

# 15-21: DISREGARD FOR HISTORICAL ABUSE AND WINDRUSH SCHEMES

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## Introduction

1. This memo provides guidance on the Social Security (Income and Capital Disregards) (Amendment) Regulations 2021<sup>1</sup> [SS (I&C Dis) (Amdt) Regs 2021], [SI 2021/1405](#). The changes take effect from 01.01.22.

1 SS (I & C Dis) (Amdt) Regs 2021

## Background

2. These regulations<sup>1</sup> provide that compensation payments made:

1. by schemes established or approved by the Secretary of State to compensate for historical institutional child abuse in the United Kingdom<sup>2</sup>, **or**

2. under the Home Office's Windrush Compensation Scheme<sup>3</sup>

do not affect recipients' entitlements to means-tested benefits.

1 SS (I & C Dis) (Amdt) Regs 2021; 2 The approved schemes that will be covered by the regulations at the point they come into force are the schemes established under the Historical Institutional Abuse (NI) Act 2019, Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act

3. On 10.12.21 the Secretary of State for Work and Pensions (SSWP) approved a number of redress schemes for the purposes of means tested benefits. The footnote to paragraph 2 lists the schemes approved for the purposes of these regulations at the point when they come into force. Should further schemes be approved by the SSWP in future, guidance will be updated as necessary.

## Definitions

4. These regulations<sup>1</sup> insert new definitions into relevant legislation.

1 SS (I & C Dis) (Amdt) Regs 2021;

## Child abuse payment

5. Child abuse payment means a payment from a scheme established or approved by the SSWP, for the purpose of providing compensation in respect of historic institutional child abuse in the UK<sup>1</sup>. A child abuse payment may also include an element paid in respect of a person having been in “harm’s way”. This means that the person might not have suffered actual abuse but was in an environment where they were at risk.

1 IS (Gen) Regs reg 2(1); JSA Regs reg 1(3); SPC Regs reg 1(2); ESA Regs reg 2(1)

## Windrush payment

6. Windrush payment means a payment made under relevant legislation<sup>1</sup>. This definition is inserted into relevant legislation<sup>2</sup>.

1 The Windrush Compensation Scheme (Expenditure) Act 2020;

2 IS (Gen) Regs reg 2(1); JSA Regs reg 1(3); SPC Regs reg 1(2); ESA Regs reg 2(1)

## Qualifying person

7. In the definition of qualifying person, a

1. child abuse **or**

2. Windrush

payment is inserted into relevant legislation<sup>1</sup>. This means any person that receives a payment from these schemes is added to the definition of a qualifying person.

## Effect on Capital

8. For

1. IS, JSA & ESA, any one off payment of capital<sup>1</sup>**or**

2. SPC, any one-off payment of capital<sup>2</sup>

made from historical child abuse compensation schemes established or approved by the Secretary of State or the Windrush compensation scheme is disregarded indefinitely.

1 IS (Gen) Regs Sch 10 para 22; JSA Regs Sch 8 para 27; ESA Regs Sch 9, para 27

2 SPC Regs sub-para (1A) of para 15 Sch 5

9. For IS, JSA & ESA, any payment in kind made from historical child abuse compensation schemes established or approved by the Secretary of State or the Windrush compensation scheme is disregarded indefinitely<sup>1</sup>

1 IS (Gen) Regs Sch 10 para 29; JSA Regs Sch 8 para 31; ESA Regs Sch 9 para 31

## Notional capital

10. For IS, JSA & ESA capital paid

1. to a third party for the claimant or their partner **or**

2. to the claimant or their partner for a third party

is not to be treated as notional capital where the payment is made under historical child compensation schemes established or approved by the Secretary of State or the Windrush compensation scheme<sup>1</sup>

1 IS (Gen) Regs 51(3B); JSA Regs 113(3B); ESA Regs 115(5A)

## Effect on income

11. Fully disregard<sup>1</sup>

1. any payments of income made from historical child abuse compensation schemes established or approved by the Secretary of State or the Windrush compensation scheme in IS, JSA(IB) and ESA(IR) **and**

2. any income from capital that was received from historical child abuse compensation schemes

established or approved by the Secretary of State or the Windrush compensation schemes in IS, JSA(IB), ESA(IR) and SPC.

1 IS (Gen) Regs, Sch 9, paras 39(1A) to 39 (6), JSA Regs, Sch 7, para 41(1A),

ESA Regs, Sch 8, para 41(1A), SPC Regs, Sch 5, para 15(1)

**Note:** payments of income made from such historical child abuse and Windrush compensation schemes are not prescribed income for SPC.

12. Payments from historical child abuse compensation schemes established or approved by the Secretary of State or the Windrush compensation schemes are also disregarded for the following purposes:

1. Income in Kind<sup>1</sup>

2. Payments to a Third Party in respect of a claimant or their partner<sup>2</sup>

3. Non-dependants' gross weekly income for the purposes of calculating deductions for allowable housing costs<sup>3</sup>

4. Income treated as Capital<sup>4</sup>

1 IS (Gen) Regs, Sch 9, para 21(2), JSA Regs, Sch 7, para 22(2), ESA Regs, Sch 8, para 22(2);

2 IS (Gen) Regs, reg 42(4ZA)(a), JSA Regs, reg 105(10A)(a), ESA Regs, reg 107(5A);

3 IS (Gen) Regs, Sch 3, para 18(8)(b), JSA Regs, Sch 2, para 17(8)(b), ESA Regs, Sch 6, para 19(8)(b),

SPC Regs, Sch 2, para 14(8)(b); 4 IS (Gen) Regs, reg 48(10), JSA Regs, reg 110(10), ESA Regs, reg 112(8)

(b)

## Annotations

Please annotate the number of this memo against the following DMG paragraph: [23775](#), [28350](#), [28419](#), [28450](#), [28468](#), [28472](#), [28477](#), [28479](#), [28515](#), [28670](#), [28681](#), [29418](#), [29450](#), [29861](#), [29862](#), [44611](#), [51210](#), [51299](#), [51341](#), [51360](#), [51363](#), [51384](#), [51418](#), [51598](#), [51606](#), [52418](#), [52450](#), [52729](#), [52861](#), [52862](#), [78524](#), [84475](#), [85370](#)

## Contacts

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in – Memo [4/19](#) Requesting case guidance from DMA Leeds for all benefits.