

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (INFECTED BLOOD AND THALIDOMIDE)
REGULATIONS 2017

2017 No. 870

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 Her Majesty.

2. Purpose of the instrument

- 2.1 The proposed amendments in this instrument provide for payments from schemes approved by the Secretary of State, and established to provide compensation to people who have been infected from contaminated blood products, to be disregarded (i.e. not taken into account as income or capital) for the purpose of calculating entitlement to certain income-related benefits. The relevant income-related benefits generally include provisions which list the specific compensation schemes from which payments are to be disregarded. Until now, the relevant provisions have needed to be amended each time a new scheme was introduced. The proposed amendments provide for a simpler process whereby amendments to Regulations will not be required to reflect any future restructuring of the infected blood schemes, or changes to the names of the schemes.
- 2.2 This instrument also provides that payments made under or by certain trusts (such as the Thalidomide Trust), established for the purpose of giving relief and assistance to people who have disabilities caused by their mother having taken the drug known as Thalidomide during their pregnancy and approved by the Secretary of State, are also disregarded in calculating entitlement to certain income-related benefits. As with the infected blood payments, this general approach is intended to future-proof the Regulations in the event of a name change to the individual trust which administers these payments.
- 2.3 The instrument also exempts payments from such schemes or trusts from the Department's compensation recovery scheme.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 In the UK six payment schemes currently provide financial support to people infected with HIV and/or hepatitis C following NHS treatment with contaminated blood in the

1970-80s. These are run by the following organisations: The Eileen Trust, The Macfarlane Trust, MFET Ltd, The Skipton Fund and The Caxton Foundation¹. In addition, the Scottish Infected Blood Support Scheme (SIBSS) has been operational since 1st April 2017.

- 4.2 Following an announcement of reform of the existing infected blood payment schemes by the Prime Minister in July 2016, the Department of Health (DH) consulted on proposals and as a result, from 2nd October 2017, these services will be consolidated and rationalised into single schemes for persons infected via NHS treatment. The NHS Business Services Authority will become the new scheme administrator for England; and the new Welsh Infected Blood Support Scheme will be administered by Velindre NHS Trust through the NHS Wales Shared Services Partnership. Northern Ireland plan to mirror the reforms for England; however, they plan to use a different new scheme administrator – the Regional Business Services Organisation.
- 4.3 This instrument makes amendments to the Income Support (General) Regulations 1987 (S.I. 1987/1967)², the Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207)³, the State Pension Credit Regulations 2002 (S.I. 2002/1792)⁴, the Housing Benefit Regulations 2006 (S.I.2006/213)⁵, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214)⁶, and the Employment and Support Allowance Regulations 2008 (S.I. 2008/794)⁷ so that payments made by the new schemes (where those schemes have been approved by the Secretary of State) can be disregarded for the purpose of calculating entitlement to these benefits in the same way as payments made by the existing UK schemes. The reason for doing so is because, as in respect of the existing infected blood schemes, the new schemes do not supplement income in the same way as the relevant income-related benefits.
- 4.4 This instrument also amends the same Regulations so as to indefinitely disregard capital payments for the purpose of calculating entitlement to certain income-related benefits from trusts, such as the Thalidomide Trust, which have been established for the purpose of giving relief and assistance to people who have disabilities caused by their mothers having taken the drug known as Thalidomide during their pregnancy; where those trusts have been approved by the Secretary of State. Income payments can be disregarded under existing Regulations and therefore a specific income disregard is not required.
- 4.5 The Department is bringing payments from the new infected blood schemes into line with evidence and information requirements in respect of payments from other sources. This means that for a payment to be disregarded when calculating capital for income-related benefits it must be declared and verified. This will prevent difficulties from arising where a benefit claimant with undeclared capital from one of these funds may be identified in a capital data match and the source of their capital cannot be established. In this situation the claimant may be asked to attend an interview under

¹ www.macfarlane.org.uk; www.skiptonfund.org/payments; www.caxtonfoundation.org.uk

² http://www.legislation.gov.uk/ukSI/1987/1967/pdfs/ukSI_19871967_300916_en.pdf

³ http://www.legislation.gov.uk/ukSI/1996/207/pdfs/ukSI_19960207_300916_en.pdf

⁴ http://www.legislation.gov.uk/ukSI/2002/1792/pdfs/ukSI_20021792_300916_en.pdf

⁵ http://www.legislation.gov.uk/ukSI/2006/213/pdfs/ukSI_20060213_311216_en.pdf

⁶ http://www.legislation.gov.uk/ukSI/2006/214/pdfs/ukSI_20060214_300916_en.pdf

⁷ http://www.legislation.gov.uk/ukSI/2008/794/pdfs/ukSI_20080794_300916_en.pdf

caution on the grounds of suspected fraud. It is only at this point that the source of the capital may be established as an infected blood scheme payment, which can cause distress to the claimant. Requiring the claimant to prove that they have capital which can be disregarded safeguards them from the possibility of being investigated on suspicion of a criminal offence.

- 4.6 To reflect this change in policy this instrument also includes changes to the Housing Benefit Regulations and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 so that benefit claimants will now be required to declare payments from the Scottish Infected Blood Support Scheme (SIBSS) which has been operational since 1st April 2017, before these payments are disregarded. This is necessary because these Regulations currently include provisions which specify that housing benefit claimants are not required to provide evidence in respect of payments from the SIBSS.
- 4.7 This instrument also exempts infected blood schemes which have been approved by the Secretary of State, such as the new schemes coming into operation from 2nd October, from the Department's compensation recovery scheme via amendments to the Social Security (Recovery of Benefits) Regulations 1997 (S.I. 1997/2205)⁸ and the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008 (S.I. 2008/1596)⁹.

5. Extent and Territorial Application

- 5.1 The extent and territorial application of this instrument is Great Britain.
- 5.2 The Department for Communities in Northern Ireland will be making corresponding provision for Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

Infected Blood Scheme Reforms

- 7.1 Currently payments from the existing UK-wide infected blood schemes are fully disregarded for the purposes of calculating eligibility for income-related benefits as they do not supplement income in the way that those benefits do. Such payments are also exempt from the Department's compensation recovery scheme.
- 7.2 The various social security benefits have different rules of entitlement and income/capital requirements. However, these benefits do have exceptions which allow some sources of income and capital to be disregarded. All payments made to individuals via the schemes mentioned above are currently fully disregarded for the purposes of calculating eligibility for income-related benefits as they do not supplement income in the way that those benefits do but are intended to compensate 'infected persons' and their relatives in recognition that the physical, mental and other

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

⁹ http://www.legislation.gov.uk/ukxi/2008/1596/pdfs/ukxi_20081596_301114_en.pdf

health impacts for those infected can lead to additional costs which cannot be met through the benefits system. Entitlement to contributory benefits is not affected by such payments. Such payments are also exempt from the DWP compensation recovery scheme.

- 7.3 This instrument ensures that payments made by the new schemes, operational from 2nd October 2017, will also be disregarded in the same way that payments from the existing schemes are disregarded for the purposes of recovery of benefit and the assessment of claimant income and capital when considering entitlement to the relevant income-related benefits, where those schemes have been approved by the Secretary of State.
- 7.4 Although the new schemes will be in operation from 2nd October 2017, no payments from the new schemes will be made before 23rd October 2017 when this instrument comes into force.
- Thalidomide Health Grant
- 7.5 The Thalidomide Trust administers the Thalidomide Health Grant (THG) on behalf of the Department of Health (DH) and payments from the Thalidomide Trust are intended to assist with meeting the health-related costs of people whose disabilities were caused by Thalidomide use – i.e. costs which are not covered by income-related benefits.
- 7.6 Under existing income-related benefit Regulations, THG payments can be disregarded as income on the grounds that they are a charitable payment. However, for certain income-related benefits, capital payments can only be disregarded to a limited extent – a new disregard is required in order to disregard capital payments from the Thalidomide Trust indefinitely.
- 7.7 Some beneficiaries who want to use their funding to prevent or manage future health issues are concerned that without the disregard there is a possibility of a reduction in, or loss of, their benefits if they exceed the capital limits for the relevant benefits – for example, if beneficiaries save their health grant over a number of years to fund bigger items such as house renovations. This instrument therefore allows for capital payments to be disregarded from any approved trust, such as the Thalidomide Trust.

Consolidation

- 7.8 Informal consolidation of new instruments is available to the public free of charge via the National Archives website: <http://www.legislation.gov.uk/>.

8. Consultation outcome

- 8.1 We have consulted the Local Authority Associations¹⁰ (LAAs) as the changes have an effect on Housing Benefit Regulations. Three out of four LAAs responded to the consultation – none of whom raised any issues.
- 8.2 The Social Security Advisory Committee decided that it did not require the proposed changes to be formally referred to it and, accordingly, the Committee did not conduct a public consultation exercise on them.

¹⁰ There are four LAAs representing local authorities' interests: the Local Government Association, London Councils, Welsh Local Government Association and Convention of Scottish Local Authorities.

9. Guidance

- 9.1 A guidance bulletin detailing these changes will be issued to decision makers in the Department for Work and Pensions, and to Local Authority operational staff, in advance of this statutory instrument coming into force.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is negligible. Data from DH and the Devolved Administrations suggests that around 3,500 people will be affected by the introduction of the new infected blood schemes. It follows that the number of income-related benefit claimants in respect of whom payments from the new schemes may need to be disregarded will be in line with or lower than this figure.
- 10.3 The Thalidomide Trust currently supports 462 beneficiaries so it is reasonable to also assume that the number of income-related benefit claims involved will be very small. Eligibility for support from the Thalidomide Trust is restricted to those whose disabilities were caused by the fact that during their mother's pregnancy she had taken the Thalidomide drug in the UK, so low numbers of new beneficiaries are anticipated.
- 10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

- 12.1 No specific monitoring and review of the new claims process will be carried out above and beyond what which is already in place as part of the Department's routine data collection.

13. Contact

- 13.1 Joanne Ward at the Department for Work and Pensions, Telephone: 020 7449 5039 or Email: Joanne.Ward@dwp.gsi.gov.uk can answer any queries regarding this instrument.