

EXPLANATORY MEMORANDUM TO
THE CARE AND SUPPORT (CHARGING AND ASSESSMENT OF RESOURCES)
(AMENDMENT) (NO. 2) REGULATIONS 2023

2023 No. 405

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 This instrument adds a new category to the categories of capital which local authorities must disregard when carrying out a financial assessment to calculate whether a person has assets below the upper capital limit and, if so, what they can afford to contribute towards the cost of their care and support. The new category is for additional payments which are being made to eligible recipients of means-tested benefits, tax credits and disability benefits under the Social Security (Additional Payments) Act 2023 (“2023 Act”).

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 (“2014 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 2014 Act. Where a local authority chooses to charge a person, section 17 of the 2014 Act sets out that a financial assessment of the person’s resources must be undertaken. The financial assessment determines whether the person has assets below the financial limit and, if so, what (if anything) the person can afford to contribute towards the cost of their care and support.

- 6.2 The Principal Regulations set out, among other things, how the financial assessment should be undertaken. Part 5 deals with the calculation of capital and requires a local authority to disregard any capital specified in Schedule 2 to the Principal Regulations from its calculations.
- 6.3 The 2023 Act makes provision for additional payments to be made in the 2023-24 financial year to help people with the increased cost of living. Specifically, it makes provision for the Secretary of State for the Department for Work and Pensions or His Majesty's Revenue and Customs to make three means-tested additional payments, totalling up to £900, to an eligible person who has a qualifying entitlement to social security benefits or tax credits and sets out the specific qualifying social security benefits or tax credits. It also makes provision for the Secretary of State to make a £150 disability additional payment to an eligible person and sets out the specific qualifying disability benefits. Section 8 of the 2023 Act provides for these additional payments to be disregarded for the purposes of tax and entitlement to social security benefits and tax credits.
- 6.4 Regulation 2 of this instrument inserts a new category of capital into Schedule 2 of the Principal Regulations. The new category covers any additional payments to recipients of means-tested benefits, tax credits and disability benefits which would be disregarded under section 8 of the 2023 Act. Therefore, any payments disregarded for the purposes of section 8 of the 2023 Act (explained in paragraph 6.3 above) are also to be disregarded by a local authority when it is calculating a person's capital for social care charging purposes under the Principal Regulations.

7. Policy background

What is being done and why?

- 7.1 The Government introduced a new policy initiative for the 2022-23 financial year to help families with the rising cost of living by making additional payments on specified dates to those in receipt of certain benefits. For the 2022-23 Cost of Living Payments, an amendment was made to the Principal Regulations, to ensure that those payments would not be taken into account by local authorities when they calculate what a person can afford to contribute towards their care costs. This ensured the payments would have their intended impact and ease cost of living pressures, by allowing individuals to retain the full amount.
- 7.2 In the Autumn Statement, the Government announced its intention to make more Cost of Living Payments in 2023-24 to vulnerable households. The initiative is being delivered by the Department for Work and Pensions through the benefits system. This instrument, amending the Principal Regulations, requires that the additional payments made under the 2023 Act will be disregarded for the purposes of any financial assessment carried out by the local authority for adult social care charging purposes. This will ensure that these payments remain available to a person for covering cost of living expenses, which aligns with the policy intent of the initiative. It is intended that this instrument will come into force before the first payments start to be made from 25 April 2023.
- 7.3 There are existing disregards in the Principal Regulations which covered the 'Pensioner Cost of Living Payment' for 2022-23 and are currently intended to cover the 'Pensioner Cost of Living Payment' for 2023-24, which was also announced in the Autumn Statement.

Explanations

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

- 7.4 The Principal Regulations set out how local authorities calculate the amounts individuals are required to contribute towards their care and support costs and contain a list of categories of income and capital that must be disregarded in respect of that calculation.

Why is it being changed?

- 7.5 This instrument adds a new category to the categories of capital which local authorities must disregard when carrying out a financial assessment in order to ensure that people can retain the 2023-24 Cost of Living Payments made under the 2023 Act to help them with the increased cost of living.

What will it now do?

- 7.6 This instrument ensures that the 2023-24 Cost of Living Payments made under the 2023 Act will be disregarded from local authority financial assessments of what a person can afford to contribute towards their care and support costs. Those eligible for the payments will therefore be able to retain them in full, to help ease cost of living pressures.

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 No public consultation has been undertaken due to the low impact this amendment will have on local authorities.

11. Guidance

- 11.1 The Department for Work and Pensions' guidance regarding the Cost of Living Payments 2023 to 2024, which includes details about each of the payments, can be found at <https://www.gov.uk/guidance/cost-of-living-payments-2023-to-2024>

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 significant impacts on local authorities in allowing a person to use the Cost of Living Payments to ease their financial burden as intended rather than using them 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 of this legislation is centred on the need to consider what, if any, further initiatives the Government may introduce to ease cost of living pressures.

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.