EXPLANATORY MEMORANDUM TO

THE INFECTED BLOOD COMPENSATION SCHEME REGULATIONS 2025

2025 No. 404

1. Introduction

1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 Nick Thomas-Symonds, Minister for the Cabinet Office and Paymaster General at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

2.2 James Quinault, Director General for Public Inquiries Response Unit, at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Elizabeth Bates at the Cabinet Office. Telephone: +447745201350 or email: ibiresponse@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Infected Blood Compensation Scheme Regulations 2025 ("the Regulations") establish further aspects of the Infected Blood Compensation Scheme ("IBCS") to allow the Infected Blood Compensation Authority ("IBCA") to process compensation claims and payments to those eligible.

4.2 The Regulations restate and expand the Infected Blood Compensation Scheme Regulations 2024, which established the initial aspects of the IBCS in August 2024. The Regulations extend the IBCS to people who are affected and make enhancements for compensation via a supplementary route, while also restating the policy established in the previous regulations.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland (i.e. UK wide).

4.4 The territorial application of this instrument will include eligible infected and affected people, wherever they are located, as set out in the Regulations.

5. Policy Context

What is being done and why?

Background

5.1 The Infected Blood scandal refers to the treatment of people with blood, blood products or tissue contaminated mainly with HIV, Hepatitis C and Hepatitis B, and the subsequent impacts of these treatments. Around 30,000 people are estimated to have been directly infected, primarily during the 1970s and 1980s. People with haemophilia and other blood disorders were particularly at risk of receiving contaminated blood or blood products as treatment for their condition. It is estimated that more than 3,000 deaths are attributable to contaminated blood, blood products or tissue.

5.2 The Infected Blood Inquiry was launched in 2017 to review the events of the scandal and the effect on those impacted. Those impacted comprise people who were infected, and people who were affected through their relationship with an infected person. More details on the people impacted is set out from point 5.8 onwards.

5.3 The Inquiry is chaired by Sir Brian Langstaff, who initially published two interim reports on compensation. The Second Interim Report[1], published April 2023, made recommendations on compensation, which built on the recommendations made by Sir Robert Francis KC's Infected Blood Compensation Framework Study[2] in June 2022.

5.4 The Inquiry published its final report on 20th May 2024[3]. The report laid out the full extent of the scandal and made recommendations. That day, the then Prime Minister apologised on behalf of the state to all those impacted.

5.5 On the 21st May 2024, the then Government set out details of their proposal for a compensation scheme, based on the principles and recommendations of Sir Brian Langstaff and Sir Robert Francis KC. Sir Robert Francis KC engaged with key representatives of the infected blood community on these proposals in June 2024 and published his recommendations to the Government in August 2024. The Government accepted 69 of Sir Robert's 74 recommendations and published updated plans[4] for compensation in August 2024.

5.6 The Victims and Prisoners Act 2024 placed a statutory duty on the Government to establish the compensation scheme in regulations by 24th August 2024. To meet this statutory requirement, the Government prioritised regulations which established the IBCS for infected people claiming through the core route only, with a commitment to bring further regulations at a later date to establish the remaining aspects. These Regulations meet that commitment.

Eligibility for Compensation

5.7 The Infected Blood Compensation Scheme Regulations 2025 ensure that compensation can be paid to eligible infected and affected people.

5.8 The definition of an eligible infected person includes those directly infected with HIV, Hepatitis C and/or Hepatitis B as a result of NHS (or armed forces overseas) treatment with contaminated blood, blood products or tissue during a qualifying time period. It

[1] https://www.infectedbloodinquiry.org.uk/reports/second-interim-report
[2] https://www.infectedbloodinquiry.org.uk/reports/infected-blood-compensation-framework-study
[3] https://www.infectedbloodinquiry.org.uk/reports/inquiry-report
[4] https://www.gov.uk/government/publications/infected-blood-compensation-scheme-summary-august-2024/infected-blood-compensation-scheme-summary-august-2024

includes those indirectly infected, for example, by transmission from an infected mother to a child during childbirth.

5.9 The definition of an eligible affected person includes partners, parents, children, and siblings of an eligible infected person. In some circumstances, people who acted as a carer for an infected person may also be eligible for compensation.

5.10 Where an eligible infected person has sadly died, their estate is able to make a claim on behalf of the deceased person. Where an eligible affected person sadly dies before accepting an offer of compensation, the estate is not eligible to claim. An eligible infected or affected person is able to claim compensation in their own right, regardless of whether they have received compensation via the estate of another eligible person.

Design of the IBCS

5.11 The Regulations establish a tariff-based compensation scheme, which will be used to calculate the amount of compensation someone is eligible for. This is based on the nature and, in some cases, severity of their infection, or for eligible affected applicants, the infection of their associated 'infected' person.

5.12 There are five categories of award under which compensation can be paid, as recommended by the Infected Blood Inquiry. These categories of award capture the primary ways in which an eligible person may have been impacted by the scandal. These are the Injury Impact; Social Impact; Autonomy; Care; and Financial Loss awards. Compensation can be claimed as a lump sum, or as regular payments.

5.13 Eligible infected people will be able to claim compensation under all five categories of award. All eligible affected people will be able to claim under the Injury Impact and Social Impact awards. Some eligible affected people will also be able to claim under the other categories of award, depending on their circumstances. The Regulations include details of different amounts payable under each category of award, and the formulae for calculating the compensation an individual is eligible to receive.

5.14 Where a person is registered with one of the four UK Infected Blood Support Schemes (IBSS), the IBCS also allows for the continuation for life of these regular payments as part of their compensation award. The IBSS support payments are previous payments available to those directly infected or their bereaved partners through the four UK IBSS. These support schemes, which are the responsibility of the Department of Health and Social Care (DHSC) and the Devolved Governments, were established in 2021.

Core Route

5.15 The IBCS will offer a Core Route and additional Supplementary Routes for awarding compensation.

5.16 The Core Route will make a tariff-based assessment of someone's compensation, under the five categories of award. The assessment will be based on a number of criteria depending on whether someone is infected or affected, including the severity of their infection or their relationship to the infected person. Once accepted onto the IBCS, all eligible applicants will initially be offered a compensation package through the Core Route. The design of the tariffs means that the Core Route is expected to be suitable for the majority of applicants, with no further assessment of personal circumstances required.

5.17 The Core Route offers two assessment paths to compensation: The first path is for those who are currently in receipt of monthly IBSS support payments and wish to

continue to receive these. The second path is for those who are either not in receipt of these payments, or do not wish to continue to receive them. Applicants also have a choice as to whether they wish to receive their compensation as a lump sum or periodic payments. Determining which path is most suitable for the person who is claiming will vary depending on the circumstances of the individual, and IBCA (see 5.24) will provide advice and support to all applicants. The decision of which path to take will ultimately be for the applicant. Regardless of which path of the Core Route an applicant opts for, nobody will be worse off under the IBCS than they were under the IBSS.

Supplementary Routes

5.18 Supplementary Routes will provide additional awards in exceptional cases where the level of compensation offered through the Core Route does not sufficiently address a person's individual circumstances. An applicant will need to go through their Core Route assessment before they can apply to the Supplementary Route, but any assessment under the Supplementary Route will not delay payment of the compensation offer made through the Core Route.

5.19 There are three supplementary awards which infected people may be eligible for and one supplementary award which affected people may be eligible for. Should a person be eligible, multiple awards can be claimed under the Supplementary Route in addition to the Core Route Award. The Supplementary Routes are set out below.

5.20 Some victims of the infected blood scandal were subjected to unethical research practices. To reflect the specific harms caused by this, an additional Autonomy Award is available via the Supplementary Route for those who were subject to unethical research practices. The eligibility criteria set out in the Regulations are based on the Inquiry's findings and follow a period of community engagement on the design of the award (see 7.5).

5.21 The Severe Health Condition award will be available to eligible infected people who have suffered from a specified rare severe health condition as a result of their infection that has not already been taken into account in the core awards (for example, severe visual impairment and severe psychiatric disorders). Applicants will need to provide evidence of their specific health impacts or conditions, and may need to provide evidence of their inability to return to work after developing a severe health condition, and/or assessment of their care needs to be eligible for supplementary care and financial loss awards.

5.22 The Exceptional Loss Award will also be available to eligible infected people without one of the specified health conditions if they can provide evidence of their financial loss and/or care costs due to their infection. To access this award, an applicant will need to show that they incurred at least one of the following: i) financial loss due to reduced earning capacity where the financial loss exceeded the assumptions in the core route; ii) where past care was paid for but was assumed, under the core route, to be unpaid; or iii) where past care was assumed to be paid for but the cost of that care exceeded that provided for under the core route. This is intended to allow applicants to provide evidence of their losses beyond the set tariffs of the Core Route. An example of this would be where a person had particularly high earnings prior to their infection and therefore suffered greater financial loss from needing to give up their job due to the impact of their infection.

5.23 The Supplementary Financial Dependency Award will be available to those eligible affected individuals who were financially dependent on an eligible infected person at

the time of the infected person's death (for example, a disabled child who relied on their infected parent for support into adulthood). In this instance, the affected person would receive a financial loss award for every year after the eligible infected person's death, up to that infected person's healthy life expectancy.

Delivery of the IBCS

5.24 All compensation will be delivered by IBCA, an arms-length body which was established in law by the Victims and Prisoners Act 2024. IBCA began to process its first claims in October 2024, starting with a small group of eligible infected people, and the first payments were made in December 2024. IBCA aims to open to 250 people by March 2025, increasing to larger numbers after that.

5.25 IBCA will work closely with people eligible for compensation to ensure they understand the compensation service and what they are eligible for. Applicants will be allocated a claims manager who will help them through the claims process. IBCA offers access to free legal support, up to an agreed amount, to the first people making their claims, alongside financial advice available to applicants. IBCA is continuing to work through the exact details of its support offer as it develops and tests the compensation service. The latest support, information and advice is available on the IBCA website[5].

5.26 The Regulations enable an eligible infected person who has received compensation payment to return to IBCA for reassessment in certain circumstances where their condition deteriorates or where they develop a new health impact condition as a result of their infection. IBCA will then assess whether they are eligible for an additional compensation payment, based on the severity bandings in the tariffs. A reassessment following a health deterioration will be possible within six years of the date of further diagnosis, regardless of how long it has been following an eligible infected person's initial assessment.

Cost

5.27 The estimated cost for delivering the IBCS, as established by the Regulations, is £11.8 billion for the 2024/25 to 2029/30 financial period. However, the ultimate costs will depend on the number of eligible people who come forward, which is difficult to estimate. The events of the infected blood scandal stretch back for decades, and, though estimates can be made, the number of people who have been infected and affected and may come forward as eligible to claim under the IBCS is unknown. The costs, as published in the 2024 Autumn Budget, reflect assumptions and expert input, and build on the statistical work conducted for the Infected Blood Inquiry to estimate the numbers of eligible infected people.

What was the previous policy, how is this different?

5.28 This is the first compensation scheme established for victims of the infected blood scandal. It responds directly to the recommendations of the Infected Blood Inquiry and was developed using the spirit of the recommendations as its guiding principles.

5.29 Previously, payments were available to those directly infected or their bereaved partners through the four UK IBSS. These support schemes, which are the responsibility of the DHSC and the Devolved Governments, were established in 2021. Those who are registered with IBSS before 31st March 2025 can continue to receive these payments under the IBCS. The responsibility for making these payments will transfer to IBCA.

[5] https://ibca.org.uk/

5.30 The payments made by IBSS are ex gratia until 31st March 2025. After this date, both the regular support payments and discretionary payments paid will count towards compensation calculations. However, payments for talking therapy and pre-payment prescription certificates will be disregarded.

5.31 Prior to the establishment of the IBSS, there were other organisations and ad hoc schemes which provided similar support and payments. Payments from these predecessor organisations will not be deducted from final compensation.

5.32 Interim compensation payments of £100,000 were made to infected persons and bereaved partners registered with IBSS in October 2022. Further interim payments of £210,000 were made in June 2024 to infected people registered with IBSS only. Interim payments of £100,000 to estates of the deceased infected beneficiaries who were registered with a UK IBSS or Alliance House Organisation on or before 17th April 2024, and whose death is not yet recognised through a payment to the infected beneficiary themselves or their bereaved partner, were made from December 2024 onwards. All of these payments were made as interim compensation and therefore are deducted from the final compensation a person is eligible for under the IBCS.

5.33 Any other past compensation awards received (e.g. those made by a court or tribunal) will be deducted from compensation awards through the Scheme. Should a person choose to pursue litigation after receiving compensation through the Scheme, compensation amounts previously awarded through the Scheme should be deducted from any awards made through the courts.

5.34 The Infected Blood Compensation Scheme Regulations 2024 established a compensation scheme for eligible infected people via the core route only. The Regulations restate and expand the IBCS to include supplementary routes for infected people and both core and supplementary routes for affected people. The Government has consistently committed to paying compensation to eligible infected and affected people[6].

6. Legislative and Legal Context

How has the law changed?

6.1 This is new law, using powers under and as required by Part 3 of the Act. Section 48 established IBCA to administer the compensation scheme and the Regulations continue and expand the scheme that was set up in the Infected Blood Compensation Scheme Regulations 2024.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes. The Victims and Prisoners Act 2024 placed a statutory duty on the Government to establish the IBCS in regulations by 24th August 2024. The Regulations follow on from and replace the 2024 regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 The IBCS was developed based on the Inquiry's second interim report and Sir Robert Francis KC's earlier compensation framework study. These reports were both

[6] https://hansard.parliament.uk/Commons/2024-07-26/debates/B8458DEA-73FB-4047-8D52-DA7A887972AE/InfectedBloodInquiry#contribution-681B3AE9-BB87-4AF4-AC34-29BFB2E884F9

developed and written following substantive engagement with the infected blood community.

7.2 The Government sought the advice of the Infected Blood Inquiry Response Expert Group, chaired by Professor Sir Jonathan Montgomery. The Government has published the full list of Group members online[7]. Throughout the development of the compensation scheme, the Group provided specialist advice in order to ensure the final compensation scheme reflected the impact of infected blood on the lives of victims as closely as possible. The group's work concluded in December 2024. Summaries of the expert group's findings have been published by the Government[8] and an addendum report will be published to accompany these Regulations.

7.3 Sir Robert Francis KC was appointed as interim Chair of IBCA in May 2024. The following month, at the Government's request, he undertook an engagement exercise with representatives from the infected blood community to gather feedback on the Government's proposed scheme before it was finalised in regulations. He found that the IBCS "is the result of a genuine attempt to achieve… a scheme which aligns in spirit with the recommendations in [Sir Robert Francis KC' 2022] framework report and Sir Brian's recommendations arising out of that". He noted that "the proposals…largely achieve their objective" but advised there were "some particular matters of detail which could well be changed to improve the perception of fairness, the better recognition of individual circumstances, the ease of processing applications, the understanding of the scheme and the reasoning underlying the scheme". Sir Robert presented the Government with 74 recommendations[9], of which the Government accepted 69.

7.4 The Government and IBCA continue to engage regularly with the infected and affected communities. The Government carried out engagement with representatives from the community in December 2024 and January 2025, to update on the progress made to fully establish the IBCS.

7.5 The Government undertook engagement with key representative groups of the infected blood community in December 2024 on the unethical research practices award. A fact sheet outlining the policy proposals on these awards was shared and the Government requested written feedback from the selected groups on the proposed eligibility criteria for the award, which requires applicants to demonstrate they were treated at certain Haemophilia centres during the time period in which the Inquiry found that unethical research took place. As a result of the feedback received through this exercise, using evidence from the Infected Blood Inquiry Report, the scope of the award has been extended and more centres have been added to the eligibility criteria.

7.6 The Government has engaged with the Devolved Governments both during the passage of the Victims and Prisoners Act, and the development of the compensation scheme and the subsequent regulations. Officials from the Devolved Governments were invited to give comments on draft versions of both the 2024 and the 2025 regulations. IBCA is a UK-wide body, and therefore the primary area of concern for the Devolved Governments is the future of IBSS and the transition of those payments to IBCA.

[7] https://www.gov.uk/government/publications/infected-blood-inquiry-response-expert-group-terms-of-reference/infected-blood-inquiry-response-expert-group-terms-of-reference-html#annex-a-list-of-infected-blood-expert-group

[8] https://www.gov.uk/government/publications/infected-blood-inquiry-response-expert-group-summary-report/infected-blood-inquiry-response-expert-group-final-report

[9] https://assets.publishing.service.gov.uk/media/66bc6254ab418ab05559371a/Sir_Robert_Francis_IB_recommendations_FINAL.pdf

8. Applicable Guidance

8.1 The details of the IBCS and other guidance can be found at https://www.gov.uk/government/collections/infected-blood-compensation-scheme.

8.2 IBCA's website also provides further details on the body that will deliver the IBCS https://ibca.org.uk/.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Equalities Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the regulations do not apply to any organisations within those categories.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector. The cost of the IBCS, including the costs of running the IBCA, has been accounted for in Government budgets and will be demand-led. More detail on cost is included in paragraph 5.27.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 There is a requirement under the Act for IBCA to prepare an annual report on the exercise of its functions during that financial year. This report must be sent to the Secretary of State or the Minister for the Cabinet Office and laid before Parliament.

10.2 The Regulations also make provision for the Minister for the Cabinet Office or the Secretary of State to carry out a review of the administration of the IBCS by the IBCA under the Regulations.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The Minister for the Cabinet Office has committed to ensuring that regulations which establish the IBCS for eligible affected people would be in place by 31st March 2025. He first made this commitment during the debate in the House of Commons on 23rd October 2024[10].

11.2 The Regulations replace and update the previous Statutory Instrument 'The Infected Blood Compensation Scheme Regulations 2024', which was approved by Parliament in October 2024. Those regulations gave the IBCA the powers to pay compensation through the core route to eligible infected people only. The 2025 Regulations continue the core route for eligible infected people, as well as expanding the IBCS to cover supplementary routes for those eligible individuals and both core and supplementary routes for eligible affected people.

[10] https://hansard.parliament.uk/commons/2024-10-23/debates/8EF74D99-0161-4C59-9F5F-5B07C2185754/InfectedBloodCompensationScheme#contribution-9F47BC5B-911F-42D4-800E-D0FEFE0448D2

11.3 The substance of the 2024 Regulations is largely unchanged. However, having a single set of regulations covering all routes means that it has been possible to make some drafting changes to simplify and consolidate the provisions. The minor changes that have been made to the 2024 Regulations are set out below; these do not materially impact the policy of the Regulations and any payment made by IBCA under the 2024 Regulations is unchanged.

11.4 There are changes to formulae for calculation of compensation in some instances to simplify them. The calculations result in the same amounts of compensation.

11.5 The terminology used for compensation payments is now shorter and more consistent. The general term "compensation payment", when it refers to a payment under the IBCS, has been replaced with "IBCS payment".

11.6 The deductions that are to be made from payments (e.g. previous damages payments and most support scheme payments after 31st March 2025) are now collectively referred to as "deductible payments", and have a single definition. This simplifies the provisions under which amounts of the payments are calculated.

12. European Convention on Human Rights

12.1 The Minister for the Cabinet Office has made the following statement regarding Human Rights:

"In my view the provisions of the Infected Blood Compensation Scheme Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").