

## **Department for Work and Pensions**

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Social Security Advisory Committee  
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18 March 2004

### **THE SOCIAL SECURITY MISCELLANEOUS AMENDMENTS (No2) REGULATIONS 2004**

At its meeting on 4<sup>th</sup> February the Committee considered a draft SI containing a number of proposals to amend the Income Support, income based Jobseeker's Allowance, Housing Benefit and Council Tax Benefit regulations.

One of the proposals concerned a new capital disregard for ex-gratia payments made by the Skipton Fund to people who have contracted Hepatitis C from NHS blood products. The Committee raised some concerns about aspects of this new scheme. Following the meeting we took these concerns up with the Department of Health. Annex 1 contains answers to the points raised, which I hope will be acceptable to the Committee. The Committee may wish to note that the start date for the scheme has slipped slightly but it is still planned to start in April.

In addition we want to inform the Committee about two further minor amendments which have only just been identified, to exempt payments from the Skipton Fund from the Compensation Recovery Scheme and to include the Skipton Fund in the payments to be disregarded when making deductions from Social Fund Funeral payments. I have outlined the change at Annex 2. As with the original proposal the object of these amendments is to ensure that Skipton Fund payments are treated in the same way as payments from the Macfarlane and Eileen Trusts.

At Annex 3 is a further draft SI that includes these additional amendments as well as the amendments considered at the February meeting. It also includes amendments to the State Pension Credit Regulations in relation to the Skipton Fund that were originally in another SI considered in February.

The committee are asked to consider the minor amendment to the Social Security (Recovery of Benefit) Regulations 1997 and the Social Fund Maternity and Funeral Expenses Regulations and to confirm whether these and the other amendments contained in the attached draft SI may be made without formal reference.

Alison Beckett  
LPPD6

**SKIPTON FUND PAYMENTS – QUESTIONS RAISED BY THE SOCIAL SECURITY ADVISORY COMMITTEE**

The following concerns were raised at February's meeting:

**If compensation has already been obtained from another source and this is offset against any Skipton Fund payments the customer will have a smaller amount of capital disregarded than a customer who just receives a payment from the Fund**

This concern arises from the fact that whereas Skipton Fund payments will be fully disregarded, other compensation payments could be taken into account. This is less likely in State Pension Credit where a general disregard on payments for personal injury would apply to any compensation paid to the person who contracted Hepatitis C. In Income Support and other income-related benefits for people of working age, however, personal injury payments are only disregarded as capital if and for so long as they held in a trust fund. Thus while it would be possible for a person who received both a payment from the Skipton Fund and a compensation payment to have both disregarded as capital, the disregard on the compensation payment would not be automatic. In addition, in neither State Pension Credit nor the working age benefits do the rules on personal injury payments include capital disregards for payments to dependants like those proposed for Skipton Fund payments.

If compensation payments from other sources were offset against Skipton Fund payments these differences could have resulted in some customers qualifying for smaller disregards than others. However the issue has been reconsidered by the Department of Health (DoH) and health departments in the devolved administrations. DoH have now confirmed that they plan to remove the condition that states ex-gratia payments will be reduced if compensation from another source has previously been received. This will ensure that all those who qualify will receive the full amount they are entitled to from the Skipton Fund and remove the potential for people to be treated differently by the benefits system.

**The Chairman asked what the protocols would be for establishing the existence of cirrhosis of the liver and what arrangements would be made for applicants who dispute the decision and wish to appeal.**

The Department of Health are still finalising the application process but have confirmed it is likely to take the following format:

- Validation of initial applications will depend on meeting the criteria set out on the application form. It is likely this will ask for a full medical history, evidence to substantiate the claim and concurrence from clinicians.
- The Skipton Fund's administrative staff will administer straightforward cases. More difficult cases will be sent for assessment by a standing medical panel.

- The non-invasive tests to be used to determine whether a haemophiliac has cirrhosis (and therefore qualifies for the second payment) are currently being designed by a group of expert hepatologists/haematologists. Non-haemophiliacs will be tested via a biopsy.

Where these decisions are disputed, or if an applicant has failed to meet the criteria but wishes to challenge the decision, the medical panel will review the case. The applicant may be asked to provide any additional evidence they think might help to support their case. Applicants will be free to challenge decisions in court.

**AMENDMENT TO THE SOCIAL SECURITY (RECOVERY OF BENEFIT)  
REGULATIONS 1997 and THE SOCIAL FUND MATERNITY AND FUNERAL  
EXPENSES (GENERAL) REGULATION 1987**

Further to the issues raised we want to inform the Committee about an additional amendment to exempt payments from the Skipton Fund from the Compensation Recovery Scheme (CRS) and to include the Skipton Fund in the payments to be disregarded when making deductions from Social Fund Funeral payments.

**Background (Compensation Recovery Scheme)**

The CRS is laid down in the Social Security (Recovery of Benefits) Act 1997 and the Social Security (Recovery of Benefits) Regulations 1997.

The scheme is based upon the long-standing principle that people should not be compensated more than once for the same need. For example, via the state benefit system and again via a compensator.

The scheme also places a liability, within prescribed limits and conditions, on the compensator to repay any benefits paid to the injured person in consequence of the injury, accident or disease for which compensation is being paid (recoverable benefits).

The legislation (section 8 of the Act) covers reduction of compensation payments where specific benefits and specific elements of compensation are paid under the same heads of damage. This covers loss of earnings, or mobility or cost of care. No reduction is made to compensation payments that are for general damages for pain and suffering.

As with the Macfarlane and Eileen Trusts, the Skipton Fund payments will be made for general damages only and are therefore not paid under any specific head of damage. As a consequence no offset should be made under Section 8 of the Social Security (Recovery of Benefits) Act 1997.

If we do not change the regulations there would be no financial effect on recipients who receive payments from the Skipton Fund, however, there may be an administrative delay in payments being made. It would also place an administrative burden on both the health departments and the Department of Work and Pensions (DWP) as each case would need to be considered individually. And there would be an additional cost to the health departments as they would be liable to repay any recoverable benefits.

### **Impact upon the SS (Recovery of Benefit) Regs 1997**

It is proposed to exempt Skipton Fund payments from the CRS, in line with exemptions that are already in place for the Macfarlane and Eileen Trusts and payments made for variant CJD.

Reg 2(2) of the SS (Recovery of Benefit) regulations 1997, which provides a list of exempt payments, will therefore be amended to include the Skipton Fund .

### **Background (Funeral Payments from the Social Fund)**

A payment for a simple, low cost, respectful funeral may be made to a customer who has an award of a qualifying benefit or tax credit and where the deceased has not made sufficient provision. The customer must have accepted responsibility for arranging the funeral, and have good reason for doing so. From the amount that may be awarded certain assets or available income are deducted. The assets deducted do not include the Macfarlane and Eileen Trusts and payments made for variant CJD.

### **Impact upon the Social Fund Maternity and Funeral Expenses (General) Regs 1997**

In addition to the changes to the Income Related Benefits (IRBs) we propose to amend regulation 8(2) of the Social Fund Maternity and Funeral Expenses (General) Regs 1997 to disregard payments from the Skipton Fund.

The change is required to ensure that payments from the Skipton Fund are treated in the same way as payments made from the Macfarlane and Eileen Trusts and payments made for variant CJD.

Draft 10/3/04

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 STATUTORY INSTRUMENTS
 

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2004 No.

## SOCIAL SECURITY

**The Social Security (Miscellaneous Amendments) (No. 2)  
Regulations 2004**

*Made* - - - - - []

*Laid before Parliament* []

*Coming into force* - - - [] April 2004

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by section 123(1)(a), (d) and (e), sections 135(1), 136(3), 136(5)(b) and (d), sections 137(1), 138(1)(a) and (4) and 175(4) of the Social Security Contributions and Benefits Act 1992(1), sections 12(1), 12(4)(b) and (d), 35(1) and 36(4) of the Jobseekers Act 1995(2), sections 15(3) and (6) and 17(1) of the State Pension Credit Act 2002(3) and section 29 of and paragraph 8 of Schedule 1 to the Social Security (Recovery of Benefits) Act 1997(4) and all other powers enabling him in that behalf, after consultation in respect of provisions in these regulations relating to housing benefit and council tax benefit with organisations appearing to him to be representative of the authorities concerned(5), and [after agreement by the Social Security Advisory Committee that proposals in respect of the Regulations should not be referred to it(6),] hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Amendments) (No. 2) Regulations 2004 and shall come into force on [] April 2004.

(2) In these Regulations—

“the Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992(7);

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(8);

“the Income Support Regulations” means the Income Support (General) Regulations 1987(9);

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996(10);

“the Recovery of Benefits Regulations” means the Social Security (Recovery of Benefits) Regulations 1997(11);

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(1) 1992 c.4. Section 123(1)(e) was substituted by paragraph 1 of Schedule 9 to the Local Government Finance Act 1992 (c.14). Section 137(1) is an interpretation provision and is cited because of the meaning given to the word “prescribed”.

(2) 1995 c.18. Section 35(1) is an interpretation provision and is cited because of the meaning given to the words “prescribed” and “regulations”. Sections 35(1) and 36(4) were amended by section 2 of, and paragraph 62 and 63 respectively of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (1999 c.2).

(3) 2002 c.16. Section 17(1) is cited because of the meaning given to the word “prescribed”.

(4) 1997 c.27. Section 29 is an interpretation provision and is cited because of the meaning given to the words “prescribed” and “regulations”.

(5) See section 176(1) of the Social Security Administration Act 1992 (1992 c.5).

(6) See sections 170 and 173(1) of the Social Security Administration Act 1992; paragraph 67 of Schedule 2 to the Jobseekers Act 1995 added that Act to the list of “relevant enactments” in respect of which regulations must normally be referred to the Committee.

(7) S.I. 1992/1814.

(8) S.I. 1987/1971.

(9) S.I. 1987/1967.

(10) S.I. 1996/207.

“the Social Fund Maternity and Funeral Expenses Regulations” means the Social Fund Maternity and Funeral Expenses (General) Regulations 1987(12);

“the State Pension Credit Regulations” means the State Pension Credit Regulations 2002(13).

### **Council tax benefit, housing benefit, income support, jobseeker’s allowance and state pension credit: interpretation**

2. In regulation 2(1) of each of the Council Tax Benefit Regulations, the Housing Benefit Regulations and the Income Support Regulations and in regulation 1(3) of the Jobseeker’s Allowance Regulations and regulation 1(2) of the State Pension Credit Regulations (interpretation)—

- (a) in the definition of “qualifying person”(14) for the words “or the Eileen Trust” there shall be substituted “, the Eileen Trust or the Skipton Fund”;
- (b) immediately after the definitions of—
  - (i) in the Council Tax Benefit Regulations, “the Independent Living (1993) Fund”;
  - (ii) in the Housing Benefit Regulations and the Income Support Regulations, “the Macfarlane Trust”;
  - (iii) in the Jobseeker’s Allowance Regulations, “single claimant”; and
  - (iv) in the State Pension Credit Regulations, “qualifying person”,

there shall be inserted the following definition—

““[the Skipton Fund” means the scheme known by that name established on [ ] for the benefit of certain persons suffering from hepatitis C and other beneficiaries eligible for payment in accordance with its provisions;]”.

### **Council tax benefit, housing benefit, income support, jobseeker’s allowance and state pension credit: capital to be disregarded**

3.—(1) In each of the paragraphs of the Schedules to the Regulations specified in paragraph (2) (capital to be disregarded) and in the case of the State Pension Credit Regulations (capital disregarded for the purpose of calculating income), for the words “or the Independent Living Funds” there shall be substituted “, the Independent Living Funds or the Skipton Fund”.

(2) The paragraphs of the Schedules specified for the purpose of paragraph (1) above are—

- (a) paragraph 23(1)(15) of Schedule 5 to the Council Tax Benefit Regulations;
- (b) paragraph 23(1)(16) of Schedule 5 to the Housing Benefit Regulations;
- (c) paragraph 22(1)(17) of Schedule 10 to the Income Support Regulations;
- (d) paragraph 27(1) of Schedule 8 to the Jobseeker’s Allowance Regulations;
- (e) paragraph 15(1) of Schedule V to the State Pension Credit Regulations.

### **Council tax benefit, housing benefit, income support and jobseeker’s allowance: further amendments with respect to capital to be disregarded**

4.—(1) In each of the paragraphs of the Schedules to the Regulations specified in paragraph (2) (capital to be disregarded) for the words “section 12, 24 or 26 of the Social Work (Scotland) Act 1968” there shall be substituted “section 12 of the Social Work (Scotland) Act 1968 or sections 29 or 30 of the Children (Scotland) Act 1995”.

(2) The paragraphs of the Schedules specified for the purpose of paragraph (1) above are—

- (a) paragraph 18(18) of Schedule 5 to the Council Tax Benefit Regulations;
- (b) paragraph 18(19) of Schedule 5 to the Housing Benefit Regulations;

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(11) S.I. 1997/2205.  
(12) S.I. 1987/481.  
(13) S.I. 2002/1792.  
(14) The definition of “qualifying person” was inserted into S.I. 1987/1967 and 1987/1971 by S.I. 1992/1101. The relevant amending instrument is S.I. 1993/1249.  
(15) Paragraph 23 was amended by S.I. 1993/963 and 1993/1249.  
(16) Paragraph 23 was inserted by S.I. 1988/661 and substituted by S.I. 1991/1175. The relevant amending instruments are S.I. 1992/1101, 1993/963 and 1993/1249.  
(17) The relevant amending instruments are S.I. 1988/663, 1992/1101, 1993/963 and 1993/1249.  
(18) Paragraph 18 was amended by S.I. 2001/3070.

- (c) paragraph 17(20) of Schedule 10 to the Income Support Regulations;
- (d) paragraph 22(21) of Schedule 8 to the Jobseeker's Allowance Regulations.

(3) In each of the paragraphs of the Schedules to the Regulations specified in paragraph (4) for the words "and the Eileen Trust" there shall be substituted ", the Eileen Trust and the Skipton Fund".

(4) The paragraphs of the Schedules specified for the purpose of paragraph (3) above are—

- (a) paragraph 23(7)(22) of Schedule 5 to the Council Tax Benefit Regulations;
- (b) paragraph 23(7)(23) of Schedule 5 to the Housing Benefit Regulations;
- (c) paragraph 22(7)(24) of Schedule 10 to the Income Support Regulations;
- (d) paragraph 15(7) of Schedule V to the State Pension Credit Regulations (capital disregarded for the purpose of calculating income).

(5) In paragraph 16 of Schedule 5ZA(25) to each of the Council Tax Benefit Regulations and the Housing Benefit Regulations—

- (a) in sub-paragraph (1)(a) the word "or" shall be deleted;
- (b) in sub-paragraph (1)(b) after the words "the Independent Living Funds" for "." there shall be substituted "; or";
- (c) after sub-paragraph (1)(b) there shall be inserted—  
" (c) the Skipton Fund. ";
- (d) after sub-paragraph (6) there shall be inserted—  
"(6A) For the purposes of sub-paragraphs (2) to (6) any reference to "the Trusts" shall be construed as including a reference to the Skipton Fund."

(6) In paragraph 27 of Schedule 8 to the Jobseeker's Allowance Regulations after sub-paragraph (6) there shall be inserted—

"(7) For the purposes of sub-paragraphs (2) to (6), any reference to "the Trusts" shall be construed as including a reference to the Skipton Fund."

### **Council tax benefit, housing benefit, income support and jobseekers allowance: sums to be disregarded in the calculation of income other than earnings**

5.—(1) In each of the paragraphs of the Schedules to the Regulations specified in paragraph (2) (sums to be disregarded in the calculation of income other than earnings) for the words "section 12, 24 or 26 of the Social Work (Scotland) Act 1968" there shall be substituted "section 12 of the Social Work (Scotland) Act 1968 or sections 29 or 30 of the Children (Scotland) Act 1995".

(2) The paragraphs of the Schedules specified for the purpose of paragraph (1) above are—

- (a) paragraph 27(26) of Schedule 4 to the Council Tax Benefit Regulations;
- (b) paragraph 26(27) of Schedule 4 to the Housing Benefit Regulations;
- (c) paragraph 28(28) of Schedule 9 to the Income Support Regulations;
- (d) paragraph 29(29) of Schedule 7 to the Jobseeker's Allowance Regulations.

(3) In each of the paragraphs of the Schedules to the Regulations specified in paragraph (4) (sums to be disregarded in the calculation of income other than earnings) for the words "section 21 of the Social Work (Scotland) Act 1968" there shall be substituted "section 26 of the Children (Scotland) Act 1995".

(4) The paragraphs of the Schedules specified for the purpose of paragraph (2) above are—

- (a) paragraph 25 of Schedule 4 to the Council Tax Benefit Regulations;
- (b) paragraph 24(30) of Schedule 4 to the Housing Benefit Regulations;

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(19) The relevant amending instruments are S.I. 1992/432 and 2001/3070.  
(20) The relevant amending instruments are S.I. 1988/663, 1989/1034, 1992/468 and 2001/3070.  
(21) Paragraph 22 was amended by S.I. 2001/3070.  
(22) Sub-paragraph (7) was amended by S.I. 1993/1249.  
(23) Paragraph 23 was inserted by S.I. 1988/661 and amended by S.I. 1992/1101 and 1993/1249.  
(24) Paragraph 22 was inserted by S.I. 1988/663 and substituted by S.I. 1991/1175. The relevant amending instruments are S.I. 1992/1101 and 1993/1249.  
(25) Schedule 5ZA was inserted in each set of regulations in relation to any person who has attained the age for state pension credit by S.I. 2003/325.  
(26) Paragraph 27 was amended by S.I. 2001/3070.  
(27) Paragraph 26 was substituted by S.I. 1992/432 and amended by S.I. 2001/3070.  
(28) Relevant amending instruments are S.I. 1988/663, 1989/1034, 1992/468 and 2001/3070.  
(29) Paragraph 29 was amended by S.I. 2001/3070.



- (c) paragraph 26(31) of Schedule 9 to the Income Support Regulations;
- (d) paragraph 27 of Schedule 7 to the Jobseeker's Allowance Regulations.

### **Income support and jobseeker's allowance: capital treated as income**

6. In regulation 41(3)(32) of the Income Support Regulations and in regulation 104(3)(33) of the Jobseeker's Allowance Regulations (capital treated as income) for the words "section 12, 24 or 26 of the Social Work (Scotland) Act 1968" there shall be substituted "section 12 of the Social Work (Scotland) Act 1968 or sections 29 or 30 of the Children (Scotland) Act 1995".

### **Further amendment to the income support regulations**

7. In paragraph (12)(1)(d)(i) of Schedule 2(34) to the Income Support Regulations (applicable amounts) for the words "Social Security (Hospital In-Patient) Regulations 1975" there shall be substituted "Social Security (Attendance Allowance) Regulations 1991 or the Social Security (Disability Living Allowance) Regulations 1991".

### **Amendment of the recovery of benefit regulations**

8. In regulation 2(2) of the Recovery of Benefit Regulations—

- (a) in sub-paragraph (i) for "10<sup>th</sup> April 1992." There shall be substituted "10<sup>th</sup> April 1992;";
- (b) after sub-paragraph (i) there shall be inserted

“(j) any payment made from the fund known as the Skipton Fund established on [ ] for the benefit of certain persons suffering from hepatitis C and other beneficiaries eligible for payment in accordance with the fund's provisions.”.

### **Amendment of the social fund maternity and funeral expenses regulations**

9. In regulation 8(2)(35) of the Social Fund Maternity and Funeral Expenses Regulations—

- (a) for the words "or the Eileen Trust" there shall be substituted ", the Eileen Trust or the Skipton Fund";
- (b) for the words "and "the Eileen Trust"" there shall be substituted ", "the Eileen Trust" and "the Skipton Fund"".

### **Signatory text**

Date

Parliamentary Under Secretary of State,  
Department for Work and Pensions

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1814), the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971), the Income Support (General) Regulations 1987 (S.I. 1987/1967), the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207) and the State Pension Credit Regulations 2002 (S.I. 2002/1792) ("the Principal Regulations").

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- (30) Paragraph 24 was substituted by S.I. 1992/432.
  - (31) Paragraph 26 was amended by S.I. 1988/1445 and 1992/468.
  - (32) Paragraph 3 was amended by S.I. 1988/663, 1989/1034 and 2001/3070.
  - (33) The relevant amending instrument is S.I. 2001/3070.
  - (34) Paragraph 12(1)(c) and (d) substituted paragraph 12(1)(c) as originally enacted, by S.I. 2002/3019.
  - (35) Paragraph 2 was inserted by S.I. 1997/792 and amended by S.I. 2001/1118.

They also amend the Social Fund Maternity and Funeral Expenses (General) Regulations 1987 (S.I. 1987/481) (“the Social Fund Maternity and Funeral Expenses Regulations”) and the Social Security (Recovery of Benefits) Regulations 1997 (S.I. 1997/2205) (“the Recovery of Benefit Regulations”).

The Principal Regulations are amended to—

- insert a definition of the Skipton Fund (regulation 2);
- include in the definition of “qualifying person” reference to a person in respect of whom payment has been made from the Skipton Fund (regulation 2);
- provide that payments made to a person from the Skipton Fund will be disregarded when calculating a person’s capital and, in the case of the State Pension Credit Regulations 2002, provide that payments received will be disregarded for the purpose of calculating a person’s income from capital (regulations 3(1) and (2), 4(3), (4), (5) and (6)).

Except in the case of the State Pension Credit Regulations 2002, the Principal Regulations are also amended to substitute references to the Social Work (Scotland) Act 1968, which were repealed by the Children (Scotland) Act 1995, with references to the latter Act (regulations 4(1), 5(1), (2), (3) and (4) and regulation 6).

Regulation 7 amends the Income Support (General) Regulations 1987 to correct a reference to supporting legislation in the conditions for Higher Pensioner Premium and Disability Premium which was inserted by S.I. 2002/3019.

Regulation 8 amends regulation 2(2) of the Recovery of Benefit Regulations to include an exemption for payments made from the Skipton Fund from the recovery of benefits scheme.

Regulation 9 amends regulation 8 of the Social Fund Maternity and Funeral Expenses Regulations to provide that no deduction will be made from an award of a funeral payment in respect of a payment from the Skipton Fund.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.