

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (INCOME AND CAPITAL) (MISCELLANEOUS**  
**AMENDMENTS) REGULATIONS 2020**

**2020 No. 618**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by The Department for Work and Pensions (the Department) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Social Security (Income and Capital) (Miscellaneous Amendments) Regulations 2020 make the amendments below.

2.2 They ensure the following payments, currently covered by extra-statutory arrangements, are disregarded from means-tested benefits:

- payments made to people affected by the fire at Grenfell Tower from the Grenfell Tower Residents' Discretionary Fund, the Royal Borough of Kensington and Chelsea and registered charities;
- payments made by the National Emergencies Trust;
- payments received from the Child Migrants Trust; and
- New Style Employment and Support Allowance special payments.

2.3 They also provide an amendment to widen the definition of “postgraduate loan” in order to future proof regulations so that when new loans are introduced they can be treated correctly for benefit purposes.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T or the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

4.3 Corresponding legislation for Northern Ireland is being made and laid in parallel to this instrument by the Department for Work and Pensions on behalf of the Department for Communities.

## **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<sup>1</sup>, the Jobseeker's Allowance Regulations 1996<sup>2</sup>, the State Pension Credit Regulations 2002<sup>3</sup>, the Housing Benefit Regulations 2006<sup>4</sup>, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>5</sup>, the Employment and Support Allowance Regulations 2008<sup>6</sup>, the Universal Credit Regulations 2013<sup>7</sup> and the Universal Credit (Transitional Provisions) Regulations 2014<sup>8</sup> to enable certain payments made to benefit recipients to be disregarded when calculating the amount of that person's benefit award.
- 6.2 Amendments are also made to the definition of postgraduate loan in social security legislation to widen the scope of that definition so that a proportion of a person's postgraduate student loan can be taken into account in the calculation of the amount of the person's benefit award.

## **7. Policy background**

### *What is being done and why?*

#### *Grenfell Tower Payments*

- 7.1 Following the fire at Grenfell Tower on 14 June 2017, the Department agreed with the Treasury an extra-statutory arrangement which meant that payments of means-tested benefits would not be affected by payments made to people affected by the fire from the Grenfell Tower Residents' Discretionary Fund (GTRDF), the Royal Borough of Kensington and Chelsea and registered charities.
- 7.2 The amendments in these regulations, therefore, are aimed at putting the extra-statutory arrangements into law by providing income and capital disregards of payments to people affected by the fire from the sources mentioned above.

#### *National Emergencies Trust Payments*

- 7.3 The National Emergencies Trust (NET) is a new charity that will launch a public appeal in response to domestic national disasters and emergencies, and will then coordinate the distribution of funds raised to victims and/or their families. It has been set up on the advice of the Charity Commission for England and Wales after lessons learned from the Grenfell Tower fire and the Manchester and London terrorist attacks, which found the need for better co-ordination of fundraising and the overall initial charitable sector response, as well as distribution of funds.

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/1987/1967/contents>

<sup>2</sup> <http://www.legislation.gov.uk/uksi/1996/207/contents>

<sup>3</sup> <http://www.legislation.gov.uk/uksi/2002/1792/contents>

<sup>4</sup> <http://www.legislation.gov.uk/uksi/2006/213/contents>

<sup>5</sup> <http://www.legislation.gov.uk/uksi/2006/214/contents>

<sup>6</sup> <http://www.legislation.gov.uk/uksi/2008/794/contents>

<sup>7</sup> <http://www.legislation.gov.uk/uksi/2013/376/contents>

<sup>8</sup> <http://www.legislation.gov.uk/uksi/2014/1230/contents>

- 7.4 The Department agreed extra-statutory arrangements with the Treasury to ensure that entitlement to DWP means-tested benefits would not be affected by payments made under NET.
- 7.5 The amendments in these regulations, therefore, are aimed at putting the extra-statutory arrangements into law by providing income and capital disregards of payments made by the NET.

***Former child migrant compensation scheme***

- 7.6 The UK Government has set up a payment scheme for former British child migrants who were separated from their families and sent overseas as part of the UK government's historic participation in child migration programmes. Each former child migrant will receive a one-off payment of £20,000 paid by the Child Migrants Trust, a registered charity.
- 7.7 Any payment received from the Child Migrants Trust will be a payment of capital and for the purposes of means-tested benefits it will be disregarded indefinitely.
- 7.8 In practice, following agreement from Treasury, the Department is already disregarding these payments. The proposed amendments will give statutory backing to these disregards.

***Treatment of three new student loans for postgraduates***

- 7.9 In 2016 the Department for Education (DfE) introduced a new postgraduate master's degree loan for students normally resident in England. Unlike undergraduate funding, this loan is not divided between general maintenance costs and tuition fees, but is a single sum (initially £10,000 but uprated each year) intended as a contribution towards both. We take 30% of the loan into account for benefit awards (subject to any applicable disregard) and ignore the remaining 70%.
- 7.10 By virtue of the Social Security (Treatment of Postgraduate Master's Degree Loans and Special Support Loans) (Amendment) Regulations 2016<sup>9</sup> the Department duly amended all the working age, income-related benefits to reflect the 70/30 split and to introduce the definition of 'postgraduate master's degree loan'.
- 7.11 The proposed amendments widen the definition of "postgraduate loan" in order to remove any ambiguity as to the correct treatment of these loans when calculating entitlement to benefit. They future proof regulations so that when new loans are introduced, they will be covered by the regulations and only 30% of the loan will be taken into account for the calculation of a benefit award.

***New Style Employment and Support Allowance Special Payments***

- 7.12 In its original form Employment and Support Allowance (ESA) was a single benefit with two separate strands: one based on National Insurance contributions (contributory ESA), the other means-tested (income-related ESA). Universal Credit (UC) is gradually replacing the following benefits: working tax credit, child tax credit, housing benefit, income support, income-based Jobseekers Allowance (JSA) and income-related ESA.
- 7.13 UC is not replacing contributory ESA (or contribution-based JSA). Since, however, it is not possible to have entitlement to both UC and the original versions of ESA (or

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<sup>9</sup> <http://www.legislation.gov.uk/uksi/2016/743/regulation/2/made>

JSA), we necessarily introduced, in 2013, new ESA (and JSA) Regulations<sup>10</sup>, to provide a “new style” of the benefit, namely one which is wholly and exclusively based on National Insurance contributions, and thus can be paid alongside UC.

- 7.14 Extra-statutory payments are being made to provide redress to people affected by initial errors in the way claims for new style ESA were handled.
- 7.15 These extra-statutory payments are intended to restore a claimant’s award to as near as possible the amount that should have been payable, were it not for the incorrect advice. Where this payment would otherwise affect an individual’s award of UC or other means-tested benefit, it will be disregarded.
- 7.16 HM Treasury has provided the Department with the appropriate cover to disregard the extra-statutory payments for the interim period until these regulations provide statutory backing.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 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 text or instruments is available to the public free of charge via the National Archives’ website: [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **10. Consultation outcome**

- 10.1 The Department presented the draft regulations to the Social Security Advisory Committee (SSAC) on 8<sup>th</sup> April 2020. The Committee did not take the regulations on formal reference.
- 10.2 The Department has a statutory duty to consult the Local Authority Associations on any amendments to Housing Benefit Regulations. This was carried out between 20 March 2020 – 1 May 2020. The Associations raised no concerns.

## **11. Guidance**

- 11.1 Official guidance will be updated both internally and on gov.uk.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector. Local Authorities have responsibility for administering the disregards to Housing Benefit payments, however, the operational impact of this is small.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no impact on business.

## **13. Regulating small business**

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

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<sup>10</sup> <http://www.legislation.gov.uk/ukxi/2013/378/contents> (JSA); and <http://www.legislation.gov.uk/ukxi/2013/379/contents> (ESA)

**14. Monitoring & review**

14.1 There are no plans to formally review the impacts of these amendments.

14.2 The regulation does not include a statutory review.

**15. Contact**

15.1 Joe Cook at the Department for Work and Pensions. Telephone: 0203 1935526 or email: joseph.cook1@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Kerstin Parker, Deputy Director for Universal Credit Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Will Quince, Minister for Welfare Delivery at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.