This will ensure there is not a significant real terms reduction of the income individuals in receipt of local authority funded care and support retain following any charge made by the local authority.

What will it now do?

7.6 The Principal Regulations will continue to set the minimum amount of income that a person should be left with, after the deduction of the amount charged by the local authority for meeting their needs each week, and the amount that must be disregarded if an individual is in receipt of Savings Credit when determining how much they can afford to contribute towards their care and support needs. These values will be increased in line with CPI inflation for the upcoming financial year (2023-24).

7.7 The PEA will increase to £28.25 per week and the rates of the Savings Credit disregard will increase to £6.50 per week for an individual and from up to £9.75 per week for couples.

7.8 As noted in paragraph 7.3, there are different values of MIG for different groups of adults. These will all increase in line with CPI inflation. For example, the MIG will increase to £103.65 per week for a single person aged 25 or older (but less than pension credit age) and a lone parent aged 18 or over. It will increase to £214.35 per week for a single person who has attained pension credit age.

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 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 (LAC) was published on 9 February 2023. The circular sets out the revised rates of the MIG, PEA and Savings Credit disregard for the financial year 2023 to 2024 which are applicable when a local authority undertakes a financial assessment.

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 there are no, or no significant, impacts on local authorities in allowing a person to retain more of their income 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 the monitoring of this legislation is centred on the need to publish a Local Authority Circular annually and consider what, if any, uprating should be applied as part of this process.

15. Contact

15.1 Heidi Thurman at the Department of Health and Social Care, Telephone: 02079 723818 or email: Heidi.Thurman@dhsc.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Linsey Craike and Megan Bradish, Deputy Directors for Adult Social Care Charging, Commissioning and Markets, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Helen Whately, Minister of State for Social Care at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.