

Social Security Advisory Committee
Minutes of the meeting held on 21 May 2025

Chair: Dr Stephen Brien

Members: Les Allamby
Bruce Calderwood
Rachel Chiu
Carl Emmerson
Daphne Hall
Professor Stephen Hardy
Philip Jones
Jacob Meagher

Apologies: Dr Suzy Walton

1. Private Session

[RESERVED ITEM]

2. The Social Security (Habitual Residence) (Amendment) Regulations 2025

[The record of the Committee's scrutiny of draft regulations presented at this point of the meeting has been redacted at the request of the Department for Work and Pensions as certain elements remain under review. The Committee will update this document as and when it is able.]

This draft instrument contained amendments to the Housing Benefit Regulations 2006 to allow individuals claiming Housing Benefit (HB), to be treated as satisfying the Habitual Residence Test (HRT) where they are already receiving Universal Credit, in the same way as currently happens for recipients of Pension Credit and legacy benefits. This means that Local Authorities assessing HB claims will not need to undertake any work related to the HRT if the claimant is receiving UC, as the HRT has already been completed by a DWP Decision Maker. The purpose of the amendment is to eliminate duplication, improve DWP operational practises and to mitigate the legal risks associated with discrepancies between different HRT outcomes between UC and HB. The Committee was content with this element of the above Regulations and the issue was not discussed at this meeting. These amendments will now form part of The Social Security (Habitual Residence) (Amendment) Regulations 2025 to be laid on 3 September 2025].

3. The Social Security (Income and Capital Disregards) (Amendment) (No. 2) Regulations 2025

3.1 The Chair welcomed the following officials to the meeting: Hannah Birtwistle-Gordon (SCS1, Universal Credit Policy), James Snelling (Grade 6, Universal Credit Policy) Kally Chan (Grade 7, Analyst) Jon Bulgin (SEO, Universal Credit Policy) and Andrew Chapman (Legal).

3.2 Introducing the session, Hannah Birtwistle-Gordon noted that these measures ensure that any payment under the Ministry of Justice (MoJ) Miscarriages of Justice compensation scheme are fully disregarded for means tested benefits when paid to the recipient or certain next of kin (partner for Universal Credit). This could be for a pecuniary or non-pecuniary award. These measures will apply equally to compensation payments made by the two Scottish Government administered schemes and the scheme administered by the Northern Ireland Executive for those living in Great Britain.

3.3 This compensation scheme has been in place since 1988; however MoJ have only recently requested that this scheme be disregarded for means-tested benefits. As this is a government compensation scheme, a new disregard is required; however, it is almost identical to other compensation payments where a disregard has been applied.

3.4 Committee members raised the following main questions in discussion:

(a) Does the decision to disregard compensation payments rest with the Department, or is DWP simply the executive of that policy, with responsibility for working out the detail?

It is for DWP to decide whether to disregard payments, reliant on the department responsible for administering the scheme providing the necessary information to inform that decision. The Department does not actively seek out potential disregards. It is best to consider potential disregards of compensation schemes when they are established rather than acting later. The Department would have acted on this before if it had been approached by MoJ. The Department is usually in contact with other government departments on issues at inception, as was the case with the Grenfell compensation scheme.

(b) What is the trigger? Did the other 16 compensation schemes that are already disregarded come about after the event or was this determined at the outset?

Most of them will come to the Department first when they are being set up and early meaningful conversations can take place. As there are quite a few of these now, people are becoming experts in their relevant department and a

network is starting to grow. Some will be after the event and provisions are in place despite it not being a comprehensive process.

- (c) **Assurances were given with the Infected Blood scheme that any tax issues had been resolved with HM Revenues and Customs (HMRC). However, it has come to light that issues have arisen in relation to Inheritance Tax. Have any potential Inheritance Tax issues regarding these miscarriage of justice compensation payments been resolved with HMRC?**

The Department agreed to follow up on that issue specifically and respond outside of the meeting¹. The Department looks at the reason for the inclusion of a next of kin provision within a scheme. For infected blood it was reasonable given the impact on the next of kin and the time that elapsed from the potential infection to the payments being made. It is something that needs to be considered when looking at standardising schemes.

- (d) **Should the Department be thinking about all capital disregards, such as NHS compensation payments. There could then be a better view of standardisation with a full scope.**

The Department is working to understand where there are other government compensation schemes that may benefit from a capital disregard. It is challenging to find information and contacts on all schemes and some of the schemes are very historic and small.

- (e) **In looking at the subtle differences between this scheme and others what comparisons can be made?**

Under the Ministry of Defence's Lesbian, Gay, Bisexual and Transgender Financial Recognition Scheme, it was clear that there would be no additional beneficiaries. For this scheme it can go to the statutory parameter and be awarded to the personal representative, after consideration and consultation with MoJ it was agreed that the disregard should be limited to the partner.

- (f) **This might end up with a taxonomy of compensation schemes and disregard rules for each class of compensation system; one set of rules where the estate benefits and one where they do not. For purposes of this discussion, this scheme can be regarded as being identical to the Vaccine Damage Payments Scheme.**

¹ A response was provided after the meeting, see Annex B

Noted.

(g) Can the Department confirm the numbers who are likely to get compensation [redacted]?²

This question partially covers the backdating query which the Committee has raised previously. These measures will only apply when the regulations are laid so there will be no backdating; however, anyone who has received a payment from the applicable schemes at any time can have those payments disregarded, enabling them to make a new claim now.

[Redacted]

(h) [Redacted]¹

[Redacted]

(i) Will there be an expectation that MoJ will get in contact with previous recipients who may now be able to claim benefit and have they confirmed that?

We are in contact with MoJ who would decide on the best method of contacting previous recipients. It is at the early stages of looking at what is possible. It may be that there is media coverage of the change alerting people that the benefit system is now available to them. This data is owned by MoJ so it will be down to them to find the most effective means of communication. There will also be discussions with Scotland and Northern Ireland (NI).

The MoJ scheme covers England and Wales only; however, these regulations cover any payments made by all UK or Devolved Government miscarriage of justice schemes for those residing in Great Britain, so would include disregards for payments made in all UK jurisdictions. However, Northern Ireland will need to lay their own regulations to cover those residing in Northern Ireland claiming benefits administered by their Department for Communities.

(j) Has the Department for Communities (NI) indicated any issue with this in NI?

² Paragraphs 3.3 (g) and (h) contain unpublished data which has been redacted at the request of DWP.

Its Minister needs to make a decision, but current discussions are favourable.

- (k) What happens if someone seeks redress through the courts and found not guilty on a technicality but does not receive a compensation payment? In addition, what if it is not a MoJ miscarriages of justice payment but they receive some other form of payment; will this be treated like a personal injury payment? In addition, if someone settles out of court and receives an ex-gratia payment, how would that be treated? What is the distinction between these payments?**

If someone makes a successful legal application and receives a compensation payment, the DWP would have to consider it on a case-by-case basis because it would be a form of personal injury payment. Where there is a case and a judicial process against the Crown it would fall under this scheme. Even if it was an ex-gratia payment, it would still fall under the remit because the payment does not have to be limited to a section 133 payment,³ it includes any payment made by MoJ.

- (l) Where is that indicated in these regulations?**

See (for example) regulation 8(2)(b), paragraph (b), which states that the definition of 'miscarriage of justice payment' extends to any other payment made by the Secretary of State for the purpose of compensating for a miscarriage of justice.

- (m) Why not just indicate it is for any miscarriage of justice payment rather than indicating section 133 and then other payments?**

Schemes that are disregarded are all government schemes, there are issues if you open this up to any miscarriage of justice award. It no longer becomes easy to control because other awards could be extremely high and there would be no way to know how many may be made and the effect on budgets.

- (n) These regulations cover how such awards are treated, so there could be a way to exert budget control.**

Noted.

- (o) If a miscarriage of justice is settled out of court, there would be a record of that settlement. However, what happens if the court decides not to settle and it goes to the High Court? If the appeal is successful, would**

³ [Criminal Justice Act 1988](#)

the high court make an award⁴ or would it go back to the original court or for the Secretary of State to look at it again? It would appear that if the court was to make an award in this circumstance it would not be covered.

There is a need to align policy intent with the specifics. There may even be a question of whether the intention is correct and some of the specifics need to be reviewed. Could the Department come back to the Committee with an articulation of the intent and the specifics? This should then indicate or explain the believed alignment. In other circumstances there has been a well-defined scheme and the disregard has been applied accordingly, but here there is a real need to specify the perimeter. This could be addressed by reverse engineering of the regulations to identify the clear intent so that ministers are happy with what is being done.

Noted.

- (p) What is the definition of ‘partner’ that the Department is adopting with these regulations. Where does next of kin come into this and what is the boundary?**

‘Partner’ is a fairly standard definition and links to the general UC concept of a couple or member of a couple for UC purposes. It is the same as would normally be used and based on whether a couple is living together etc.

- (q) There is a need to try and connect why a partner who is currently living with the falsely convicted has been chosen compared to other next of kin. Would it be linked back to the original impact because a child would also be impacted in this situation if the individual had been sent to prison since they were born. This definition would also include someone who became a partner after someone’s release from prison who would not have been impacted at all. Is this your intention from a policy perspective?**

The next of kin provisions are not about passing on the impact of the event. If someone has suffered, they are awarded compensation as defined by the scheme, but this can include payments for the cost of the family having to visit prison and the MoJ can sometimes make a compensation payment to the next of kin. The Department is trying to emulate that in some way but to allow

⁴ Later in the discussion it was highlighted that the High Court does award costs through section 133.

a disregard for the children is difficult to administer. There is a need to draw a line, and the Department has chosen that at partner.

- (r) Children were included for the infected blood compensation. These payments could involve large sums being paid out with two or three children potentially entitled to compensation who have had years of psychological issues due to a parent being falsely imprisoned; however, they will lose their entitlement to UC. This provision would allow for a recently acquired partner to receive a disregard while the children who lived through it would not. Can you explain the rationale for that? (JM)**

Different disregards have different provisions and the Department has chosen to limit this disregard to the partner. Infected blood was looked at separately and involved significant sums of money, the impact of this will be less.

- (s) The line has to be drawn somewhere but what is the rationale for it being drawn around the partner? The Committee is here to ensure that the Secretary of State does not make capricious decisions. What is the Department trying to do by drawing a line under the partner, and why are they deserving of having the payment and disregard when there may be others who have a claim on the estate who cannot have the disregard? Children may have suffered, get compensation but yet not the disregard. Why is that the rationale?**

Within the UC regulations there are definitions regarding partner, close relative and children so they are already in existence but do they apply here? Are they suitable to consider for this issue? (SH)

The Department agreed to look into these issues and respond to the Committee outside of the meeting⁵.

- (t) Regarding state pension, when people are released from prison, they may not have made enough national insurance contributions to receive a full state pension. There seems to be a lacuna here. Has any thought been given to allow for contributions to be made up so these people they can receive it?**

The MoJ compensation payment may well compensate for that. The Department will check this and respond to the Committee outside of the meeting.⁶

⁵ A response was provided after the meeting, see Annex B

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- (u) Are there any further updates that you can share with the Committee on the standardising of the framework of compensation payments. How far along is the process?**

This may be the last set of separate regulations on compensation payments. Given the nature and profile these regulations have been expedited over the wider work. There was probably a bit too much optimism in January when this was initially discussed, and there have been delays given the pressure on policy and legal resource associated with the Health and Disability Green Paper. The Department does not yet have sufficient clarity and is continuing to work on what the legislation will look like in delivering the wider power.

The Department is also aware of wider interest in capital rules and capital disregards, including pressures on capital issues such as ISAs and ensuring staff are confident in advising on and implementing capital disregards, which staff are finding more difficult to identify for customers. In the next six to eight weeks there should be more of an idea of where things are and start to firm up what the legislation may look like and areas that may be still exposed. The National Audit Office has also hinted that the Government should potentially consider a specific department to own all these schemes which may support DWP in the longer term.

- (v) The Committee would like to have a more comprehensive update on progress at its meeting in July?**

Noted. We will arrange this.

- (w) Why have you included those in receipt of Income Support and Jobseeker's Allowance in these regulations?**

When the regulations are laid in July there will still be some people in receipt of Jobseeker's Allowance and Income Support.

- (x) Do you know if any of them are likely to be affected?**

The Department does not hold the data as to who payments have been made to so including Income Support and Jobseeker's Allowance is the safest approach. This was also the case with the Grenfell compensation payments, so it is difficult to know.

- (y) Will the Department be bringing that up with MoJ as an issue?**

Yes, including whether MoJ can provide more information to DWP or to customers to support effective administration. It would be good for recipients of the scheme to know what information they need to provide to the Department when making their claim. so it was straightforward to deal with on the frontline.

(z) Will you be looking at section 65 of the UC regulations regarding personal injury and how that works in general?

There is no intention to do so, as the Department believes that this works well. There will be consideration of aligning the current compensation schemes and ensuring no duplication of work.

(aa) What about those who may seek to get around these issues by putting such payments into a trust so it is treated like a personal injury payment? This also relates to the current Health and Disability Green Paper and having access to services; if someone receives a personal injury payment outside of the scheme then they would not be able to access these services, so if a payment is made privately should it not be disregarded rather than looking at convoluted ways of getting around it?

If there are issues such as this then it would be good to clarify them as part of the process.

3.5 The Chair thanked officials for attending and advised that the Committee would follow up on the areas that require further clarification as part of the scrutiny.

3.6 In a subsequent private session, the Committee decided that, notwithstanding the further material that had been requested of the Department, it would not take the regulations on formal reference.

4. Private Session

[RESERVED ITEM]

5 Date of next meeting

5.1 The next meeting is scheduled to take place on 18 June.

Attendees

Guests and Officials

Item 3: Hannah Birtwistle-Gordon (SCS1, Universal Credit Policy)
James Snelling (Grade 6, Universal Credit Policy)
Kally Chan (Grade 7, Analyst)
Jon Bulgin (SEO, Universal Credit Policy)
Andrew Chapman (Legal)

Secretariat: Denise Whitehead (Committee Secretary)
Kenneth Ashworth (Assistant Secretary)
Robert Cooper (Assistant Secretary)
Edward Munn (Assistant Secretary)
Lauren Shields (Analyst)

The Social Security (Income and Capital Disregards) (Amendment) (No. 2) Regulations 2025: further information provided by the Department for Work and Pensions following the meeting

1. Confirmation that any Inheritance Tax issues have been resolved regarding these compensation payments passing through the estate.

HMRC are responsible for Inheritance Tax policy. The Ministry of Justice (MoJ) are not aware of any Inheritance Tax issues in regard to these compensation payments, but we have asked HMRC to confirm the tax status of these schemes. HMRC has advised that given these schemes have existed since 1988, they have chosen to conduct a review before providing any advice. They state that long running schemes can change and expand over time so any tax advice provided when these schemes were launched may not still be relevant to the circumstances today. *[Redacted]*.⁷

2. Confirmation of the rationale as to why the disregard is only to be extended to the partner of the falsely imprisoned at the time of their death, as opposed to other members of the family who may have actually suffered as a result of the false imprisonment.

In consultation with the MoJ it was established that the compensation scheme extends to the 'personal representative' where the individual has deceased. MoJ were content to allow us to provide a definition that broadly fits with the treatment of other compensation scheme estate/next of kin disregard provisions such as the Vaccine Damage Payments Scheme. We felt drawing the line at 'partner' was a reasonable approach to take.

We recognise that a number of disregards for other compensation schemes have alternative provisions and as a consequence of the Committee's concern we intend to consider whether to make amendments, which may make future provisions more consistent overall. We would welcome the Committee's thoughts on this as this work progresses.

3. Confirmation of whether Ministry of Justice miscarriage of justice compensation payments compensate those who may be falsely imprisoned and cannot receive a full state pension as a result of being unable to make the required national insurance contributions.

The Department already has regulations which provide for people wrongly convicted to qualify for contributory benefits. This provision would apply to anyone who has served a prison sentence whose conviction has been quashed – they wouldn't need to satisfy the MoJ's statutory test.

⁷ Response 1 contains unpublished information which has been redacted at the request of DWP.

See Regulation 9D of the Social Security Credits Regulations 1975: [The Social Security \(Credits\) Regulations 1975](#).