EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (INFECTED BLOOD CAPITAL DISREGARD) (AMENDMENT) REGULATIONS 2023

2023 No. 894

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. Purpose of the instrument

2.1 The purpose of this instrument is to create a new capital disregard to allow a son, daughter, step-son or step-daughter to receive an interim infected blood compensation payment from their deceased parent's estate without it affecting their means-tested benefit entitlement.

2.2 The instrument also clarifies the disregards that apply in Universal Credit where a payment is made by a scheme or trust to provide compensation in respect of a person having been diagnosed with variant Creutzfeldt-Jacob disease or infected from contaminated blood products.[1] A payment to a person other than the diagnosed or infected person from such a scheme or trust, or which is derived from such a payment, is disregarded in any of the circumstances it would be disregarded in relation to an award of State Pension Credit.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is being laid and will come into force during Parliamentary summer recess before the Committee will have the opportunity to consider it. This is so that the small number of interim payments that are still due to be paid to estates where the infected person or their bereaved partner died before the payment could be made directly to them, can be paid.

3.2 Once the instrument comes into force, arrangements can be made by the relevant UK infected blood support schemes to pay the remaining interim payments as soon as possible.

3.3 The changes made by this instrument are positive and beneficial, and it is anticipated that they will be warmly welcomed by MPs and Peers. The changes effect a small extension of a long-established existing policy rather than a new or novel proposal.

3.4 They are not controversial, but they are sensitive given the levels of interest in the Infected Blood Inquiry. They are necessary to support the Government's commitment to enable children to receive an interim infected blood compensation payment from their deceased parent's estate without it affecting their means-tested benefit entitlement. The regulations do not anticipate or prejudice any final policy decisions

[1] https://www.nhs.uk/conditions/creutzfeldt-jakob-disease-cjd/

or legislation that may need to be brought forward once the Inquiry publishes its final report.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales and Scotland.

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument makes amendments to the Income Support (General) Regulations 1987[2], the Jobseeker's Allowance Regulations 1996[3] , the State Pension Credit Regulations 2002[4], the Housing Benefit Regulations 2006[5], the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006[6], the Employment and Support Allowance Regulations 2008[7] and the Universal Credit Regulations 2013[8].

6.2 This instrument inserts a new paragraph into the provisions cited above (except the Universal Credit Regulations 2013), which will enable a payment from an estate to be disregarded when calculating entitlement to benefit and the amount of the recipient's benefit award.

6.3 The disregard applies to payments derived from a payment made to meet the recommendation of the Infected Blood Inquiry in its first interim report published on 29th July 2022[9]. That report recommended that an interim payment should be made to all those infected from contaminated blood and blood products and all bereaved partners already registered on the UK infected blood support schemes and those who register before the inception of any future scheme. The Government committed that where the infected person or their bereaved partner died after registering for such a scheme but before the interim payment could be made, it would be paid to their estate. The amendment means that a payment derived from an interim infected blood compensation payment from the estate will be disregarded if it is made to a deceased person's son, daughter, step-son or step-daughter.

6.4 These amendments also clarify the disregards that apply in Universal Credit in relation to a person where a payment is made by a scheme or trust to provide compensation in respect of a person having been diagnosed with variant Creutzfeldt-Jacob disease or infected from contaminated blood products.

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[2] https://www.legislation.gov.uk/uksi/1987/1967/contents
[3] https://www.legislation.gov.uk/uksi/1996/207/contents
[4] https://www.legislation.gov.uk/uksi/2002/1792/contents
[5] https://www.legislation.gov.uk/uksi/2006/213/contents
[6] https://www.legislation.gov.uk/uksi/2006/214/contents
[7] https://www.legislation.gov.uk/uksi/2008/794/contents
[8] https://www.legislation.gov.uk/uksi/2013/376
[9] https://www.infectedbloodinquiry.org.uk/reports/first-interim-report

7. Policy background

What is being done and why?

7.1 In the UK, it is a longstanding policy to disregard payments made to individuals via infected blood support schemes in the calculation of entitlement to means-tested benefits. This is because they do not supplement income in the way ordinary benefits do but are intended to compensate 'infected persons' and certain relatives, for example, their spouses or partners in recognition that the physical, mental and other health impacts for those infected can lead to additional costs which cannot be met through the benefits system. Since 2017, the following four UK infected blood support schemes make these payments: the England Infected Blood Support Scheme[10], the Wales Infected Blood Support Scheme[11], the Scotland Infected Blood Support Scheme[12] and the Infected Blood Payment Scheme for Northern Ireland[13].

7.2 The current disregard framework provides that infected blood payments made by the four schemes listed above are fully disregarded when assessing certain individuals' entitlement to means-tested benefits. To this end, income and capital disregards exist across the means-tested benefits.

7.3 In July 2017 the Government set up the Infected Blood Inquiry[14] under the Inquiries Act 2005[15], with Sir Brian Langstaff appointed as its Chair in 2018. Sir Robert Francis KC was commissioned to undertake a compensation framework study and his report was published on 7th June 2022[16]. The study makes a number of recommendations for a framework for compensation and redress for the victims of infected blood.

7.4 On 29th July 2022, the Inquiry published its first interim report, and on 17th August 2022 the Government accepted in full Sir Brian Langstaff's recommendations made therein[17]. The report recommended that interim compensation payments of £100,000 be made to infected persons and bereaved partners who registered with a UK infected blood support scheme. The Government agreed to this, and payments were made to the vast majority of eligible infected persons and bereaved partners in October 2022.

7.5 Additionally, where an infected person or their bereaved partner registered with a UK infected blood support scheme but died before the interim payment could be made, the Government agreed that the interim payment of £100,000 would be made to that person's estate.

7.6 The Department identified a potential gap in the existing means-tested benefits disregard framework which would prevent the children of the above beneficiaries benefitting from a disregard when claiming a means-tested benefit if they receive a payment derived from an interim infected blood compensation payment from the deceased's estate. Not closing this gap creates a risk that beneficiaries of an estate could receive a payment derived from an interim payment which would reduce or remove their means-tested benefits, due to the existing capital limits in those benefits,

[10] https://www.nhsbsa.nhs.uk/england-infected-blood-support-scheme
[11] https://wibss.wales.nhs.uk
[12] https://www.nss.nhs.scot/browse/patient-support-schemes/scottish-infected-blood-support-scheme-sibss
[13] https://www.nidirect.gov.uk/articles/infected-blood-payment-scheme
[14] Https://www.infectedbloodinquiry.org.uk
[15] https://www.legislation.gov.uk/ukpga/2005/12/contents
[16] https://www.gov.uk/government/publications/compensation-and-redress-for-the-victims-of-infected-blood-recommendations-for-a-framework
[17] https://www.infectedbloodinquiry.org.uk/reports/first-interim-report

where income from capital is assumed for capital of over £6,000, and entitlement ceases completely where capital is over £16,000[18].

7.7 The amendments in this instrument therefore create a capital disregard which will allow payments derived from an interim infected blood compensation payment made to sons, daughters, step-sons and step-daughters from the infected person or their bereaved partner's estate to be disregarded in the calculation of entitlement to means-tested benefits.

Numbers affected

7.8 Numbers likely to be affected are expected to be low - approximately eight estates fall into this category. Nevertheless, this instrument will ensure alignment with the current approach, whereby payments received from an infected blood support scheme are disregarded for the purposes of determining an individual's means-tested benefit entitlement.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Informal consolidated texts or instruments are available to the public free of charge via the 'National Archive' website: www.legislation.gov.uk.

10. Consultation outcome

10.1 The Department presented the draft regulations to the Social Security Advisory Committee on 19th July 2023. The Committee did not take the regulations on formal reference.

10.2 The Department also consulted the Local Authority Associations in relation to Housing Benefit. No comments were received.

11. Guidance

11.1 Guidance for staff and decision makers in the Department for Work and Pensions, and for Local Authority operational staff, will be updated both internally and on GOV.UK[19][20] as the legislation comes into force.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no impact on business.

[18] The rules are slightly different for State Pension Credit (SPC) and pension age Housing Benefit if the guarantee credit element of SPC is also in payment, where there is no upper limit on capital, but income from capital over £10,000 is assumed.
[19] https://www.gov.uk/government/collections/decision-makers-guide-staff-guide
[20] https://www.gov.uk/government/publications/advice-for-decision-making-staff-guide

13. Regulating Small Business

13.1 The legislation does not apply to activities that are undertaken by small business

14. Monitoring & review

14.1 There are no plans to formally review the impacts of these regulations above and beyond that which is already in place as part of the Department's routine data collection.

15. Contact

15.1 Joanne Ward at the Department for Work and Pensions - email: Joanne.Ward@dwp.gov.uk - can be contacted with any queries regarding the instrument.

15.2 Samantha Hainsworth, Deputy Director for Employment and Support Allowance Policy at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Tom Pursglove MP, the Minister for Disabled People, Health and Work at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.