

04-23 The Bereavement Benefits (Remedial) Order 2023 – UC capital disregard

Contents	Paragraphs
Introduction	1
Background	2 - 4
Capital disregards	5

INTRODUCTION

1. This memo gives guidance on the Bereavement Benefits (Remedial) Order¹ 2023 capital disregard which comes into force on 9.2.23. The Order extends to England, Scotland, Wales and Northern Ireland.

1 [Bereavement Benefits \(Remedial\) Order 2023, SI 2023/134](#)

BACKGROUND

2. The Supreme Court¹ and the High Court² ruled that the legislation governing Widowed Parent's Allowance (WPA) and the higher rate of Bereavement Support Payment (BSP) is incompatible with article 14 of the European Convention on Human Rights. It was found that, in restricting eligibility to people in a legal union, the current legislation discriminates between children on the grounds of the legal status of their parent's relationship.

1 McLaughlin [2018] UKSC 48; 2 Jackson & Ors v SSWP [2020] EWHC 183 (Admin)

3. The Secretary of State decided to use a Remedial Order¹ to amend the Social Security Contributions and Benefits Act 1992, the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Bereavement Support Payment Regulations 2017, the Bereavement Benefit Support Payment (No.2) Regulations (Northern Ireland) 2019, the Pensions Act 2014 and the Pensions Act (Northern Ireland) 2015 in response to the Declaration of Incompatibility.

1 Human Rights Act 1998, s 10

4. The Remedial Order¹ was made on 9.2.23 and has retrospective effect back to the date of the Supreme Court's ruling on 30.8.18.

1 Bereavement Benefits (Remedial) Order 2023

CAPITAL DISREGARDS

5. The Remedial Order¹ provides that any payment of WPA or BSP in relation to the entitlement conditions set out in [DMG memo 02/23](#) will be disregarded for a period of 12 months for UC.

1 Bereavement Benefits (Remedial) Order 2023

Annotations

The number of this memo should be annotated against the following paragraphs of the ADM; [H2090](#).

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 [7/19](#) Requesting case guidance from DMA Leeds for all benefits.

DMA Leeds: February 2023