EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (INCOME-RELATED BENEFITS) AMENDMENT REGULATIONS 2017

2017 No. 174

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 Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to implement the decision of an Upper Tribunal requiring an amendment to working age Housing Benefit (HB) Regulations to introduce a disregard of £10 weekly to recipients of compensation pension payments made by the Netherlands Government to victims of National Socialist persecution. This is necessary to provide equal treatment with recipients of similar compensation pension payments made by the Governments of Germany and Austria which already attract a £10.00 weekly disregard.

2.2 The instrument also provides a £10 weekly disregard of Dutch Government compensation pension payments for recipients of pension age HB, State Pension Credit (PC), Income Support (IS), income-based Jobseeker's Allowance (JSA) and income-related Employment and Support Allowance (ESA).

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 negative resolution procedure and has not been prayed against, 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 The instrument is required to amend Regulations following an Upper Tribunal judgement concerning the treatment of a compensation pension payment made by the Dutch Government to a person who was a victim of National Socialist persecution during the Second World War. The amendment addresses the discrimination identified by the Tribunal.

4.2 However, while the Tribunal case was only concerned with the Housing Benefit Regulations 2006 Regulations, there are similar differences in treatment in other income-related benefit Regulations. To ensure these payments are treated the same in all the income-related benefits where there is a disregard, changes are also being made to provide comparable treatment of Dutch Government compensation pensions payments in these benefits.

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.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 In April 2014 an Upper Tribunal[1] found that compensation pension payments made by the Dutch Government to victims of National Socialist persecution should be treated in the same way as payments made under schemes administered by the Governments of Germany and Austria for the purposes of calculating entitlement to working age HB. Currently, equivalent compensation payments made by the German/Austrian Governments attract a £10 weekly disregard in working age Housing Benefit, whereas Dutch payments are taken fully into account when calculating entitlement. There is therefore a difference in treatment in similar payments for the purposes of entitlement to benefit. Recipients of Dutch compensation pension payments are therefore relatively worse off.

7.2 As a minimum, it is necessary to implement the Upper Tribunal's judgement in respect of working age HB claimants and amend the Housing Benefit Regulations 2006 (S.I. 2006/213) to introduce a £10 weekly disregard for Dutch compensation pension payments. However, as the same discriminatory treatment between Dutch and German/Austrian payments exists in IS, JSA and ESA, therefore, it is necessary to make the same changes to the following regulations:

- The Income Support (General) Regulations 1987 (S.I. 1987/1967);
- The Jobseeker's Allowance Regulations 1996 (S.I. 1996/207); and
- The Employment and Support Allowance Regulations 2008 (S.I. 2008/794).

7.3 For PC and pension age HB, the inequality of treatment between Dutch and German/Austrian payments is reversed. At present recipients of German/Austrian compensation pension payments receive a £10 weekly disregard but Dutch payments are disregarded in full. German/ Austrian payment recipients are therefore worse off compared to Dutch payment recipients.

7.4 To give full effect to the judgement, the recipients of Dutch compensation pension payments will be taken into account in the same way as the equivalent German and Austrian payments. Like those payments, they will receive a £10 weekly disregard in PC and pension age HB. This will mean the treatment of these payments will be the same irrespective of nationality across those income-related benefits where there is a partial disregard. This will require an amendment to the following instruments:

- The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214); and

[1] MS v Bury Council and Secretary of State for Work and Pensions (HB) (CH1445 2013)

- The State Pension Credit Regulations (S.I. 2002/1792).

7.5 To reinforce the point of parity of treatment irrespective of nationality, this instrument removes references to specific national governments from the instruments listed at paragraphs 7.2 and 7.4.

Consolidation

7.6 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website www.legislation.gov.uk. An explanation as to which instruments are maintained on each site is available from http://www.dwp.gov.uk/docs/lawvolnews.pdf.

8. Consultation outcome

8.1 In accordance with the provisions of section 172(1) of the Social Security Administration Act 1992, in January 2017 the draft Regulations were referred to the Social Security Advisory Committee. The Committee did not consider that there was a need for them to undertake a public consultation. This supports the Department's view that a public consultation was not appropriate, given the minimal impact of the changes set out in the draft Regulations. The Committee have approved the Regulations as drafted.

8.2 In accordance with section 176(1) of the Social Security Administration Act 1992, the Department consulted with the Local Authority Associations (LAAs). The LAAs have noted the changes and are content.

9. Guidance

9.1 Guidance will be made available to local authority and DWP staff prior to the regulations coming into force. The guidance about the changes to HB will also be available on the 'Housing Benefit for local authorities' section which can be found at https://www.gov.uk/government/collections/housing-benefit-for-local-authorities-circulars. The Department routinely issues new guidance to HB processing staff at least five weeks before a legislative change comes into effect.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. It is not possible to identify numbers of existing benefit claims that will be affected by the changes introduced by the instrument. Neither is it possible to predict the volume of any new claims that might rise. A further variable is that payments made by the Dutch Government vary in value depending upon the circumstances of the individual claim.

10.4 However, the Department is of the view that because of the special circumstances concerning the compensation scheme and the period for which claims may be made (i.e. the person must have been a victim as a consequence of National Socialist persecution during the period 1940 – 1945) there will be very few benefit claims affected and consequently a minimal impact on Local Authorities, the Pension Service and Jobcentre Plus.

11. Regulating small business

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

12. Monitoring & review

12.1 The monitoring of the changes will be part of the general monitoring of benefit claims. The Department will review the impact of these regulations through the normal course of business.

13. Contact

13.1 David Tottey at the Department of Work and Pensions Telephone: 020 7449 7150 or email: david.tottey@dwp.gsi.gov.uk can answer any queries regarding the instrument.