

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (INCOME AND CAPITAL DISREGARDS)
(AMENDMENT) REGULATIONS 2023

2023 No. 640

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.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to amend regulations to ensure that certain payments are disregarded indefinitely as capital and income for the purposes of calculating entitlement to benefits. In particular, the amendments made by this instrument expand the existing disregard for Grenfell Tower payments, create a new disregard for Post Office compensation payments and ensure that partners of persons in respect of whom a payment under the Vaccine Damage Payments Act 1979 is made are covered by a disregard.
- 2.2 These amendment regulations also provide that both Grenfell Tower payments and Post Office compensation payments will be exempt from the Department's compensation recovery scheme. This means that compensation payments will not be reduced. Payments made under the Vaccine Damages Act 1979 to or in respect of the injured person are already exempt.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 and Wales and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and 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 1987¹, the Jobseeker's Allowance Regulations 1996², the State Pension Credit

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

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

Regulations 2002³, the Housing Benefit Regulations 2006⁴, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁵, the Employment and Support Allowance Regulations 2008⁶, the Universal Credit Regulations 2013⁷, 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 Social Security (Recovery of Benefits) Regulations 1997⁸ and the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008⁹ to exempt Post Office compensation and Grenfell-related compensation payments from the Department’s compensation recovery process.

7. Policy background

What is being done and why?

Post Office Compensation Payments

- 7.1 The Post Office Horizon IT system was introduced in 1999/2000 as a point-of-sale accounting system. The system recorded shortfalls in cash in branches, which Post Office Ltd (POL) sought to reclaim. Some postmasters were consequently convicted of theft, fraud, or false accounting, based on what turned out to be flawed Horizon evidence. Over the last two years, the courts have overturned a number of convictions which were based on flawed evidence from the Horizon system.
- 7.2 In 2016, court proceedings were initiated against Post Office Limited. A Group Litigation Order (“GLO”) was made in 2017 and 555 current and former postmasters joined the claimant group. As part of the court proceedings, two trials took place, which resulted in two key judgments – Alan Bates and Others v Post Office Limited [2019] EWHC 606 (QB) (known as the “Common Issues” judgment) and [2019] EWHC 3408 (QB) (known as the “Horizon Issues” judgment). In December 2019, the parties reached a full and final settlement, as part of which the Post Office paid £42.75m, plus legal costs to the claimants. However, the claimants only received a small proportion of this as the remainder was absorbed by funding costs.
- 7.3 Government has announced funding to enable the Post Office to deliver compensation schemes and arrangements for various cohorts of postmasters, including the Historical Shortfall Scheme, compensation arrangements for postmasters whose convictions were overturned and a compensation scheme for postmasters who did not receive remuneration during a suspension period, to address issues expressly identified by the parties during the court proceedings or flowing from the Common Issues and Horizon Issues judgments. In March 2022, the Government agreed to provide funding to ensure that the GLO claimants received compensation on a similar basis to other postmasters. A Department for Business and Trade scheme to deliver that outcome opened for applications in March 2023.
- 7.4 The amending regulations provide that compensation and support payments made in connection with the failings of the Horizon system, or which are otherwise payable

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

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

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

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

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

⁸ <https://www.legislation.gov.uk/ukxi/1997/2205/contents>

⁹ <https://www.legislation.gov.uk/ukxi/2008/1596/contents>

following the judgement in *Bates and Others v Post Office Ltd* [2019] EWHC 606 (QB)¹⁰, do not affect entitlement to means-tested benefits.

Grenfell Tower Compensation Payments

- 7.5 The Grenfell Fire occurred on 14 June 2017 leading to the loss of 72 lives. DWP provided personalised support to residents of Grenfell Tower through teams of dedicated benefit case workers, including the sensitive handling of those cases where individuals unfortunately died, and the on-going support for their dependent partners. DWP also administered the Grenfell Tower Residents' Discretionary Fund scheme to help people with their immediate needs following the fire.
- 7.6 In 2020 the Department introduced legislation¹¹ to disregard payments from the following when assessing entitlement to means-tested benefits:
- Grenfell Tower Residents' Discretionary Fund
 - Charities
 - Compensation payments from the Royal Borough of Kensington and Chelsea to replace personal contents.
- 7.7 Since then, however, additional sources of compensation payments have come to light. In particular, settlement payments resulting from the ongoing Grenfell Tower-related civil litigation¹², which has been brought against the government and various other private and public sector defendants. It is principally these settlements which has motivated the department to extend the existing Grenfell Tower-related disregard provisions within the means-tested benefits to ensure benefit entitlement is not adversely affected.

Vaccine Damage Payment Scheme

- 7.8 The Vaccine Damage Payment Scheme (VDPS) is a no-fault scheme that provides, in accordance with the Vaccine Damage Payments Act 1979, a one-off, tax-free payment of £120,000 to claimants who have been found, on the balance of probabilities, to have been seriously disabled by a vaccine administered to treat a disease listed in that Act.
- 7.9 The VDPS incorporated COVID-19 from December 2020, and the scheme is now processing these claims and providing outcomes to claimants in a timely manner. The NHS Business Services Authority (NHSBSA) started processing COVID-19 claims for medical assessment in May 2022, with the first COVID-19 claimants notified of the outcome of their claims in June 2022.
- 7.10 The majority of VDPS awards are already disregarded under existing social security legislation relating to compensation for personal injury. However, this legislation does not apply to the partners of vaccinated individuals who receive a payment derived from a VDPS award. The amendments in this instrument create a specific disregard for payments under the Vaccine Damage Payments Act 1979 and extend the disregard to cover payments which are derived from such payments and made to partners.

¹⁰ <https://www.judiciary.uk/wp-content/uploads/2019/03/bates-v-post-office-judgment-no3-15-mar-19.pdf>

¹¹ [The Social Security \(Income and Capital\) \(Miscellaneous Amendments\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

¹² [Grenfell Tower fire: Civil settlement claim worth £150m - BBC News](https://www.bbc.com/news/health-56841441)

Explanations

What did any law do before the changes to be made by this instrument?

- 7.11 The legislation currently includes disregards in relation to, for example, personal injury or payments from specified compensation schemes. These provisions are however not sufficient to disregard all payments referred to in this instrument. This means that without the amendments, receipt of payments referred to would reduce or remove some recipients' entitlement to means-tested benefits. That is due to the capital limits in those benefits, where income from capital is assumed for capital of over £6,000, and entitlement ceases completely where capital is over £16,000.¹³

Numbers affected

Post Office Compensation Payments

- 7.12 The Department estimates that around 6,000 – 6,500 claimants could be adversely affected if Post Office Horizon-related and similar compensation payments were included as part of their capital when calculating entitlement to means-tested benefit.

Grenfell Tower Compensation Payments

- 7.13 The Grenfell Tower litigation consists of over 1,100 claimants¹⁴, all of whom could be adversely affected if their compensation payments were included as part of their capital when calculating entitlement to means-tested benefit.

Vaccine Damage Payment Scheme

- 7.14 Data provided by The Department of Health and Social Care indicates that so far 239 bereaved claimants could be adversely affected if a Vaccine Damage Scheme payment were included as part of their capital when calculating entitlement to means-tested benefit.

Compensation recovery

- 7.15 The amendments to the recovery of benefits regulations will ensure that Grenfell Tower compensation payments and Post Office compensation payments are not subject to recovery of benefit procedures. The Social Security (Recovery of Benefits) Act 1997 provides that, if a person makes a payment (whether on his own behalf or not) to another person in consequence of any accident, injury or disease, and specific social security benefits have been paid in respect of the same accident, injury or disease, the person making the payment is liable to repay the Secretary of State an amount equivalent to the benefits paid. This can reduce the amount of compensation that the compensator pays to the claimant, which is not considered appropriate in the context of Grenfell Tower and Post Office compensation.

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.

¹³ The rules are slightly different for Pension Credit and pension age Housing Benefit if the guarantee credit element of Pension Credit is also in payment, where there is no upper limit on capital, but income from capital over £10,000 is assumed.

¹⁴ Based on estimates provided by the lawyers acting for the plaintiffs.

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 (SSAC) on 24 May 2023. The Committee did not take the regulations on formal reference. The Department also consulted the Local Authority Associations in relation to Housing Benefit. No comments were received.

11. Guidance

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

13. Regulating small business

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

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 Trevor Pendergast at the Department for Work and Pensions Telephone: 0207 449 5639 or email: trevor.pendergast@dpw.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Graeme Connor, 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 The Minister for Employment, Guy Opperman, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.