

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (CAPITAL DISREGARDS) (AMENDMENT)**  
**REGULATIONS 2019**

**2019 No. 1314**

**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 purpose of this instrument is to allow back-payments of Armed Forces Independence Payment and Maternity Allowance to be ignored in the calculation of a claimant’s capital, across the full range of income-related social security benefits. The disregards will apply for a prescribed length of time from the date the arrears are received.

**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 of 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 extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain. Separate but corresponding provision will be made for Northern Ireland.

**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 Across the range of working-age income-related benefits (Income Support, income-based Jobseeker’s Allowance, Housing Benefit, income-related Employment and Support Allowance and Universal Credit), there are upper and lower capital limits at

or above which a claimant's entitlement, or the amount payable by way of that entitlement, can be affected.

- 6.2 Pension-age income-related benefits (Pension Credit and Housing Benefit for people who have attained the qualifying age for Pension Credit) have similar, but slightly different, rules. In Pension Credit, for example, there is no upper capital limit.
- 6.3 Capital, in general, means any and all savings and investments and the value of property and land owned but not occupied by the claimant. However, certain types of capital are wholly "disregarded" (excluded from the calculation of the claimant's capital) either in whole or in part, the effect of which is to prevent awards of benefit from either ending or being reduced. The nature of the capital that attracts a disregard, and the extent of the disregard, is prescribed in the appropriate sets of regulations, along with the associated conditions (if any) that need to be satisfied.
- 6.4 This instrument makes changes to the following statutory instruments, to allow for back-payments of Armed Forces Independence Payment and Maternity Allowance to be disregarded across the full range of income-related social security benefits.
- the Income Support (General) Regulations 1987 (S.I. 1987/1967)<sup>1</sup> ("the IS Regulations");
  - the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207)<sup>2</sup> ("the JSA Regulations");
  - the State Pension Credit Regulations 2002 (S.I. 2002/1792)<sup>3</sup>;
  - the Housing Benefit Regulations 2006 (S.I. 2006/213)<sup>4</sup>;
  - the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214)<sup>5</sup>;
  - the Employment and Support Allowance Regulations 2008 (S.I. 2008/794)<sup>6</sup> ("the ESA Regulations");
  - the Universal Credit Regulations 2013 (S.I. 2013/376)<sup>7</sup>; and
  - the Universal Credit (Transitional Provisions) Regulations 2014 (S.I. 2014/1230)<sup>8</sup>.

## 7. Policy background

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

#### Disregard of arrears of prescribed benefits – background

- 7.1 Across the range of income-related benefits arrears of prescribed benefits are wholly disregarded for a period of 52 weeks from the date of receipt. With Universal Credit (UC) the disregard only applies if the benefit concerned is not included as unearned income in the calculation of a claimant's income<sup>9</sup>.
- 7.2 Where the arrears amount to £5,000 or more, and become payable either as a result of official error or from an error of law, a longer disregard applies: in these

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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>

<sup>9</sup> See regulation 66(1) of, and paragraph 18 of Schedule 10 to, the Universal Credit Regulations 2013. Link as per footnote 7.

circumstances, the arrears are normally disregarded for 52 weeks from the date of receipt or for the remainder of the award, whichever is the longer period. With UC, the longer disregard applies to benefit arrears of £5000 or more if the arrears would have attracted the longer disregard for the purposes of the other income-related benefits.

#### Disregard of arrears of Armed Forces Independence Payment

- 7.3 From 8 April 2013, Personal Independence Payment (PIP) replaced Disability Living Allowance for people aged 16 to 64 with a health condition or disability and who have difficulties with daily living or getting around (or both). From the same date, Armed Forces Independence Payment (AFIP) was introduced into the Armed Forces and Reserve Forces Compensation Scheme<sup>10</sup> as an alternative to PIP for service personnel and veterans who have been seriously injured as a result of service, and who meet the eligibility criteria.
- 7.4 The policy intention was – and remains – that, across the full range of income-related benefits, AFIP should be prescribed as a relevant benefit for the purposes of the arrears provisions described above. In the event, however, the instrument which made changes to legislation in consequence of the introduction of AFIP<sup>11</sup> omitted to insert appropriate cross-references into the IS Regulations, the JSA Regulations and the ESA Regulations.
- 7.5 As a result, there is, currently, no dedicated disregard of arrears of AFIP, regardless of the amount or reason, within the three benefits in question, and the arrears are, instead, having to be disregarded under a separate provision relating to payments made to the claimant in consequence of any personal injury.
- 7.6 Whilst the Department is satisfied that, to date, no claimants have suffered any financial disadvantage as a result of the omissions, this instrument restores the policy intent by inserting dedicated disregards of arrears of AFIP into the three sets of Regulations.
- 7.7 Additionally, this instrument amends the Universal Credit Regulations 2013 and the Universal Credit (Transitional Provisions) Regulations 2014, to clarify that arrears of AFIP are disregarded for the purposes of UC as well.

#### Disregard of arrears of Maternity Allowance

- 7.8 Maternity Allowance (MA) is payable to pregnant women who are not entitled to Statutory Maternity Pay from their employer, or who are self-employed, or who have irregular employment. This instrument also prescribes MA as a relevant benefit for the purposes of the arrears provisions described above. This is because a historical error has come to light which may require arrears of MA to be paid, and prescribing

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<sup>10</sup> The Armed Forces and Reserve Compensation Scheme is a no-fault compensation scheme for injury, illness or death caused by service in the UK Armed Forces (Regular and Reserve) on or after 6 April 2005. Compensation is paid for injuries which arise as a result of service, regardless of how they are sustained.

<sup>11</sup> The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591) <https://www.legislation.gov.uk/uksi/2013/591/contents/made>

MA as a relevant benefit will ensure that any claimants who may receive back-payments will not be disadvantaged by having the arrears included in the calculation of their capital.

- 7.9 Additionally, this instrument amends the Universal Credit (Transitional Provisions) Regulations 2014, to provide that arrears of MA under £5000 (which would not otherwise fall to be disregarded for the purposes of UC, because MA is included as unearned income in the calculation of a claimant's income - see paragraph 7.1) are to be disregarded for 12 months from the date of receipt of the payment.

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

- 8.1 This instrument does not relate to the withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 Informal consolidated text of instruments is available to the public free of charge via the 'National Archives' website [legislation.gov.uk](http://legislation.gov.uk).

## **10. Consultation outcome**

- 10.1 Local Authorities have responsibility for the administration of Housing Benefit, and the Department has a statutory obligation to consult with organisations representing those Authorities over all proposed changes that affect that benefit. Following consultation with the representative organisations relating to the amendments proposed at regulations 5 and 6 of this instrument, none indicated that they had any issues with the proposals in question.
- 10.2 The proposals in this instrument were subject to statutory consideration by the Social Security Advisory Committee. The Committee considered the instrument at its meeting on 4 September 2019. The Committee decided that it did not wish to take the instrument on formal referral.

## **11. Guidance**

- 11.1 The Department will issue Advice for Decision Making and Decision Makers Guide memos, to be published on the DWP Intranet, to ensure that staff are aware of the changes introduced by this instrument. The memos will also be published on the GOV.UK website for the public before this instrument 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 An Impact Assessment has not been prepared for this instrument because no businesses are affected.

## **13. Regulating small business**

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

**14. Monitoring & review**

- 14.1 Since the instrument makes no substantive changes beyond introducing additional disregards, no formal monitoring or review is planned.

**15. Contact**

- 15.1 Jane Edwards at the Department for Work and Pensions can answer any queries regarding the instrument. E-mail: jane.e.edwards@dwp.gsi.gov.uk
- 15.2 Helen Walker, Deputy Director for the Labour Market, Families and Disadvantage, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mims Davies, the Minister of Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.