

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (INCOME AND CAPITAL DISREGARDS)
(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2021

S.R. 2021 NO. 345

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities 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), 129A(1), 131(1), 132(3) and (5), 132A(3) and 171(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽¹⁾, Articles 6(5), 14(1) and (4) of the Jobseekers (Northern Ireland) Order 1995⁽²⁾, paragraph 8 of schedule 1 to the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997⁽³⁾, and now vested in it⁽⁴⁾, sections 15(3) and (6) and 19(1) and (3) of the State Pension Credit Act (Northern Ireland) 2002⁽⁵⁾, sections 4(2), 17(1) and (3) of the Welfare Reform Act (Northern Ireland) 2007⁽⁶⁾ and Article 48(1) of, and paragraph 4(1) and (3) of Schedule 1 to, the Welfare Reform (Northern Ireland) Order 2015⁽⁷⁾, and is subject to the negative resolution procedure.

2. Purpose

- 2.1 The purpose of this instrument is to amend regulations to ensure that payments made by schemes which provide compensation for historical institutional child abuse in the United Kingdom do not affect recipients' entitlements to means-tested benefits⁽⁸⁾.
- 2.2 The instrument also makes amendments to ensure payments made under the Home Office's Windrush Compensation Scheme do not affect recipients' entitlements to means-tested benefits.

3. Legislative Context

- 3.1 This instrument makes amendments to the Income Support (General) Regulations (Northern Ireland) 1987⁽⁹⁾, the Jobseeker's Allowance Regulations (Northern Ireland) 1996⁽¹⁰⁾, the State Pension Credit Regulations (Northern Ireland) 2003⁽¹¹⁾, the Housing Benefit Regulations (Northern Ireland) 2006⁽¹²⁾, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations

⁽¹⁾ 1992 c. 7

⁽²⁾ S.I. 1995/2705 (N.I. 15)

⁽³⁾ 1997 No. 1183 (N.I. 12)

⁽⁴⁾ See Article 8(b) of S.R. 1999 No. 481

⁽⁵⁾ 2002 c. 14 (N.I.)

⁽⁶⁾ 2007 c.2

⁽⁷⁾ S.I.2015/2006 (N.I.1)

⁽⁸⁾ Universal Credit, Housing Benefit, Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance and State Pension Credit.

⁽⁹⁾ S.R.1987 No.459

⁽¹⁰⁾ S.R.1996 No.198

⁽¹¹⁾ S.R.2003 No.28

⁽¹²⁾ S.R.2006 No.405

(Northern Ireland) 2006⁽¹³⁾, the Employment and Support Allowance Regulations (Northern Ireland) 2008⁽¹⁴⁾, the Universal Credit Regulations (Northern Ireland) 2016⁽¹⁵⁾, to enable certain payments made to benefit recipients to be disregarded when calculating the amount of that person's benefit award.

- 3.2 Amendments are also made to the Social Security (Recovery of Benefits) Regulations (Northern Ireland) 1997⁽¹⁶⁾ and the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008⁽¹⁷⁾ to exempt payments under the Windrush Compensation Scheme from the Department's compensation recovery scheme.

4. Background

What is being done and why?

Payments in respect of historical institutional child abuse.

- 4.1 The amendments providing for the disregard of certain compensation payments made in respect of historical institutional child abuse were prompted by the establishment of four schemes making or due to be making payments made under:
- Historical Institutional Abuse (Northern Ireland) Act 2019⁽¹⁸⁾;
 - Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021⁽¹⁹⁾;
 - The London Borough of Lambeth Redress Scheme⁽²⁰⁾; and
 - The London Borough of Islington's proposed support payment scheme⁽²¹⁾.
- 4.2 They provide for 'future proofed' amendments to means-tested benefit regulations so that further scheme-specific legislative exceptions will not be required for full income and capital disregards to apply to any future historical institutional child abuse schemes in the UK, where the scheme(s) in question has been established or approved by the Secretary of State. Therefore, they provide for full and indefinite income and capital disregards for the schemes mentioned in paragraph 4.1 as well as working for future (approved) schemes. Further detail on each of the schemes mentioned in paragraph 4.1 is below.

Payments made under the Historical Institutional Abuse (Northern Ireland) Act 2019

- 4.3 The Northern Ireland Executive set up an inquiry into historical institutional abuse, which reported in January 2017. The inquiry covered abuse of children under 18 who lived in children's homes, borstals, training schools, juvenile justice centres, hospitals

⁽¹³⁾ S.R.2006 No.406

⁽¹⁴⁾ S.R.2008 No.280

⁽¹⁵⁾ S.R.2016 No.216

⁽¹⁶⁾ S.R.1997 No.429

⁽¹⁷⁾ S.R.2008 No.355

⁽¹⁸⁾ <https://www.legislation.gov.uk/ukpga/2019/31/introduction?view=interweave>

⁽¹⁹⁾ <https://www.legislation.gov.uk/asp/2021/15/contents>

⁽²⁰⁾ <https://beta.lambeth.gov.uk/lambeth-childrens-homes-redress-scheme>

⁽²¹⁾ <https://www.islington.media/news/islington-council-will-create-non-recent-child-abuse-support-payment-scheme-for-survivors-of-abuse-in-childrens-homes>

and orphanages between 1922 and 1995 in Northern Ireland. On 5 November 2019, the Historical Institutional Abuse (Northern Ireland) Act 2019 (HIA) became law, enabling the establishment of a Redress Board to administer claims for awards of compensation to victims and survivors of historical institutional abuse.

- 4.4 Payments are: a standard award payment of £10,000; and an enhanced award payment of between £10,001 and £80,000.
- 4.5 In line with the recommendation at paragraph 83 of the inquiry's report⁽²²⁾, the Historical Institutional Abuse (Northern Ireland) Act 2019 (HIA) (at section 15) includes a provision which states that payments made under the HIA are disregarded when assessing entitlement to means-tested social security benefits.
- 4.6 The HIA covers benefits administered in Northern Ireland, not in Great Britain. DWP will make corresponding legislation that will provide for full and indefinite income and capital disregards of payments made under the HIA to people who are resident in Great Britain, therefore maintaining parity of treatment with those recipients living in Northern Ireland.

Payments made under the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021

- 4.7 The Deputy First Minister of Scotland made a statement to the Scottish Parliament on 23 October 2018, in response to recommendations from a review group, to provide an apology and establish a financial redress scheme for those who suffered abuse in care in Scotland before December 2004. The Redress for Survivors Act (Historical Child Abuse in Care) (Scotland) Act 2021 passed into law on 23 April 2021, and payments under it are due to begin in January 2022.
- 4.8 Payments will be: fixed rate redress payments of £10,000; and individually assessed payments (IAP), which, depending on the severity of harm suffered, are to be paid at three levels: £20,000, £40,000, and £80,000.
- 4.9 One of the review group's recommendations was that "negative consequences" including any potential impact on benefit entitlement, should be prevented or mitigated⁽²³⁾. The Scottish Government gave a commitment to work with the UK Government to achieve a disregard of payments made under the Act.⁽²⁴⁾
- 4.10 The amendments in these regulations will provide for full and indefinite income and capital disregards in respect of payments made under the Redress for Survivors Act.
- 4.11 It is estimated that the number of people who will receive a payment under the Redress for Survivors Act who are also on means-tested benefits⁽²⁵⁾ will be around 3,000.

⁽²²⁾ [HIA Report - Chapter 4 - Recommendations \(hia.inquiry.org\)](https://hia.inquiry.org)

⁽²³⁾ <https://www.celcis.org/our-work/key-areas/historical-abuse/financial-redress>

⁽²⁴⁾ [Financial redress for survivors of child abuse in care: information note 10 - May 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot)

⁽²⁵⁾ Universal Credit, Housing Benefit, Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance and State Pension Credit.

Local Authority Schemes

- 4.12 The London Borough of Lambeth Redress Scheme⁽²⁶⁾ pays compensation to people who were abused, or lived in fear of being abused, while in Lambeth’s care as children.
- 4.13 The scheme provides for an Individual Redress Payment up to £125,000. The payment award varies depending on the severity of the abuse suffered. A “Harm’s Way” Payment of between £1,000 and £10,000 may also be paid, based on the length of a person’s exposure to harm. The scheme closes on 2 January 2022.
- 4.14 The Secretary of State wrote to the London Borough of Lambeth on 3 November 2021 confirming cross-Government agreement that payments made by its scheme will be disregarded in the calculation of means-tested benefits⁽²⁷⁾ pending the passage of the amendments in these regulations.
- 4.15 The Secretary of State’s letter was sent jointly to the leader of the London Borough of Islington, to confirm the same in respect of its proposed support payment scheme⁽²⁸⁾ for those who as children were abused in its care homes. This is substantially similar to the London Borough of Lambeth’s scheme.
- 4.16 Although Harm’s Way Payments may have already been made under Lambeth’s scheme, the amendments relating to that scheme are not retrospective. The understanding from Lambeth is that some people have delayed their applications for Harm’s Way Payments until they were clear about how payments under the scheme might affect their entitlement to means-tested benefits. Additionally, it is believed the existing personal injury compensation payment disregards will be sufficient to ensure entitlement to means-tested benefits will not be affected until these regulations come into operation.
- 4.17 It is estimated that the number of people who receive a payment under Lambeth’s Scheme who are also on means-tested benefits will be around 500. There is no data regarding the numbers of people who are likely to receive a payment under the London Borough of Islington scheme, but as the population of Islington is smaller, it is anticipated that a broadly similar but slightly smaller number of payments are likely to be made from the Islington scheme.

The Windrush Compensation Scheme

- 4.18 The Home Office Windrush Compensation Scheme⁽²⁹⁾ is intended to provide both financial and non-financial redress to those people from the Windrush Generation who had difficulties demonstrating their lawful right to live in the UK.
- 4.19 The Department for Work and Pensions agreed extra-statutory arrangements with the Treasury to ensure that entitlement to DWP means-tested benefits would not be affected by payments made under the Windrush Compensation Scheme.
- 4.20 The amendments to the Social Security (Income and Capital Disregards) (Amendment) Regulations 2021 in GB are aimed at now replicating the extra-statutory arrangements in statute by providing for full and indefinite income and

⁽²⁶⁾ <https://beta.lambeth.gov.uk/lambeth-childrens-homes-redress-scheme>

⁽²⁷⁾ That is, Universal Credit, Housing Benefit, Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance and State Pension Credit

⁽²⁸⁾ <https://www.islington.media/news/islington-council-will-create-non-recent-child-abuse-support-payment-scheme-for-survivors-of-abuse-in-childrens-homes>

⁽²⁹⁾ <https://www.gov.uk/government/publications/windrush-scheme>

capital disregards of payments made under the Windrush Compensation Scheme. They also amend the Social Security (Recovery of Benefits) Regulations 1997⁽³⁰⁾ and the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008⁽³¹⁾ to provide that Windrush Compensation Scheme payments are not subject to recovery of benefit rules.

- 4.21 The Home Office’s current planning assumption is for between 4,000-6,000 applications to the Windrush Compensation Scheme. The Home Office publishes updated information on the Windrush Scheme on gov.uk:

<https://www.gov.uk/government/publications/windrush-compensation-scheme-data-october-2021>

The Department does not hold data on how many recipients of Windrush Compensation Scheme payments will have had those payments disregarded.

- 4.22 The Social Security (Income and Capital Disregards) (Amendment) Regulations (Northern Ireland) 2021 will, for Northern Ireland, replicate the provisions contained in the Social Security (Income and Capital Disregards) (Amendment) Regulations 2021. They will also amend the Social Security (Recovery of Benefits) Regulations (Northern Ireland) 1997 and the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008 for the same reason as stated in paragraph 4.20.

Explanations

- 4.23 Existing provisions in means-tested benefits relating to treatment of personal injury compensation payment (for example Universal Credit regulation 75) provide for such compensation payments to be disregarded as capital for 12 months after the payment is made, unless the payment is put into a trust, in which case it is disregarded indefinitely. They also allow any income from such a payment to be disregarded in certain circumstances. For example, where such a compensation payment is used to purchase an annuity, any payments made under the annuity are to be disregarded for the purposes of calculating unearned income. The rules in Pension Credit and pension age Housing Benefit⁽³²⁾ are different, as an indefinite capital disregard applies to personal injury payments, irrespective of whether they are in a trust.
- 4.24 The existing personal injury provisions would not be sufficient to capture all payments made under the schemes referred to in paragraph 4.1, and in the event that they did cover some of the payments, in many cases the disregard would only apply for 12 months. That means that without the amendments made by these regulations, receipt of payments would reduce or remove some recipients’ entitlement to means-tested benefits. That is due partly to the capital limits in those benefits, where income from capital is assumed for capital of over £6,000, and entitlement ceases completely when capital is over £16,000.⁽³³⁾
- 4.25 Each of the child abuse schemes has a “harm’s way” provision, not necessarily related to a “personal injury”. For example, section 2 of the Northern Ireland Historical

⁽³⁰⁾ <https://www.legislation.gov.uk/uksi/1997/2205/contents>

⁽³¹⁾ <https://www.legislation.gov.uk/uksi/2008/1596/contents>

⁽³²⁾ Namely, Housing Benefit which is assessed under the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (NI) 2006 (SR 2006 No.406).

⁽³³⁾ The rules are slightly different for Pension Credit and pension age Housing Benefit, where income from capital over £10,000 is assumed. Pension Credit has no equivalent to the £16,000 capital limit at which benefit ceases.

Abuse Act (HIA) includes “having witnessed one or more other children suffer abuse” and “having otherwise been exposed to a harsh environment” and the Lambeth Scheme covers those who lived in fear of being abused.

- 4.26 Due to the long periods covered by the HIA and Redress for Survivors Act (Historical Child Abuse in Care) (Scotland) Act 2021, they include provisions to make payments to next of kin of those who were actually abused. As these would not be classed as payments relating to personal injury of the next of kin, such payments would not come within the existing personal injury disregards.
- 4.27 The Northern Ireland Historical Abuse Act (HIA) includes provision for compensation for having been sent to Australia under the Child Migrants Programme. This complements the Child Migrants Trust scheme payments which are fully disregarded in means-tested benefits due to amendments made in 2020.⁽³⁴⁾ The amendments made by these regulations will ensure consistency of treatment.

Numbers affected

- 4.28 There is no evidence that claimants’ entitlement to means-tested benefits⁽³⁵⁾ have been affected for those schemes which are already paying (the Northern Ireland Historical Institutional Abuse Scheme and the London Borough of Lambeth Scheme). That is likely to be due to several factors: (a) the existing personal injury disregards maybe sufficient to cover the payments made to date, although without the amendments made by these regulations, that will not continue to be the case as the 12 month anniversaries of the original payments approach; (b) some recipients will have placed the payments in a trust, thus triggering the existing full and permanent personal injury disregards; (c) some recipients will be on Pension Credit/pension age Housing Benefit⁽³⁶⁾, in which the existing disregards have fewer conditions than in working age benefits.
- 4.29 We assume that the payments received to date can all be classed as personal injury payments (i.e. not harm’s way or next of kin payments for the child abuse schemes), as such payments would not come within the scope of the existing personal injury disregards.
- 4.30 Extra-statutory arrangements with the Treasury mean that means-tested benefits should not have been affected by Windrush Compensation Scheme payments.

What will it now do?

- 4.31 From the date they come into operation, the amendments will ensure that people on means-tested benefits will not experience a reduction or withdrawal of those benefits simply because they receive a payment from:
- any of the schemes mentioned in paragraph 4.1;
 - any future schemes providing compensation for historical institutional child abuse in the United Kingdom which are established or approved by the Secretary of State; and

⁽³⁴⁾ The Social Security (Income and Capital) (Miscellaneous Amendments) Regulations (Northern Ireland) 2020 (SR 2020 No.108).

⁽³⁵⁾ Universal Credit, Housing Benefit, Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance and State Pension Credit.

⁽³⁶⁾ Namely, Housing Benefit which is assessed under the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (SR2006 No.406).

- the Windrush Compensation Scheme.
- 4.32 Whether approval is given in relation to any future schemes will depend on factors such as whether the Secretary of State is satisfied that the scheme in question is comparable to the Northern Ireland Historical Institutional Abuse Scheme, the Scottish Redress for Survivors (Historical Child Abuse in Care) Scheme or The London Borough of Lambeth Redress Scheme, and whether she can secure agreement from HM Treasury to disregard payments from any such future schemes. This ‘future proofed’ approach allowing for further future schemes to be disregarded subject to Ministerial approval is similar to the approach taken in relation to infected blood schemes, as provided for in The Social Security (Infected Blood and Thalidomide) Regulations (Northern Ireland) 2017⁽³⁷⁾.
- 4.33 Although the payments under the schemes are one-off capital payments, the amendments will ensure that income disregards are also in place where required⁽³⁸⁾. This is partly for clarity of administration, and partly to prevent the need for future amendments should schemes arise in the future which the Secretary of State wishes to approve which do make payments which might be classed as income rather than capital.
- 4.34 The amendments to the recovery of benefits regulations will ensure that Windrush Compensation Scheme payments are not subject to recovery of benefit procedures. The Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 provides that, where 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 Department an amount equivalent to the benefits paid.
- 4.35 The arrangement between the DWP and the Home Office with regard to people affected by Windrush is that DWP will, where possible, pay arrears of benefits to people affected by Windrush, where they were previously refused those benefits on the basis of their immigration status. The Home Office will deduct any such arrears of benefits from the compensation it pays where the arrears are payable for the same period. As the aim is for the government to compensate the people affected without any further detrimental effect as a result of the compensation being paid, we consider it would be inappropriate to apply recovery of benefit provisions in such cases.
- 4.36 Payments under the relevant historic institutional abuse schemes will not be exempted from the recovery of benefits provisions, as to do so would potentially create inequality and inconsistency, given that compensation for the same types of injury, agreed through the civil claims process, would be subject to recovery of benefits rules but these payments would then not be. We consider that the lack of a specific exemption from recovery of benefits rules for these payments will have minimal impact on injured parties. This is because for recovery of benefits provisions to apply, the compensation payment and the social security benefits in question need to be paid for the same reason (in consequence of the same accident, injury or disease) over the same period of time. Given the nature of the historic institutional abuse compensation payments, there are likely to be very few, if any, people in receipt of social security

⁽³⁷⁾ S.R.2017 No.219

⁽³⁸⁾ Specific amendments to achieve this are not needed for Universal Credit, Pension Credit or pension age Housing Benefit, all of which only take account of income types which are expressly specified in regulations.

benefits for the same reasons that qualified them for a compensation payment related to historic institutional abuse.

Consultation

4.37 There is no requirement to consult on these regulations.

5. Equality Impact

5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise and concluded that the changes did not have any significant implications for equality of opportunity. In light of this, the Department considered that an equality impact assessment was not necessary.

6. Regulatory Impact

6.1 These Regulations do not require a Regulatory Impact Assessment as they do not impose a cost on business, charities, social enterprises or voluntary bodies.

7. Financial Implications

7.1 A breach of parity in this matter may incur financial costs, both in the loss of benefit savings and in administration costs, which would have to be met by the Northern Ireland Executive from the Northern Ireland block grant.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has considered section 24 of the Northern Ireland act 1998 and is satisfied that the Rule –

- (a) is not incompatible with any of the Convention rights;
- (b) is not incompatible with Community law;
- (c) does not discriminate against a person or class of person on the grounds of religious belief or political opinion; and
- (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. E U Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 These Regulations are equivalent to the Social Security (Income and Capital Disregards) (Amendment) Regulations 2021 in Great Britain, which were made on 9th December 2021 and come into force on 1st January 2022.

11. Additional Information

11.1 Not applicable.