EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (INFECTED BLOOD CAPITAL DISREGARD) (AMENDMENT) REGULATIONS 2024

2024 No. 964

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 The Rt Hon Sir Stephen Timms MP, Minister of State for Social Security and Disability at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

2.2 Lorenzo Peri, SCS1 for Employment-Related Health Benefits, at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Alex Fleming at the Department for Work and Pensions, email: alex.fleming1@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 This instrument applies a disregard to payments coming from the estate of a deceased infected person which derive from a payment made to the estate by an approved infected blood scheme. Any beneficiary of such a payment who is also receiving a means-tested benefit will have this money disregarded in benefit eligibility decisions. This will ensure that all beneficiaries of deceased person's estate which may include their family members and loved ones can receive their compensation payment and remain on a means-tested benefit, if they choose to do so.

Where does the legislation extend to, and apply?

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

4.3 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?

5.1 This is a new instrument to support the latest policy for infected blood compensation, including payments to a deceased infected person's estate beneficiaries.

5.2 On 21st May 2024, in the Government's initial response to the Infected Blood Inquiry's final report[1], it said that any compensation payments made to eligible infected and affected persons will be exempt from means-tested benefit assessments. To honour this, relevant regulations containing capital disregards were assessed to ensure that all those eligible were covered.

5.3 Working closely with the Cabinet Office, the Department agreed to introduce a new disregard to cover the new planned payments. This new instrument ensures that estate beneficiaries also on means-tested benefits do not see a reduction or removal of their benefit entitlement if the amount received breaches existing capital limits[2].

What was the previous policy, how is this different?

5.4 Normally property, savings and income (including inheritance) are taken into account when assessing entitlement to means-tested benefits. The Department assesses how much capital a person has when it calculates a claimant's entitlement. Where a claimant breaches capital limits, they lose some, or all, entitlement. However, there are provisions within means-tested benefit legislation to disregard the capital from certain special compensation schemes if certain conditions are met. This includes compensation payments from an approved infected blood scheme, and these are set out in legislation.

5.5 It is a longstanding Departmental policy to disregard payments made to eligible individuals via an approved infected blood scheme when calculating eligibility for the following means-tested benefits: Universal Credit, income-related Employment and Support Allowance, income-based Jobseeker's Allowance, State Pension Credit, Housing Benefit and Income Support. These disregards have existed in means-tested benefits since 1988.

5.6 This is because these payments do not supplement income in the way ordinary benefits do but are intended to compensate eligible people in recognition of the physical, mental and other health impacts which cannot be met through the benefits system.

5.7 Existing infected blood capital disregards cover the majority of intended beneficiaries. However, at present, only certain categories of estate beneficiaries are entitled to benefit disregards.

5.8 Prior to 2023, the legislation provided for a capital disregard for the following estate beneficiaries: a deceased infected person's partners, former partners, parents, step-parents or guardians. Of these beneficiaries, partners and former partners had an indefinite disregard. While parents, stepparents or guardians (where the deceased person had no partner or any children) were subject to a two-year period which starts running from the date of the infected person's death.

5.9 The Social Security (Infected Blood Capital Disregard) (Amendment) Regulations 2023[3] amended the legislation to create an indefinite disregard which applies to interim payments made out of estates of a deceased infected person or their bereaved partners to their son, daughter, stepson or step-daughter following the Inquiry's first interim report. It did not cover any further or future payments[4].

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[1] Infected Blood Compensation Scheme Proposal Summary (21st May 2024) https://www.gov.uk/government/publications/infected-blood-compensation-scheme-summary/infected-blood-compensation-scheme-summary

[2] The rules are slightly different for State Pension Credit (SPC) and pension age Housing Benefit if the guaranteed 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.

[3] https://www.legislation.gov.uk/uksi/2023/894/made

[4] Paragraph 27(5) of Schedule 9 to the Employment and Support Allowance Regulations 2008 provided a 2-year limit on the disregard for payments from estates made to parents, step-parents and guardians where the deceased person had no partner or any children.

5.10 The amendments in this instrument will apply a new indefinite capital disregard to all payments to all beneficiaries out of estates of deceased infected persons which derive from a payment made to the estate by an approved infected blood scheme.

Numbers Affected

5.11 The Department is not able to provide a reliable estimate of the number of beneficiaries of deceased infected who are also on means-tested benefits. Decisions about estate beneficiaries - who they are and how many - are a matter for individuals concerned not the state. Added to this, we are unsure about how many of these beneficiaries will be on means-tested benefits until they engage with the Department.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument makes amendments to the Income Support (General) Regulations 1987[5], the Jobseeker's Allowance Regulations 1996[6], the State Pension Credit Regulations 2002[7], the Housing Benefit Regulations 2006[8], the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006[9] and the Employment and Support Allowance Regulations 2008[10]. The Universal Credit Regulations 2013 are linked to the State Pension Credit Regulations 2002, so do not need to be amended in their own right.

6.2 The changes to the capital disregard legislation for infected blood payments over time are set out in paragraphs 5.8 and 5.9. The amendments in this instrument will apply a new indefinite capital disregard to all payments to beneficiaries out of estates of deceased infected persons which derive from a payment made to the estate by an approved infected blood scheme. They will cover all capital derived in this manner from the date the instrument comes into force, and therefore will include the interim payments made to estates from October 2024 onwards.

6.3 By applying this new capital disregard to all beneficiaries of these estates it expands the list of beneficiaries covered.

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 The Department presented the draft regulations to the Social Security Advisory Committee on 11th September 2024. The Committee did not take the regulations on formal reference.

7.2 The four UK Local Authority Associations have also been consulted regarding the changes to the Housing Benefit regulations. No comments were received.

[5] https://www.legislation.gov.uk/uksi/1987/1967/contents
[6] https://www.legislation.gov.uk/uksi/1996/207/contents
[7] https://www.legislation.gov.uk/uksi/2002/1792/contents
[8] https://www.legislation.gov.uk/uksi/2006/213/contents
[9] https://www.legislation.gov.uk/uksi/2006/214/contents
[10] https://www.legislation.gov.uk/uksi/2008/794/contents

8. Applicable Guidance

8.1 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[11][12], as the legislation comes 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 there are no costs to business.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on businesses, charities and voluntary bodies because of these amendments. The changes they enable support an individual's right to receive this compensation and remain on means-tested benefits.

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 the Department will support these beneficiaries (who are also benefit claimants) to benefit from this capital disregard. This will be met within existing budgets.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 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.

[11] https://www.gov.uk/government/collections/decision-makers-guide-staff-guide

[12] https://www.gov.uk/government/publications/advice-for-decision-making-staff-guide

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument is being laid and will come into force during Parliamentary conference recess before the Committee will have the opportunity to consider it. This will ensure that the interim compensation payments of £100,000 that are due to be paid to estates can be paid following receipt of applications evidencing entitlement for compensation (with applications open from October 2024). It will also cover all future payments made to estate beneficiaries from an approved infected blood compensation scheme. The laying of these regulations is a key dependency to work underway to make these compensation payments. It is also a first step towards compensation being paid to certain affected persons (via estates) whom the Infected Blood Inquiry recommended should receive compensation (e.g. children of the deceased infected), who have never received any compensation or financial support previously.

11.2 The changes made by this instrument are positive and beneficial. These changes are an extension of a long-established existing policy rather than a new or novel proposal.

11.3 They are not controversial, but they are sensitive given the levels of interest in the Infected Blood Inquiry and the Government's response to it. They are necessary to support the Government's commitment to enable all recipients of an interim infected blood compensation payment – including estates - to receive these payments without it affecting their means-tested benefit entitlement.

12. European Convention on Human Rights

12.1 As the instrument is subject to 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"). It does not relate to the withdrawal of the United Kingdom from the European Union in any way.