EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (INCOME AND CAPITAL DISREGARDS) (AMENDMENT) (NO. 2) REGULATIONS 2025

2025 No. 778

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.

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

2. Declaration

2.1 Sir Stephen Timms, Minister for Social Security and Disability at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

2.2 Hannah Birtwistle-Gordon, Deputy Director for Universal Credit Policy at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jon Bulgin at the Department for Work and Pensions can be contacted with any queries regarding the instrument. Telephone: 0779 509 1353 or email: jon.bulgin@dwp.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to amend legislation to ensure that payments made via the United Kingdom Government (UKG) Ministry of Justice (MoJ), Northern Ireland Executive (NIE) and both Scottish Government (SG) Miscarriage of Justice Compensation Schemes in England and Wales, Scotland and Northern Ireland, are disregarded indefinitely as capital and income when calculating entitlement to certain means-tested benefits[1] in Great Britain. Payments made by the Scottish Government ex-gratia scheme will also be indefinitely disregarded as will discretionary extra statutory payments made by the MoJ Justice Secretary.

4.2 If these payments were not disregarded, claimants who receive payments from these miscarriage of justice schemes could see their benefit entitlement reduced or cease.

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, Wales and Scotland.

[1] Universal Credit, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, Housing Benefit for people over state pension age and Pension Credit.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland.

5. Policy Context

What is being done and why?

Miscarriage of Justice Compensation Schemes

5.1 Section 133 of the Criminal Justice Act 1988[2] ('the 1988 Act') provides for compensation when a person has been convicted of a criminal offence and when subsequently their conviction has been reversed, or they have been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice.

5.2 The 1988 Act applies across the United Kingdom with the devolved governments in Scotland and Northern Ireland administering their schemes. Although the approach in delivering the schemes is broadly similar, there are differences between the Scottish scheme compared to the others. Scotland also provides an additional compensation scheme. More details are outlined below.

England and Wales

5.3 In order to receive compensation in England and Wales[3], individuals must:

- apply within two years of being pardoned or having their conviction reversed,
- have had their conviction reversed, or been pardoned, on the basis of a new or newly discovered fact which demonstrates beyond reasonable doubt they did not commit the offence, and
- not be either wholly or partly responsible for the non-disclosure of the new or newly discovered fact.

5.4 Applications for compensation are assessed by a Ministry of Justice official and if individuals meet the statutory test, under s133 of the 1988 Act, they are awarded compensation. The amount of compensation is then determined by an Independent Assessor (IA).

5.5 The maximum amount of compensation payable is set out in primary legislation and is up to £1 million in cases where an applicant has been imprisoned for 10 years or longer, or up to £500,000 in all other cases. Each case is decided on an individual basis by the IA. In reaching an assessment, the IA will apply principles comparable to those governing the assessment of damages for civil wrongs (subject to the maximum awards).

5.6 The compensation awarded is usually made up of two parts: a non-pecuniary award which is designed to compensate the applicant for loss of liberty, hardship, distress and injury to feelings, inconvenience, damage to reputation and psychiatric damage, if any, and a pecuniary award which compensates the applicant for loss of earnings (past and future), expenses (including expenses incurred by relatives and friends due to the miscarriage of justice) and legal costs related to the miscarriage of justice.

5.7 The Justice Secretary can also decide to make a discretionary extra statutory payment to someone who can demonstrate beyond reasonable doubt not to have committed the

[2] https://www.legislation.gov.uk/ukpga/1988/33/section/133
[3] https://www.gov.uk/claim-compensation-for-miscarriage-of-justice

offence but who may otherwise not fall within the strict section 133 test. This discretion will only apply in exceptional cases.

Scotland

5.8 The Scottish miscarriage of justice compensation scheme[4] follows the same approach as the scheme offered in England and Wales but it does have two main differences. The first is that there is no limit on the amount of compensation that can be awarded in an individual case and the second is that the time limit for submitting an application is three years of having the conviction overturned, rather than two.

5.9 Scotland also provides additional compensation via an ex-gratia scheme for those who have spent time in custody after a wrongful conviction or charge because the police or another public authority did something seriously wrong, or there were exceptional circumstances that justify the payment of compensation.

Northern Ireland

5.10 The Northern Ireland miscarriage of justice scheme[5] is very similar to the scheme operated in England and Wales. Although these regulations do not provide a disregard for payments made to successful applicants resident in Northern Ireland, they do provide a disregard for payments made to successful applicants via the Northern Ireland scheme who are resident in Great Britain.

Disregarding the schemes payments

5.11 Although the Department's legislation does include disregards in relation to personal injury or specified compensations schemes, it is not sufficient to cover the payments being made via the miscarriage of justice schemes. This means that, without amendment, payments made by the schemes would either reduce or remove some recipients' entitlement to means-tested benefits.

5.12 Based on this and the fact that the miscarriage of justice schemes are comparable with previous schemes that have received a disregard, the Department's Ministers agreed to make amendments to legislation to ensure compensation received by claimants from the miscarriages of justice schemes are disregarded indefinitely as capital and income when calculating entitlement to certain means-tested benefits if they are resident in Great Britain.

Previous recipients of the scheme's payments

5.13 The disregard will apply to payments whenever made, including before the instrument comes into effect. Previous scheme recipients will be able to make a claim to a means-tested benefit from the date the instrument comes into effect and have the disregard apply to any remaining balance of the past scheme payment. The Department will work with the scheme administrators to identify possible opportunities to alert past scheme recipients to consider claiming means-tested benefits once the instrument comes into force.

What was the previous policy, how is this different?

5.14 The Department has previously introduced regulations that provide for an indefinite capital and income disregard for similar compensation and support payments made to people affected by the Grenfell Tower tragedy and the Post Office Horizon IT[6], the

[4] https://www.mygov.scot/compensation-miscarriage-justice
[5] https://www.justice-ni.gov.uk/articles/compensation-miscarriage-justice
[6] https://www.legislation.gov.uk/uksi/2023/640/contents/made

Vaccine Damage Payments Act 1979[7] and the Ministry of Defence's Lesbian, Gay, Bisexual and Transgender (LGBT) Financial Recognition Scheme[8]. Introducing legislation to cover the MoJ's miscarriage of justice compensation scheme and the schemes administered by the NIE and SG, allows payments made by these schemes to be disregarded in the same way.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument makes amendments to the Income Support (General) Regulations 1987[9], the Jobseeker's Allowance Regulations 1996[10], the State Pension Credit Regulations 2002[11], the Housing Benefit Regulations 2006[12], the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006[13], the Employment and Support Allowance Regulations 2008[14] and the Universal Credit Regulations 2013[15].

6.2 By doing so it allows for payments made via the UKG/NIE/SG miscarriage of justice schemes to be indefinitely disregarded as capital and income when calculating entitlement to certain means-tested benefits. The disregard will apply to payments whenever made, including before the instrument comes into effect. The disregard will extend in limited circumstances to next of kin who derive the benefit of a payment, for example through a deceased estate.

6.3 Similar amendments were made via The Social Security (Income and Capital Disregards) (Amendment) Regulations 2023[16] and The Social Security (Income and Capital Disregards) (Amendment) Regulations 2025[17] so payments made by analogous schemes such as Grenfell Tower compensation, Post Office compensation, under the Vaccine Damage Payments and LGBT Financial Recognition Scheme could be disregarded in a similar way.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 As part of the statutory duty the Department has to consult the Social Security Advisory Committee (SSAC) and Local Authority Associations when changes to certain legislation are made. The Department presented the draft regulations to SSAC[18] on 21st May 2025 and they did not take the regulations on formal reference.

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[7] https://www.legislation.gov.uk/ukpga/1979/17/contents
[8] https://www.legislation.gov.uk/uksi/2025/44/contents/made
[9] http://www.legislation.gov.uk/uksi/1987/1967/contents
[10] http://www.legislation.gov.uk/uksi/1996/207/contents
[11] http://www.legislation.gov.uk/uksi/2002/1792/contents
[12] http://www.legislation.gov.uk/uksi/2006/213/contents
[13] http://www.legislation.gov.uk/uksi/2006/214/contents
[14] http://www.legislation.gov.uk/uksi/2008/794/contents
[15] http://www.legislation.gov.uk/uksi/2013/376/contents
[16] https://www.legislation.gov.uk/uksi/2023/640/contents/made
[17] https://www.legislation.gov.uk/uksi/2025/44/contents/made
[18] https://www.gov.uk/government/collections/social-security-advisory-committee-minutes-of-meetings

7.2 The Department has a statutory duty to consult the Local Authority Associations on any amendments to Housing Benefit Regulations. This was carried out between 2nd May 2025 and 6th June 2025. The Associations raised no concerns.

8. Applicable Guidance

8.1 Guidance for staff and decision makers in the Department and for Local Authorities will be updated both internally and on gov.uk[19] for when these regulations come into force on 22nd July 2025.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because these regulations have no, or no significant, impact on the private, voluntary or public sector.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on businesses, charities or voluntary bodies as this change is comprised of limited-scale, beneficial amendments to social security regulations, unrelated to businesses, charities and voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because disregarding payments made by the UKG/NIE/SG Miscarriage of Justice Compensation Schemes, from the calculation of means-tested benefits, will be undertaken by the Department and Local Authorities within current resources.

9.5 The Department estimates that around 62 to 86 households per year could be affected by the regulatory change when including existing granted applicants.

9.6 This is an indicative estimate based on uncertain assumptions given data limitations and does not include cases from the Scotland and Northern Ireland schemes, for which there may be a further impact of 1 to 2 cases per year to consider.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that there are no plans to formally review the impacts of these amendments, because the package is comprised of limited-scale, beneficial amendments to social security regulations.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The instrument (regulation 4(2)(a)) places in the correct alphabetical order a definition that the Social Security (Income and Capital Disregards) (Amendment) Regulations

[19] https://assets.publishing.service.gov.uk/media/67d982dba87d546feeda0193/admh2.pdf

2025 (S.I. 2025/44)[20] inserted into the State Pension Credit Regulations 2002[21]. The Department has consulted with the SI Registrar as to whether the free issue procedure is appropriate for this correction. The Registrar has agreed, in light of the length of the instrument and the proportion that regulation 4(2)(a) represents of the whole instrument, that the instrument does not fall within the scope of the free issue procedure. Accordingly, the free issue procedure has not been followed.

12. European Convention on Human Rights

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

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”).

[20] https://www.legislation.gov.uk/uksi/2025/44/contents/made
[21] https://www.legislation.gov.uk/uksi/2002/1792/contents