EXPLANATORY MEMORANDUM TO

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

S.R. 2024 No. 174

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Communities (DfC) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under sections 122(1)(a) and (d), 132(3) and (4)(b), 132A(3) and 171(1) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, Articles 14(1) and (4)(b) of the Jobseekers (Northern Ireland) Order 1995, sections 15(3) and (6)(b) and 19(1) and (3) of the State Pension Credit Act (Northern Ireland) 2002 and sections 17(1) and (3)(b) of the Welfare Reform Act (Northern Ireland) 2007, and is subject to the negative resolution procedure.

2. Purpose

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

2.2 On 21st May 2024, in the UK 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, it was agreed that a new disregard would be introduced to cover the new planned payments.

2.3 The purpose of this Statutory Rule is to apply 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 a deceased person's estate which may include their family members and loved ones can receive their compensation payment and remain on means-tested benefit, if they choose to do so.

3. Background

What is being done and why?

3.1 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

[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

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.

3.2 It is a longstanding policy to disregard payments made to eligible individuals via an approved infected blood scheme in the calculation of entitlement 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.

3.3 That 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.

3.4 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.

3.5 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, step-parents 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.

3.6 The Social Security (Infected Blood Capital Disregard) (Amendment) Regulations (Northern Ireland) 2023[2] 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 Infected Blood Inquiry's first interim report. It did not cover any further or future payments[3].

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

3.8 This Rule makes amendments to the Income Support (General) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 459), the Jobseeker's Allowance Regulations (Northern Ireland) 1996 (S.R. 1996 No. 198), the State Pension Credit Regulations (Northern Ireland) 2003 (S.R. 2003 No. 28), the Housing Benefit Regulations (Northern Ireland) 2006 (S.R. 2006 No. 405), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (S.R.

[2] The Social Security (Infected Blood Capital Disregard) (Amendment) Regulations (Northern Ireland) 2023
[3] Paragraph 27(5) of Schedule 9 to The Employment and Support Allowance Regulations (Northern Ireland) 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.

2006 No. 406) and the Employment and Support Allowance Regulations (Northern Ireland) 2008 (S.R. 2008 No. 280). The Universal Credit Regulations (Northern Ireland) 2016 are linked to the State Pension Credit Regulations (Northern Ireland) 2003, so do not need to be amended in their own right.

Numbers affected

3.9 The Department is not able to provide a reliable estimate of the number of beneficiaries (who are also on means-tested benefits) of deceased infected people. Decisions about estate beneficiaries - who they are and how many - are a matter for the individuals concerned. The Department will only become aware of any such beneficiaries who are in receipt of means-tested benefits when they engage with the Department.

4. 21 Day Rule

4.1 This Statutory Rule will breach the 21-day rule by one day. It was not possible to lay the Statutory Rule on the same day as the equivalent GB Statutory Instrument due to the need to secure DoF consent to the making of the Statutory Rule in advance of their making and further to adhere to Northern Ireland legislative processes. It was not considered appropriate to delay the operational date for the Statutory Rule as this could risk disadvantaging people in Northern Ireland that would benefit from the expanded definition of beneficiary under the Statutory Rule.

5. Consultation

5.1 The Department for Work and Pensions presented it's draft regulations to the Social Security Advisory Committee (SSAC) on 11th September 2024. The Committee did not take the regulations on formal reference.

6. Equality Impact

6.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals for these Regulations and has concluded that they do not have significant implications for equality of opportunity. In light of this, the Department considers that an Equality Impact Assessment is not necessary.

7. Regulatory Impact

7.1 These Regulations do not require a Regulatory Impact Assessment as there is no significant impact on costs to business, charities or voluntary bodies.

8. Financial Implications

8.1 None for the Department.

9. Section 24 of the Northern Ireland Act 1998

9.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that the Rule is in compliance with it.

10. EU Implications

10.1 Not applicable.

11. Parity or Replicatory Measure

11.1 The corresponding Great Britain provisions are the Social Security (Infected Blood Capital Disregard) (Amendment) Regulations 2024 (S.I. 2024/964) which were laid on 19th September 2024 and come into force on 10th October 2024.

12. Additional Information

12.1 Internal guidance for staff at the Department for Communities will be updated to take account of these changes.