

# Social Security News

Issue 208 January 2024

This News Bulletin is intended to brief those with a special interest in social security matters of the changes in the law following each sitting of Tynwald at which the changes are approved.

Copies of the Orders referred to in this bulletin may be obtained from:

Tynwald Library, Legislative Buildings, Douglas, IM1 3PW.

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Social Security legislation is available [online](#).

The relevant document number is shown against the item.

For more details on the Orders and Regulations described in this newsletter -

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## In this issue:

**SD2023/0274** makes miscellaneous amendments to social security legislation principally to remove redundant references to discontinued provisions.

**SD2023/0304** amends the Employed Person's Allowance (General) Regulations 2011 so that a claimant who is a member of a couple one of whom is engaged in remunerative work whilst the other member is a full-time carer for a severely disabled person may qualify for an allowance in respect of "relevant child care charges" as part of their applicable amount for employed person's allowance.

**SD2023/0308, SD2023/0309 and SD2023/0310** provide that vaccine damage payments made under the Vaccine Damage Payments Act 1979 (an Act of Parliament which extends to the Isle of Man) are disregarded both as income and capital for the purpose of assessing entitlement to income-based jobseeker's allowance, income support and employed person's allowance respectively.

**SD2023/0322** extends entitlement to bereavement support payment and widowed parent's allowance to the survivors of cohabiting partnerships who have dependent children or were pregnant at the date of their deceased partner's death.



Isle of Man  
Government  
*Reilrys Ellan Vannin*

The Treasury  
*Yn Tashtey*

## Social Security Legislation (Benefits) (Application) (Amendment) (No. 3) Order 2023 SD2023/0274

This Order amends the Social Security Contributions and Benefits Act 1992, the Social Security Administration Act 1992 and the Social Security Act 1998, as those Acts of the United Kingdom Parliament apply to the Island, as well as the Social Security (Overlapping) Regulations 1979, the Social Security (Claims and Payments) Regulations 1987, the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 and the Jobseeker's Allowance Regulations 1996 as those regulations apply to the Island, as follows.

References to carer's bereavement payment, variable rate energy support payment and back to work bonus - provisions for which have already been discontinued - are omitted.

Provision in the Social Security Contributions and Benefits Act 1992 (as it applies to the Island) referring to the method for calculating the applicable amount for certain benefits is omitted, having been erroneously included when that Act was originally applied to the Island in 1994, as it is not relevant to the Island.

New provision is inserted into the Social Security Administration Act 1992 (as it applies to the Island) for the Christmas bonus to be inalienable, and minor clarifications are made to provisions relating to the annual uprating of benefits.

## Employed Person's Allowance (General) (Amendment) (No. 2) Regulations 2023 SD2023/0304

These Regulations amend the Employed Person's Allowance (General) Regulations 2011 ("the EPA regulations") by adding a "category" of claimant that is eligible to have an allowance in respect of "relevant child care charges" as part of their applicable amount for employed person's allowance.

"Relevant child care charges" means charges paid by the EPA claimant (or their partner, if they have one) for care provided for a child in their family who is aged under 13 to a registered childminder or under such other formal arrangement as a social security adjudication officer so determines in a particular case or as the Treasury so determines in a particular class of case. It does not include payments made to their relatives, friends, neighbours or acquaintances.

Only certain "categories" of claimant are eligible to have relevant child care charges included in their applicable amount for EPA. They are –

- a lone parent who is engaged in remunerative work;
- a member of a couple both of whom are engaged in remunerative work;
- a member of a couple one of whom is engaged in remunerative work and the other is incapacitated;
- a member of a couple one of whom is engaged in remunerative work and the other is participating in a course of training or undergoing a course of education the sole or primary purpose of which is (in the opinion of an adjudication officer) to improve the prospects of that person securing employment;
- a member of a couple one of whom is engaged in remunerative work and the other member is a hospital in-patient;
- a member of a couple one of whom is engaged in remunerative work and the other is detained in custody under a sentence imposed by a court; and
- following the approval of these Regulations, a member of a couple one of whom is engaged in remunerative work whilst the other member is a full-time carer for a severely disabled person.

**Social Security Legislation (Benefits) (Application) (Amendment) (No. 4) Order 2023**  
SD2023/0308

**Income Support (General) (Isle of Man) (Amendment) (No. 2) Regulations 2023**  
SD2023/0309

**Employed Person's Allowance (General) (Amendment) (No. 3) Regulations 2023**  
SD2023/0310

These three items of legislation provide for vaccine damage payments paid to a claimant or their partner to be disregarded as both income and capital for the purpose of assessing entitlement to the three income-related benefits: income-based jobseeker's allowance, income support and employed person's allowance.

A vaccine damage payment is a one-off tax-free payment of £120,000 which is paid under the Vaccine Damage Payment Scheme (VDPS) to eligible people, one of the eligibility criteria being that they have become severely disabled as a result of a vaccination against certain diseases. The VDPS is operated by the NHS Business Services Authority in the United Kingdom and it receives and administers claims from residents of the UK and the Isle of Man.

These items will ensure that recipients of income-based jobseeker's allowance, income support or employed person's allowance will not see a diminution in their benefit entitlement as a result of their, or their partner, receiving a vaccine damage payment.

**Social Security Legislation (Benefits) (Application) (Amendment) (No. 5) Order 2023**  
SD2023/0322

This Order amends 3 sets of social security legislation which apply to the Island to extend entitlement to bereavement support payment and widowed parent's allowance to the survivors of cohabiting partnerships who have dependent children or were pregnant at the date of their deceased partner's death, and to make related provision.

The amendments largely mirror those made under the Bereavement Benefits (Remedial) Order 2023 (SI 2023/134) in relation to bereavement benefits legislation having effect in Great Britain and Northern Ireland.

The Order has 3 Parts –

- Part 1 is introductory and provides the Order's title, commencement and interpretation provisions. Part 1 also provides that the amendments made by Part 2 have retrospective effect from 30 August 2018.
- Part 2 amends the Pensions Act 2014, the Bereavement Support Payment Regulations 2017 and the Social Security Contributions and Benefits Act 1992, as those Acts of Parliament and Regulations apply to the Island. Part 2's amendments extend entitlement to bereavement support payment and widowed parent's allowance to the survivors of cohabiting partnerships who have dependent children or are pregnant. The amendments also provide that only one person can be entitled to bereavement support payment or widowed parent's allowance in respect of the same death and for determining who is entitled to bereavement support payment or widowed parent's allowance where there is more than one potential claimant. Part 2 also amends the Bereavement Support Payment Regulations 2017 as they apply to the Island to provide for the period for which bereavement support payment is payable to the survivors of cohabiting partnerships who are pregnant or have dependent children and for the payment of an additional lump sum in certain cases. Different payment periods apply depending on when the survivor's cohabiting partner died, when the claim for benefit is made and whether the survivor continues to be entitled to child benefit.
- Part 3 makes transitional provision so that the usual periods in which a claim may be made for bereavement support payment or widowed parent's allowance are extended where a claim is made for a death before the Order comes into operation. Part 3 also makes transitional provision so that amendments made by the Order do not affect awards of bereavement support payment or widowed

parent's allowance made before the Order comes into operation, or entitlement which would otherwise continue when the Order comes into operation but for the amendments made by it.

The measures contained in this Order closely follow the provisions introduced by the UK Government last year by way of a Remedial Order made under the Human Rights Act 1998, of Parliament (SI 2023/134). The making of that Remedial Order followed two court cases in the UK (the latter one being the McLaughlin case, heard in the Supreme Court on 30 August 2018), whereby the legislation governing widowed parent's allowance and the higher rate of bereavement support payment (which was payable only to surviving spouses and civil partners who had dependent children or were pregnant at the time of their partner's death) was declared incompatible with Article 14, read with Article 8, of the European Convention on Human Rights. In both cases, the court found that, in restricting eligibility to these benefits to people in a legal union, the legislation discriminated between children on the grounds of the legal status of their parents' relationship.

The provisions contained in this Order are modified slightly from those contained in the UK Remedial Order to reflect the following provisions in the Isle of Man –

- a standard rate of bereavement support payment is payable to all eligible surviving spouses and civil partners, whether or not they have dependent children (unlike in the UK, there is no lower or higher rate); and
- bereavement support payment may be paid to eligible surviving spouses and civil partners for longer than 18 months (i.e., the maximum period for which it is payable in the UK) where at the end of 78 weeks there is a child aged under 6 in the claimant's family (in this case it is usually paid until the youngest child in the family's 6th birthday).

To qualify for bereavement support payment (BSP) or widowed parent's allowance (WPA) by virtue of the changes made by this Order a person must have been cohabiting with their deceased partner on the date they died and at that time had dependent children or was pregnant, or after their deceased partner's death they become entitled to child benefit for a child who was living with them when their cohabiting partner died.

Currently BSP and WPA can only be paid to survivors who were in a legal union with the deceased. Extending these benefits to surviving cohabiting partners with dependent children or who were pregnant, who were not in a legal union with the deceased, means there may be a very small number of cases where more than one person may have reason to claim in respect of the same death.

But only one claimant can be entitled to either BSP or WPA (as appropriate) in respect of a death. This Order provides which claimant will be entitled where more than one claimant has reason to claim. Ordinarily, the claimant who was living with the deceased on the date of death would be entitled, subject to the following.

Where two or more people who could be entitled to either BSP or WPA were members of the same household as the deceased at the date of death, the claimant who is entitled to BSP or WPA is determined as follows:

- Where two prospective claimants were living with the deceased on the date of death, the person in a legal union with the deceased would be entitled (if they had entitlement to child benefit or were pregnant).
- If neither prospective claimant was in a legal union with the deceased (or the person in a legal union did not have dependent children), the person with entitlement to child benefit or is pregnant, would be entitled.
- If neither prospective claimant was in a legal union with the deceased and more than one prospective claimant had entitlement to child benefit, or was pregnant, the person who had cohabited with the deceased for the longest on the date of death would be entitled.

### *Transitional provisions*

For the period between 30 August 2018 and when this Order comes into force provision is made for transitional protection to ensure that those claimants already in receipt of BSP or WPA before the date on which this Order comes into force do not lose their entitlement to benefit for the duration of their award as a result of this Order.

For example, a person might have been entitled to BSP or WPA before this Order comes into force as a result of the death of their estranged spouse or civil partner. When this Order comes into force, the deceased's cohabiting partner may become entitled to BSP or WPA for the same period (for example, because they were living with the deceased on the date of death and there had been no divorce in respect of the estranged spouse). The transitional provisions contained in this Order enable both claimants to get benefit. Benefit already awarded to the surviving spouse or civil partner can continue and payments which have already been made to them are not recoverable as a result of any new entitlement for the deceased's co-habiting partner arising from the retrospective provisions in the Order.

### *Time limits for claims for retrospective periods*

The Order sets the time limits within which a claim must be made.

For Widowed Parent's Allowance (WPA), where a claimant becomes entitled as a result of this Order, the claim has to be made within 12 months of the date this Order comes into force to receive payment. As WPA is only payable in relation to deaths before 6 April 2017, all deaths will have occurred before the Order comes into force. Any claimant who becomes entitled to WPA as a result of the Order, and who submits a claim within the 12-month period, will receive a payment for the retrospective period of entitlement. They may also be entitled to an ongoing payment from the date this Order comes into force if they continue to meet the WPA eligibility criteria.

For BSP - which is payable in relation to deaths occurring on or after 6 April 2017 - the time limit for claiming depends on when the death occurred.

If the death occurred after this Order comes into force, there is no change from the current position, i.e. the claim has to be made within 3 months of the death to get the full amount of BSP (including the £3,500 lump sum and periodic payments for the maximum period payable, which will depend on the age of the youngest or only child in the family). The claim has to be made within 12 months of the death to get the lump sum and each weekly payment has a 3-month claiming window.

If the death occurred before this Order comes into force, and retrospective payments are due, the time limits for claiming are as follows:

- If the claim is received within 12 months of this Order coming into force, the claimant will receive the full amount of BSP that is due to them, irrespective of whether the claim is received within 12 months of their deceased partner's death.
- If the claim is received after 12 months of this Order coming into force, the claimant will receive up to 13 backdated weekly payments, plus any remaining weekly payments which are due to them going forward. No lump sum will be payable. The claim must be made within 21 months of the Order coming into force for any BSP to be payable to them.