

**EXPLANATORY MEMORANDUM TO**

**THE SOCIAL SECURITY AND CHILD SUPPORT (REGULATION AND INSPECTION OF SOCIAL CARE (WALES) ACT 2016) (CONSEQUENTIAL PROVISION) REGULATIONS 2018**

**2018 No. 228**

**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.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to update, within existing social security and child support secondary legislation, various definitions which will be overtaken as a consequence of the commencement, from 2 April 2018, of relevant parts of the Regulation and Inspection of Social Care (Wales) Act 2016<sup>1</sup> (“the 2016 Act”). The amendments capture and reflect the terminology of the 2016 Act, as appropriate.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative resolution procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Part 1 of the 2016 Act introduces a new system of regulation and inspection of social and health care services in Wales, replacing that established for England and Wales under the Care Standards Act 2000<sup>2</sup> (“the 2000 Act”). The 2016 Act introduces a new concept of “regulated services” which is defined in section 2 of, and Schedule 1 to, the Act.
- 4.2 The Welsh Government is commencing Part 1 of the 2016 Act on 2 April 2018 in relation to care home services, secure accommodation services, residential family centre services and domiciliary support services.
- 4.3 Whilst these services mirror the social care establishments and agencies that are regulated under the 2000 Act, the 2016 Act adopts new terminology. This instrument updates, from 2 April 2018, various existing definitions, within various sets of social security and child support secondary legislation, to capture and reflect that new terminology. This has the effect of maintaining the status quo.

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<sup>1</sup> [Regulation and Inspection of Social Care \(Wales\) Act 2016 anaw/2016/2](#)

<sup>2</sup> [Care Standards Act 2000](#)

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 Corresponding provisions will be made for Northern Ireland by the Northern Ireland Department for Communities.

## **6. European Convention on Human Rights**

- 6.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 Across a range of social security benefits and child support secondary legislation, there are provisions for people who use social care services, as currently defined, which can affect their entitlement to benefit, or the amount of child support they are liable to pay.
- 7.2 The 2016 Act creates new definitions for some social care services in Wales. Most notably, for example, the concept of a “care home” is replaced by a “care home service”.
- 7.3 Without any corresponding change to the relevant definitions in social security and child support secondary legislation, people in Wales would have different entitlements to benefits, or different child support liabilities, from people in England or Scotland who are in similar circumstances.
- 7.4 This instrument duly replaces the obsolescent definitions with definitions which reflect the terminology of the 2016 Act.
- 7.5 By way of example, in calculating entitlement to Universal Credit, allowance is normally made for a claimant’s housing costs if they make payments in respect of rent or service charges; however, payments in respect of accommodation in a care home are excluded. “Care home” is currently defined in Schedule 1 to the Universal Credit Regulations 2013<sup>3</sup> by reference to the 2000 Act. Regulation 14(3) of this instrument updates the definition, for people in Wales, so as to make reference to a care home service within the meaning of Part 1 of the 2016 Act. This maintains the status quo by ensuring that claimants in such settings cannot be paid housing costs.
- 7.6 The definition of “care home” in other sets of social security and child support regulations is being similarly amended –
  - regulation 2(2) amends the Income Support (General) Regulations 1987<sup>4</sup>;
  - regulation 3(2) amends the Social Fund Cold Weather Payments (General) Regulations 1988<sup>5</sup>;
  - regulation 4(2) amends the Child Support (Maintenance Assessments and Special Cases) Regulations 1992<sup>6</sup>;

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<sup>3</sup> Universal Credit Regulations 2013 (S.I. 2013/376)

<sup>4</sup> Income Support (General) Regulations 1987 (S.I. 1987/1967)

<sup>5</sup> Social Fund Cold Weather Payments (General) Regulations 1988 (S.I. 1988/1724)

<sup>6</sup> Child Support (Maintenance Assessments and Special Cases) Regulations 1992 (S.I. 1992/1815)

- regulation 5(2) amends the Jobseeker’s Allowance Regulations 1996<sup>7</sup>;
- regulation 6(2) amends the Social Fund Winter Fuel Payment Regulations 2000<sup>8</sup>;
- regulation 7(2) amends the Child Support (Maintenance Calculations and Special Cases) Regulations 2001<sup>9</sup>;
- regulation 8(2) amends the State Pension Credit Regulations 2002<sup>10</sup>;
- regulation 9(2) amends the Housing Benefit Regulations 2006<sup>11</sup>;
- regulation 10(2) amends the Housing Benefit (Persons who have obtained the qualifying age for state pension credit) Regulations 2006<sup>12</sup>;
- regulation 11(2) amends the Employment and Support Allowance Regulations 2008<sup>13</sup>;
- regulation 12(2) amends the Social Security (Information-sharing in relation to Welfare Services etc.) Regulations 2012<sup>14</sup>; and
- regulation 13(2) amends the Child Support Maintenance Calculation Regulations 2012<sup>15</sup>.

7.7 By way of further example, the secondary legislation covering Housing Benefit and Universal Credit currently provides that charges incurred for child care can be deducted when calculating a person’s income where, in Wales, the child care is provided “by a domiciliary care worker under the Domiciliary Care Agencies (Wales) Regulations 2004”. The 2016 Act makes this reference redundant. Regulations 9(3), 10(3) and 14(3) of this instrument duly update the relevant definitions so as to make reference, instead, to child care which is provided by a person who is engaged to provide care and support by the provider of a domiciliary support service within the meaning of Part 1 of the 2016 Act. This ensures that people in Wales paying such charges will continue to have them deducted when calculating their income.

7.8 This instrument makes a number of other amendments, in a similar vein, to some of the sets of Regulations referred to in paragraph 7.6, and to the Employment and Support Allowance Regulations 2013<sup>16</sup>. All the amendments are designed to ensure that, for benefit and child support purposes, people in Wales will continue to be treated in exactly the same way as people in England and Scotland in similar circumstances, thereby maintaining the status quo.

### ***Consolidation***

7.9 Informal consolidated text of instruments is available to the public free of charge via ‘the National Archives’ website<sup>17</sup>.

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<sup>7</sup> Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207)

<sup>8</sup> Social Fund Winter Fuel Payment Regulations 2000 (S.I. 2000/729)

<sup>9</sup> Child Support (Maintenance Calculations and Special Cases) Regulations 2001 (S.I. 2001/155)

<sup>10</sup> State Pension Credit Regulations 2002 (S.I. 2002/1792)

<sup>11</sup> Housing Benefit Regulations 2006 (S.I. 2006/213)

<sup>12</sup> Housing Benefit (Persons who have obtained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214)

<sup>13</sup> Employment and Support Allowance Regulations 2008 (S.I. 2008/794)

<sup>14</sup> Social Security (Information-sharing in relation to Welfare Services etc.) Regulations 2012 (S.I. 2012/1483)

<sup>15</sup> Child Support Maintenance Calculation Regulations 2012 (S.I. 2012/2677)

<sup>16</sup> Employment and Support Allowance Regulations 2013 (S.I. 2013/379)

<sup>17</sup> <http://www.legislation.gov.uk/>

## **8. Consultation outcome**

- 8.1 The Welsh Government conducted a wide-ranging Consultation on the latest phase of the implementation of the 2016 Act, including on draft regulations which place requirements on service providers and designated responsible individuals in providing care and support within the regulated services referred to in paragraph 4.2.
- 8.2 Four consultation events were held as part of the process. The Consultation, which ran from 2 May to 25 July 2017, received 115 responses. The summary of responses to the Consultation and the Welsh Government's Response to those responses was published in November 2017. Following analysis and consideration of the responses received, the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 were enacted and other draft Regulations were amended, as appropriate.
- 8.3 Separate public consultation on this instrument was not considered necessary as it does no more than introduce new definitions and expand existing ones in consequence of the commencement, by the Welsh Government, of Part 1 of the 2016 Act in relation to the regulated social care services mentioned in paragraph 4.2.
- 8.4 No consultation with the Social Security Advisory Committee has been required because the instrument is made using the powers in section 150 of the Government of Wales Act 2006. This section allows the Secretary of State to make legislation in consequence of Welsh legislation.
- 8.5 As required by section 176 of the Administration Act, the Local Authority Associations were consulted on the proposals relating to Housing Benefit. The Associations raised no concerns or objections.

## **9. Guidance**

- 9.1 DWP is developing appropriate instructions for staff relating to the handling of claims, decisions and awards which are affected by this instrument. Guidance will be issued to local authority staff ahead of this instrument coming into force.

## **10. Impact**

- 10.1 This instrument has no impact on business, charities or voluntary bodies.
- 10.2 This instrument, in itself, has no impact on the public sector.
- 10.3 The changes made by this instrument are limited to changes in definitions only. As there will be no impact on business, an Impact Assessment has not been prepared.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 As the instrument makes no substantive changes, no formal monitoring or review is planned.

### **13. Contact**

- 13.1 David Crowther at the Department for Work and Pensions (telephone 0114 204 1757 or 07900 778439; e-mail: david.crowther@dwp.gsi.gov.uk) can answer any queries regarding this instrument.