EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (INCOME AND CAPITAL DISREGARDS) (AMENDMENT) REGULATIONS 2025

2025 No. 44

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 Graeme Connor, Deputy Director for Universal Credit, at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Trevor Pendergast at the Department for Work and Pensions. Telephone: 0300 089 7306 or email: trevor.pendergast@dwp.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 purpose of this instrument is to amend regulations to ensure that payments made via the Ministry of Defence's Lesbian, Gay, Bi-sexual and Transgender Financial Recognition Scheme are disregard indefinitely as capital or income when calculating entitlement to certain means-tested benefits[1]. If these payments were not disregarded claimants who receive payments from the Ministry of Defence's scheme could see their benefit entitlement reduced or ceased.

4.2 The instrument also amends regulations so payments made from the scheme will be exempt from the Department's compensation recovery scheme. This means that redress payments will not be reduced.

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] Income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, Pension Credit and Universal 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?

Lesbian, Gay, Bisexual and Transgender Financial Recognition Scheme

5.1 The 1967 Sexual Offences Act[2], applicable to England and Wales, essentially decriminalised same-sex sexual activity in private between consenting adults. However, the Act also explicitly prohibited homosexuality within the Armed Forces, enabling Service personnel to continue to be convicted under Service discipline law, or be administratively discharged. Therefore, members of the Armed Forces were treated fundamentally differently from other citizens subject to United Kingdom law, in that they were not given the same rights under the Sexual Offences Act 1967.

5.2 In 1994 same-sex sexual activity ceased to be an offence under service law, however, the ban on homosexuality remained in Armed Forces policy and administrative discharges continued. Following a successful challenge in the European Court of Human Rights, in January 2000 Government policy was amended enabling personnel to serve in the Armed Forces regardless of their sexuality.

5.3 As a result, the Ministry of Defence and the Office for Veterans' Affairs co-commissioned an independent report to better understand the impacts and implications of the 1967 to 2000 ban on Lesbian, Gay, Bisexual and Transgender (LGBT) personnel.

5.4 In May 2023 Lord Etherton produced the LGBT Veterans Final Review[3]. Among its recommendations, it advocated that a Recognition scheme for people who were dismissed or felt compelled to resign because of an official policy current in the Armed Forces between 1967 and 2000 be introduced.

5.5 The Ministry of Defence have now implemented this recommendation and have introduced the LGBT Financial Recognition Scheme that will provide payments to affected Armed Forces personnel from March 2025.

5.6 There are two types of recognition payments within the LGBT Financial Recognition Scheme. The LGBT Dismissed or Discharged Payment is for applicants who were dismissed or discharged from service because of the Ban. Where successful these applicants can receive a flat rate payment of £50,000. The other recognition payment type is the LGBT Impact Payment, which can also apply to successful applicants of the LGBT Dismissed or Discharged Payment and is for applicants who suffered harm and/or suffering during their service because of the Ban. Where successful these applicants can receive a payment ranging from £1,000 to £20,000.

5.7 In terms of next of kin, the Scheme Rules for the LGBT Financial Recognition Scheme, state that the Scheme will make eligible application payments to the recipient(s) of the deceased's estate if the applicant has sadly died during the application process.

[2] https://www.legislation.gov.uk/ukpga/1967/60

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1170688/LGBT_Veterans_Independent_Review.pdf

5.8 As part of their implementation the Ministry of Defence requested that payments made via the LGBT Financial Recognition Scheme be disregarded from the Departments means-tested benefits.

5.9 Although Departmental legislation does include disregards in relation to, for example, personal injury or specified compensations schemes, it is not sufficient to cover the payments being made via the Ministry of Defence's Lesbian, Gay, Bisexual and Transgender (LGBT) Financial Recognition Scheme. This means without amendment, payments made by this scheme would either reduce or remove some recipients' entitlement to means-tested benefits.

5.10 As the Ministry of Defence scheme is analogous with previous schemes that have been legislated for before, the Department is making amendments to ensure that any payments made by the LGBT scheme are disregarded indefinitely when calculating entitlement to certain means-tested benefits.

Compensation recovery

5.11 The amendments to the recovery of benefits regulations will ensure that payments made by the LGBT Financial Recognition Scheme are not subject to recovery of benefit procedures. The Social Security (Recovery of Benefits) Act 1997[4] provides that, if a person makes a payment (whether on his own behalf or not) to another person in consequence of any accident, injury or disease, and specific social security benefits have been paid in respect of the same accident, injury or disease, the person making the payment is liable to repay the Secretary of State an amount equivalent to the benefits paid.

5.12 Unless the regulations are amended, compensation recovery could reduce the amount of the recognition payment that can be paid via the LGBT Financial Recognition Scheme to the applicant, which is not considered appropriate in the context of the LGBT Financial Recognition Scheme.

What was the previous policy, how is this different?

5.13 The Department has previously introduced regulations that provide for an indefinite capital and income disregard, and an exemption from the Department's compensation recovery scheme, for similar compensation and support payments made to people affected by the Grenfell Tower tragedy, the Post Office Horizon IT and the Vaccine Damage Payments Act 1979[5]. By introducing legislation to cover the Ministry of Defence's LGBT Financial Recognition Scheme it allows analogous payments made by this scheme 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[6], the Jobseeker's Allowance Regulations 1996[7], the State Pension Credit Regulations 2002[8], the Housing Benefit Regulations 2006[9], the Housing Benefit

[4] https://www.legislation.gov.uk/ukpga/1997/27/contents
[5] https://www.legislation.gov.uk/ukpga/1979/17/contents
[6] http://www.legislation.gov.uk/uksi/1987/1967/contents
[7] http://www.legislation.gov.uk/uksi/1996/207/contents
[8] http://www.legislation.gov.uk/uksi/2002/1792/contents
[9] http://www.legislation.gov.uk/uksi/2006/213/contents

(Persons who have attained the qualifying age for state pension credit) Regulations 2006[10], the Employment and Support Allowance Regulations 2008[11] and the Universal Credit Regulations 2013[12].

6.2 By doing so it allows for payments made via the Ministry of Defence's Lesbian, Gay, Bi-sexual and Transgender (LGBT) Financial Recognition Scheme to be indefinitely disregarded as capital and income when calculating entitlement to certain means-tested benefits.

6.3 Amendments are also made to the Social Security (Recovery of Benefits) Regulations 1997[13] and the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008[14] to exempt payments made by the LGBT Financial Recognition Scheme from the Department's compensation recovery process.

6.4 Similar amendments were made via The Social Security (Income and Capital Disregards) (Amendment) Regulations 2023[15] so payments made by analogous schemes such as Grenfell Tower compensation, Post Office compensation and under the Vaccine Damage Payments scheme could be disregarded in the same way.

Why was this approach taken to change the law?

6.5 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 on 4th December 2024 and they did not take the regulations on formal reference.

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 28th November 2024 and 3rd January 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 when these regulations come into force.

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 business, charities or voluntary bodies.

[10] http://www.legislation.gov.uk/uksi/2006/214/contents
[11] http://www.legislation.gov.uk/uksi/2008/794/contents
[12] http://www.legislation.gov.uk/uksi/2013/376/contents
[13] http://www.legislation.gov.uk/ukpga/1997/27/contents
[14] https://www.legislation.gov.uk/uksi/2008/1596/contents
[15] http://www.legislation.gov.uk/uksi/2023/640/contents

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 Ministry of Defences Lesbian, Gay, Bi-sexual and Transgender Financial Recognition Scheme, 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 300 claimants could be affected by the regulatory change to all means-tested benefits.

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 will be issued free of charge to all known recipients of the Social Security (Income and Capital Disregards) (Amendment) Regulations 2021 (S.I. 2021/1405)[16] and the Social Security (Income and Capital Disregards) (Amendment) Regulations 2023 (S.I. 2023/640) [17]. The instrument inserts into regulation 105(10A)(ac) to (ae) of the Jobseeker's Allowance Regulations 1996[18] words that should have been included in S.I. 2021/1405 and S.I. 2023/640. The instrument also omits a conjunction after regulation 76(1A)(b) of the Universal Credit Regulations 2013[19]; S.I. 2021/1405 should have omitted that conjunction.

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").

[16] https://www.legislation.gov.uk/uksi/2021/1405/contents/made
[17] https://www.legislation.gov.uk/uksi/2023/640/contents/made
[18] https://www.legislation.gov.uk/uksi/1996/207/contents
[19] https://www.legislation.gov.uk/uksi/2013/376/contents