

A1/2024: Changes to income and capital disregards in the Housing Benefit Regulations

Introduction

The bulletin is technical information for Housing Benefit staff.

Bulletin Covers:

Introduction

- The Social Security (Income and Capital Disregard) (Amendment) Regulations 2023
- The Social Security (Infected Blood Capital Disregard) (Amendment) Regulations 2023
- The Bereavement Benefits (Remedial) Order 2023

Subject

Changes to income and capital disregards in the Housing Benefit Regulations

Guidance Manual

The information in this circular does affect the content of the HB Guidance Manual. Please annotate this circular number against paragraph BW1.180 of Chapter BW1 and paragraph BP1.181 of Chapter BP1.

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Introduction

This circular provides details of recent amendments to the income and capital disregards in the Housing Benefit Regulations 2006 (SI 2006/213) and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (SI 2006/214).

The Social Security (Income and Capital Disregard) (Amendment) Regulations 2023

The following paragraphs gives guidance on the Social Security (Income and Capital Disregard) (Amendment) Regulations 2023 (SI 2023/640).

These regulations ensure that certain payments are disregarded for the purposes of calculating entitlement to Housing Benefit (HB).

These regulations:

expand the existing disregard for Grenfell Tower payments

create a new disregard for Post Office compensation payments

ensure that partners or persons in respect of whom a payment under the relevant legislation is made are covered by a disregard

Payments made under relevant legislation to or in respect of the injured person are already exempt.

These amendment regulations also exempt:

Grenfell Tower payments

Post Office compensation payments

from the Department for Work and Pensions' Compensation Recovery Scheme. This means that compensation payments will not be reduced.

Definitions

These regulations insert new definitions for:

- Post Office compensation payments
- Grenfell Tower payments
- Vaccine Damage Payments

Post Office compensation payments

Post Office compensation payment means a payment made by the Post Office or the Secretary of State for the purpose of providing compensation or support in respect of the:

- failings of the Horizon System, or
- detriments identified in relevant case law

Grenfell Tower payments

Grenfell Tower payment means a payment made for the purpose of providing compensation or support in respect of the fire on 14 June 2017 at Grenfell Tower.

Vaccine Damage Payments

Vaccine Damage Payment means a payment made under the Vaccine Damage Act 1979.

Capital disregards

These regulations provide that for HB purposes any Post Office compensation payment, Grenfell Tower payment or Vaccine Damage Payment will be disregarded indefinitely from a person's capital.

In relation to Vaccine Damage Payments the disregard applies where:

- a person who is severely disabled as a result of vaccination receives a payment under the Vaccine Damage Payments Act 1979, or
- the partner of a person referred to above receives a payment which is derived from
- the payment from that person, or
- their estate, or
- the payment is made to the personal representative of a person who was:
- severely disabled as a result of vaccination, or
- to their partner from their estate
- Notional capital

For HB purposes any Post Office compensation payment or Vaccine Damage Payment paid to:

- a third party for the claimant or their partner, or
- the claimant or their partner for a third party is not to be treated as notional capital

Income disregards

Fully disregard any:

- Grenfell Tower payments or Post Office compensation payments for Working Age HB purposes
- income from capital that was a Grenfell Tower payment or Post Office compensation payment in both Working Age and pension age HB.

Grenfell Tower payments and Post Office compensation payments are not prescribed income for pension age HB.

Grenfell Tower payments and Post Office compensation payments are also disregarded for the following purposes:

- income in kind
- payments to a third party in respect of a claimant or their partner
- non-dependant's gross income for the purposes of calculating deductions
- income treated as capital

The Social Security (Infected Blood Capital Disregard) (Amendment) Regulations 2023

Background

On 17 August 2022, the government announced that interim compensation payments of £100,000 will be made to infected persons and bereaved partners following the publication of the Infected Blood Inquiry Chairman Sir Brian Langstaff's first interim report on 29 July 2022.

Unfortunately, some infected people or their bereaved partner died after registering for a UK infected blood support scheme (UK IBSS) but before the interim payment could be made in October 2022. In these cases, the government agreed it could be paid to their estate.

New capital disregard for Infected Blood compensation payments

The Social Security (Infected Blood Capital Disregard) (Amendment) Regulations 2023 (SI 2023/894) were laid on August 2023 and came into force on 30 August 2023. These regulations closed a gap in the previous HB disregard rules which prevented the children of a deceased beneficiary benefitting from a disregard when

receiving a means tested benefit (including HB) if they received an interim Infected Blood compensation payment from their deceased parent's estate.

From 30 August 2023, any payment from an estate which derives from an interim Infected Blood compensation payment, and which is made to a person's son, daughter, step-son or step-daughter, must be disregarded indefinitely for capital purposes. However, the payment must be declared by recipients just like other payments made by a UK IBSS in order for the disregard to apply.

The Bereavement Benefits (Remedial) Order 2023

Background

Widowed Parents Allowance (WPA) was introduced in 2001 to replace Widowed Mother's Allowance and payable to Working Age people whose spouse or civil partner died before 6 April 2017. Bereavement Support Payment (BSP) came into force on 6 April 2017, replacing the previous bereavement benefits which included WPA. See circular HB A6/2017 for more information about the introduction of BSP and how payments are treated for HB.

Following two court cases, the McLaughlin case (WPA) and the Jackson case (BSP), the legislation governing WPA and the higher rate of BSP was declared incompatible with Article 14, read with Article 8, of the European Court of Human Rights. In both cases, the court found that, in restricting eligibility to people in a legal union, the legislation discriminated children on the grounds of the legal status of their parents' relationship.

The Bereavement Benefit (Remedial) Order 2023 (SI 2023/234) extends eligibility for WPA and the higher rate of BSP to surviving cohabitating partners with dependent children who were not in a legal union with the deceased on the date of death. For the purposes of entitlement to WPA and the higher rate of BSP under the Remedial Order, the claimant must have been cohabitating with their late partner on the date of death.

It can be retrospectively applied to eligible claimants would have been entitled to WPA or the higher rate of BSP from 30 August 2018 (date of the Supreme Court's judgment in McLaughlin) onwards.

There is more information on www.gov.uk about entitlement to retrospective payments of WPA or the higher rate BSP under the Remedial Order.

New capital disregards for retrospective payments of BSP and WPA

The Remedial Order provides for all retrospective WPA payments up to the date of claim to be treated as capital and disregarded for a period of 52 weeks for HB purposes.

A similar disregard applies for the same period for retrospective BSP payments made under the Order. The usual rules will continue to apply to future BSP entitlements.