

EXPLANATORY STATEMENT

Social Security Act 1991

Social Security (Exempt Lump Sums – Payments to Former British Child Migrants) Determination 2019

Purpose

Paragraph 8(11)(d) of the *Social Security Act 1991* (the Act) allows the Secretary of the Department of Social Services (DSS) to determine by legislative instrument that an amount or class of amounts received by a person is an exempt lump sum for the purposes of the Act. The effect of the *Social Security (Exempt Lump Sums – Payments to Former British Child Migrants) Determination 2019* (instrument) is that a payment in the amount of £20,000GBP made under the Ex-Gratia Payment Scheme for Former British Child Migrants by the Government of the United Kingdom is an exempt lump sum under paragraph 8(11)(d) of the Act.

Background

Under social security law, an income test is used to determine a persons' eligibility for a social security payment and, if they are eligible, the rate of a social security payment that is payable. An income amount earned, derived or received for a person's own use or benefit is generally assessable as income. However, some amounts that would otherwise be income are specifically exempted.

Paragraph 8(11)(d) of the Act allows the Secretary of the Department of Social Services to determine that an amount, or class of amounts, is an 'exempt lump sum' for the purposes of the Act. An exempt lump sum is excluded from the definition of 'ordinary income' under subsection 8(1) of the Act, meaning the lump sum amount is not to be taken into account under the social security income test.

In 2018, the British Independent Inquiry into Child Sexual Abuse Interim Report and its report on Child Migration Programmes were published. The inquiry recommended that the Government of the United Kingdom establish a financial redress scheme for surviving former British child migrants on the basis that they were exposed to the risk

of sexual abuse. The Government of the United Kingdom has long acknowledged that the Child Migration Programmes were a “shameful episode of history and... failure of the first duty of a nation, which is to protect its children”. On 19 December 2018, the Government of the United Kingdom published its response to the Inquiry, and announced that the Government would establish an ex-gratia payment scheme for former British child migrants, in recognition of the fundamentally flawed nature of the historic child migration policy. The rate of these payments is a lump-sum ex-gratia payment of £20,000GBP.

These payments are payable to all former British child migrants, regardless of whether they suffered abuse, in recognition of the ‘fundamentally flawed’ nature of the historic Child Migration Programmes. The scheme is open to:

- any former British child migrant who was alive on 1 March 2018; or
- the beneficiaries of that former British child migrant where the child migrant was alive on 1 March 2018, but has since passed away.

The payments under this scheme will be payable to all qualified applicants of the scheme regardless of their individual circumstances, including the receipt of payments received from other Governments or through private legal action.

Eligible claimants must have been a child migrant sent from the United Kingdom and Crown Dependencies (England, Wales, North Ireland, Scotland, Channel Islands and the Isle of Man). The scheme will cover the whole of the United Kingdom, regardless of the United Kingdom nation from which the former child migrant was sent. The claimant must have been sent by a church, state, voluntary or other organisation to one of the receiving countries (Australia, New Zealand, Canada and Zimbabwe/ former Rhodesia) and must not have been accompanied by an adult family member, or sent to live with another member of their birth family.

Any payments that a former British child migrant may have received from any other scheme, or private claim, in any country will not be taken into account in administering the ex-gratia payments under the scheme. The Government of the United Kingdom started accepting applications for the scheme from 1 March 2019 and the scheme will remain open for two years from its launch. Claims submitted

under the scheme after this period will be considered on a case by case basis, and eligibility for or the amount of the payment will not be affected.

Subsection 1100(1) of the Act provides that where a payment is received in a foreign currency, the amount received is taken to be the value of the amount in Australian currency. The rate at which the amount received is to be converted to Australian currency is to be calculated pursuant to the *Social Security (Foreign Currency Exchange Rate) Determination 2017*.

This instrument provides that payments made under the scheme will be exempt lump sums for the purposes of the Act. This means that recipients of these payments will not have such amounts taken into account under the social security income test.

Commencement

This instrument commences on the day after this instrument is made.

Consultation

The Department of Human Services, the Department of Agriculture and Water Resources, and the Department of Veterans' Affairs were consulted.

This instrument will operate beneficially as it exempts the Former Child Migrant Payment made by the Government of the United Kingdom from the social security income test. As a result, public consultation was considered unnecessary.

Regulatory Impact Analysis

This instrument does not require a Regulatory Impact Statement. The instrument will operate in a beneficial manner. It is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

Explanation of the provisions

Section 1 provides how the instrument is to be cited, that is, as the *Social Security (Exempt Lump Sums – Payments to Former British Child Migrants) Determination 2019*.

Section 2 provides that this instrument commences on the day after this instrument is made. This means that the instrument will have effect on and from that date.

Section 3 provides that the authority for making the instrument is paragraph 8(11)(d) of the Act.

Section 4 makes provision for definitions of certain terms used in the instrument. Act means the Social Security Act 1991. Former British Child Migrant Payment means any payment of no more than £20,000GBP made on or after 1 March 2019 by The Government of the United Kingdom under the *Ex-Gratia Payment Scheme for Former British Child Migrants* to a person who was alive on 1 March 2018 and was determined under that scheme to be an entitled former child migrant, or that person's beneficiary. Accordingly, payments made any time from 1 March 2019 under this scheme will be included in this definition. Together with section 5, this provision has some beneficial prospective operation. As the retrospectivity is only beneficial, it is consistent with section 12(2) of the *Legislation Act 2003*.

Section 5 specifies that a Former British Child Migrant payment made by The Government of the United Kingdom under the Ex-Gratia Payment Scheme for Former British Child Migrants is an exempt lump sum for the purposes of paragraph 8(11)(d) of the Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Social Security (Exempt Lump Sums – Payments to Former British Child Migrants) Determination 2019

The Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

The effect of the Determination is that a person who receives an Ex-gratia scheme payment to former British Child Migrants will not have that payment assessed as income under the social security law.

Human rights implications

The Determination engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The Determination will operate beneficially as an Ex-gratia scheme payment to former British Child Migrants will not be taken into account when assessing a person's eligibility or rate of social security entitlements under the social security income test. If the Ex-gratia scheme payment to former British Child Migrants is not exempted, a person in receipt of that payment may not be eligible for a social security payment or, if they are eligible, their rate of payment might be reduced. The Determination is therefore consistent with promotion of the right to social security.

Conclusion

The Determination is compatible with human rights as they do not raise any human rights issues.

**Mary McLarty, Branch Manager, Payment Structures Branch,
as a delegate of the Secretary of the Department of Social Services**