

Social Security Advisory Committee
Minutes of the meeting held on 19 July 2023

Chair: Dr Stephen Brien
Members: Bruce Calderwood
Kayley Hignell
Phil Jones
Gráinne McKeever
Seyi Obakin
Liz Sayce

Apologies: Carl Emmerson
Charlotte Pickles

1. Private Session

[RESERVED ITEM]

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

2.1 The Chair welcomed the following officials from the Department's Disability and Health Support Directorate: James Wolfe (Policy Group Director), Alex Fleming (G6, ESA Policy), Dan Gatland, (G7, ESA Policy), Joanne Ward (SEO, ESA Policy) and Samantha Hainsworth (Deputy Director, ESA Policy).

2.2 Introducing the item, James Wolfe explained that the Infected Blood Inquiry was set up in 2018, chaired by Sir Brian Langstaff, and on 29 July 2022 issued its first interim report.¹ The final report is due to be completed in the autumn 2023 when the Government can consider the final recommendations, including the Department's consideration of disregards, as part of the Government's overall co-ordinated response. There have been two interim reports to date: in July 2022 and April 2023.

2.3 These regulations are very specific and made in response to the first interim report. Given the nature of this issue, many of the infected persons are very ill or have passed away and, in his first interim report, Sir Brian Langstaff recommended that in such circumstances interim compensation payments of £100,000 should be made to them and bereaved partners in advance of the final report. The Government accepted that recommendation in August 2022, and the vast majority of these payments were made in October 2022.

2.4 Between August 2022 and October 2022, a number of infected persons or bereaved partners who were registered to receive a payment passed away before that payment could be made. The Government confirmed that, for those infected,

¹ [Infected Blood Inquiry Interim Report](#).

who did not have a partner, and bereaved partners who were registered on the scheme but died between the publication of the first interim report and payments being made in October 2022, the interim payments could instead be made to the estates of the deceased beneficiary.

2.5 The Department reviewed the current framework for capital disregards and identified that the relevant existing legislation would not disregard payments from an estate to the adult children of such a person. These regulations seek to rectify that. These regulations do not pre-empt the final compensation scheme and it is possible that the Department could bring forward further regulations in line with the Government's response to the Inquiry's final report. Ideally the Department would legislate only once, but Ministers have taken the decision to take action now so that the interim payments can be made.

2.6 It has been a longstanding Departmental policy, since 1988, to disregard as income and capital, payments received from an 'approved blood scheme'. The majority of people are paid through the four UK infected blood support schemes.² However, there are nine next-of-kin who are the children of an infected person, or the bereaved partner registered with a scheme, who died after the publication of the first interim report on 29 July 2022 and before the interim compensation payment could be made (October 2022). Currently there is no disregard in the legislation for payments from estates made to these children if they are claiming benefits in their own right. There is cross-government support for this disregard and the Department has approval from HM Treasury to cover the costs.

2.7 The regulations are due to be laid on 9 August 2023. They will amend all means-tested benefits to allow an indefinite capital disregard for interim infected blood compensation payments, from the estates of a deceased infected individual or their bereaved partner, made to their adult children if they are claiming benefit, ensuring that the Department is fully supporting the first interim report. There is also a minor amendment to the Universal Credit (UC) Regulations 2013 as currently the cross referencing between the UC regulations and the State Pension Credit regulations is not clear.

2.8 The Committee raised the following main questions in discussion:

- (a) It is helpful to know that the legislation is to address an immediate issue and that further regulations may be required later. It is understood there are challenges around identifying the correct people for the schemes; could you explain a little more around how they are identified? Who**

² England Infected Blood Support Scheme, Wales Infected Blood Support Scheme, Scotland Infected Blood Support Scheme and Northern Ireland Infected Blood Support Scheme.

makes decisions regarding eligibility, is it the estate or the compensation scheme?

The regulations are in response to the first interim report of the Infected Blood Inquiry, and the scope of the interim report was quite narrow. The Department had identified that, while most recipients of interim payments were covered by the existing disregard framework, there was potentially a small group of children in receipt of the monies from the estates who would not be covered. When the Infected Blood Inquiry publishes its final report, it will become clear whether further policy decisions are required on the scope of current capital disregards in regulations across all means-tested benefits. The scope of these regulations provides for affected families where an infected person, or the bereaved partner, who was registered with a scheme died after the publication of the first interim report and before the interim compensation payment could be made. In such cases the payment will instead be made to the deceased's estate. The Department is not responsible for determining who is entitled to such payments.

(b) Does the estate apply to the Infected Blood Scheme and the scheme makes the compensation payment?

It is slightly different in these circumstances. For a registered infected person, or bereaved partner, who died after the announcement but before the interim payment could be paid, the Government agreed that the interim compensation payments could be made to the small number of estates. The regulations allow the disregard to cover the interim compensation payment made to the estates. The estate does not need to apply to the Infected Blood Scheme, instead the Infected Blood Scheme will automatically make the payment to the estate of a person who was registered with the scheme but who died before the payment could be made to them.

(c) Is it correct that the disregard does not apply to anyone outside the period between the publication of the first interim report on 29 July 2022 and the compensation payment following that report?

Yes, that is correct.

(d) On the subject of payments yet to be made, various Infected Blood Schemes have been around for a long time and been inherited by partners and adult children for some time. Do these regulations change the position for those who have already inherited under one of the schemes.

No, these regulations do not change the position for persons who have previously inherited a payment derived from one of the schemes. If an adult child has previously received a payment from an estate which derives from a payment from an approved scheme, their benefit may have been affected.

- (e) **Due to the language used in the regulations, could it mean that any inheritance that includes money from a previous Infected Blood Scheme is covered by these regulations and so can be disregarded meaning more people are in scope? Is that the intention? Or should the intention be clearer? What does the application of the wording mean?**

The Department will need to check that point and come back to the Committee outside of the meeting.³

- (f) **It is understood that these regulations are narrowly circumscribed and questions about eligibility is not a matter for now, however, in respect of the Department's relationship with the Inquiry, is there an ongoing relationship so that there is a weather eye on what might be coming? Is there a sense of whether these regulations might be used as a template for a future cohort? A wider strategic context helps future-proof regulations.**

Yes, the Department has close contact with the Inquiry sponsor team in the Cabinet Office, and the Minister is engaged with discussions relating to this matter at inter-Ministerial level.

- (g) **Looking at the group of people who died after the publication of the first interim report and before the interim compensation could be made, where the payment went to the estate, the Committee understands that there are nine estates in total which are all headed by adult children, is that correct? Or is there a wider group? If so, what happens where there are estates without adult children?**

Yes, it is understood there are currently nine estates. Non-adult children would have already been covered by the existing disregards framework. Geographically, there are seven cases in England, one in Wales and one in Northern Ireland. The Department is in touch with the Department for Communities in Northern Ireland who will mirror these regulations and are working to the same timeline.

- (h) **What is the age span of the adult children?**

³ A response has been received from the Department and can be found at Annex B

The Department does not have any data on this.

(i) Are there any potential complications about moving money to another family member, what flexibility exists?

In terms of the risk the Department is trying to mitigate, this is where children inherit from an estate. There is a potential risk that if they are awarded a means-tested benefit, they could lose their entitlement to that benefit if the interim payment cannot be disregarded. They could lose access to passported benefits such as entitlement to free school meals or something else due to the receipt of the payment. These are the types of issues the Department is concerned about.

(j) If more people are identified in the timeframe to receive these compensation payments, would their benefit be backdated? This is a consideration for the next set of regulations.

Noted.

(k) How do the regulations interact in the treatment of adult children and children under 18. Are there any gaps, inconsistencies or overlap?

The definition of a child is someone under 16 and up to 19 if they are attending certain types of education and at certain establishments. Once someone turns 19, they are not treated as a child. In these regulations, as far as is relevant, the definition states "*An adult child means a person who is at least 18*". As to the question of whether there are any gaps, the Department will need to check that point and come back to the Committee outside of the meeting.⁴

(l) What is the position of a child who is 17 and not in full time education? If they received a compensation payment and is part of a benefit household, the existing disregards would apply. What happens if they live on their own?

The Department will take that point away and come back to the Committee.⁵

(m) For young people there seems to be a two-year cut off for the disregard, why is this not the same for adult children?

⁴ A response has been received from the Department and can be found at Annex B

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The two-year period only applies in circumstances where there is no partner/former partner or child/young person to pass the payments onto, for example, the purpose of that period is to give a parent, step-parent or guardian (in the circumstances where the infected person was a child/young person and had no parent/step-parent), a chance to use the money for the child's benefit and get it to a certain amount so that there is entitlement to benefit; this is known as a grace period.

- (n) Does that mean that an adult child will have an ongoing disregard of the capital from the compensation payment but guardians only have the disregard for two-years? Is that something the Department should consider further?**

The two-year limit is to allow time for the guardian to invest the payment, for example, for the child's benefit, or to bring the capital total to within means-tested benefit capital limits.

- (o) Going back to the tightness of these regulations, the regulation says 'payment' rather than identifying those it covers, and so this raises the question of whether the Department did consider a catch-all provision to include those who did not receive a timely payment? Each time a report from the Inquiry is published there will be delayed payments requiring another set of tight regulations.**

This is something the Department has been considering over the last six to nine months. The Department's view is that such a provision could only be developed once the final report is published and the Government has considered the recommendations. It would not be appropriate for addressing the specific recommendation for interim payments in the first interim report.

- (p) On the surface the regulations do not seem tight enough to only apply to the people who died between the first interim report and payment. The next set of regulations will have to be very tight.**

That is a very fair observation and is exactly what the Department needs to think about when considering the final report. The discussions today have been very useful.⁶

- (q) Has the definition in Scotland changed the definition of a child?**

The Department has regular engagement with devolved administrations, including the Scottish Government, but as these are reserved benefits it would

⁶ Please see Annex B for additional information received after the meeting.

not do this as a matter of course. This will be checked and the Department will come back to the Committee outside of the meeting.⁷

2.9 Summing up, the Chair thanked officials for attending and for engaging with the Committee's questions in a constructive and productive manner. Following a period of private discussion, the Committee decided that it would not take the regulations on formal reference and that they may proceed accordingly.⁸ However, the Committee would like the further information requested during the session to be provided before the regulations are laid.

3&4. Private Session

[RESERVED ITEMS]

Date of next meeting

The next meeting is scheduled to take place on 13 September 2023.

⁷ A response has been received from the Department and can be found at Annex B

⁸ The Committee was not quorate at the point this decision was made, therefore action was taken in accordance with its formal Rules of Procedure which states: "*Where (a) the Secretary of State...gives notice of a proposal to make regulations under any of the relevant enactments; and (b) it appears to the Chair that the proposal -*

- (i) requires urgent consideration of the Committee, and*
- (ii) need not be formally referred to the Committee,*

the Chair or, in his absence, the Vice Chair, may agree on behalf of the Committee, after consultation with at least three other members of the Committee, that the proposal need not be formally referred to the Committee.

Attendees

Guests and Officials

Item 2: James Wolfe (Policy group Director)
Alex Fleming (G6, ESA Policy)
Dan Gatland (G7, ESA Policy)
Joanne Ward (SEO, ESA Policy)
Samantha Hainsworth (Deputy Director, ESA Policy)

Nicky O'Connor (DWP observer)

Secretariat: Denise Whitehead (Committee Secretary)
Dale Cullum (Assistant Secretary)
Gabriel Ferros (Analyst)
Anna Woods (Assistant Secretary)

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

Further information provided to the Social Security Advisory Committee by the Department after the meeting.

- (a) **Due to the language used in the regulations, could it mean that any inheritance that includes money from a previous Infected Blood Scheme is covered by these regulations and so can be disregarded meaning more people are in scope? Is that the intention? Or should the intention be clearer? What does the application of the wording mean?**

No, this is not covered. Having now considered this matter, the draft regulations have been amended to tighten the wording to make it clear that the disregard is limited and only applies to payments which are derived from a payment to meet the recommendation of the Infected Blood Inquiry in its first interim report published on 29th July 2022, which is defined as an interim payment.

- (b) **How do the regulations interact in the treatment of adult children and children under 18. Are there any gaps, inconsistencies or overlap?**

Having considered this, the draft regulations have been amended to ensure no child of the deceased, whatever their age, misses out on the disregard. Reference to adult child has been removed and instead referred to the son, daughter, step-son or step-daughter of the qualified person. This amendment means that the disregard will apply to the children (whatever their age) of the infected person or, if they have died, their bereaved partner, if they died before the interim payment was made.

- (c) **What is the position of a child who is 17 and not in full time education? If they received a compensation payment and is part of a benefit household, the existing disregards would apply. What happens if they live on their own?**

The capital disregard would apply where a 17-year-old person who is not in full-time education, is living on their own and claiming a means-tested benefit and receives a compensation payment. The draft regulations have been amended to remove any age restrictions so that a child of the deceased (son, daughter, step-son or step-daughter), regardless of their age, will benefit from the disregard.

The reference to sons and daughters, step-sons and step-daughters, whatever their age, deals with the potential issue of a 16- or 17-year-old having entitlement to benefit and to cover off the potential of a child receiving the payment but then being prevented from claiming benefit when they are over 16 if they still have the capital.

- (d) On the surface the regulations do not seem tight enough to only apply to the people who died between the first interim report and payment. The next set of regulations will have to be very tight.**

This has now been considered and the wording of the amending provision has been tightened.

- (e) Has the definition in Scotland changed the definition of a child?**

No. The draft regulations have been shared with policy officials in both the Welsh and Scottish Governments and no concerns or divergences were raised regarding the definition of a child.