

EXPLANATORY STATEMENT

Veterans' Entitlements (Exempt Lump Sum – Payments of compensation by the Scottish Government from the Advance Payment Scheme) Determination 2021

(Instrument 2021 No. R2)

EMPOWERING PROVISION

Paragraph 5H(12)(c) of the *Veterans' Entitlements Act 1986* (VEA).

PURPOSE

The purpose of the determination is to ensure that compensation payable from the Advance Payment Scheme by the Scottish Government in relation to historical child abuse committed against a person whilst they were in care in Scotland before December 2004 will be treated as an exempt lump sum.

Payments of £10,000 from the Advance Payment Scheme have been made to individuals on the basis that a statutory redress scheme will be legislated by the Scottish Parliament before the end of March 2021.

When the statutory redress scheme commences the Advance Payment Scheme will be closed.

The establishment of the Advance Payment Scheme was included in the commitments given by the Deputy First Minister in his statement to the Scottish Parliament in October 2018 concerning the abuse suffered by those in care in Scotland.

The determination will align the treatment of such payments with that of monetary payments made under the National Redress Scheme for Institutional Child Sexual Abuse ("National Redress Scheme") which commenced from 1 July 2018 and compensation payments made by the Commonwealth on behalf of the ADF for historical child sexual abuse claims.

This determination provides that an amount paid to a person or person's partner under the Advance Payment Scheme where the abuse was suffered while in care in Scotland is an exempt lump sum for the purposes of the VEA.

Paragraph 5H(12)(c) of the VEA allows the Repatriation Commission to determine that an amount, or class of amounts, is an exempt lump sum. An exempt lump sum is excluded from the definition of "ordinary income" under subsection 5H(1) of the VEA, meaning the lump sum amount is not to be taken into account in determining the rate of income support under the VEA.

The determination will ensure that if a person or the person's partner receives an amount of compensation under the Advance Payment Scheme and the person is eligible for, or in receipt of, an income support supplement, a service pension or a veteran payment, then the amount of compensation received by the person or the person's partner is an exempt lump sum.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument that any consultation the rule-maker considered appropriate and reasonably practicable, has been undertaken.

This determination was made in consultation with a known recipient of a compensation payment from the Advance Payment Scheme and with Services Australia and the Department of Social Services.

Accordingly, it is considered that the requirements of section 17 of the *Legislation Act 2003* have been met.

RETROSPECTIVITY

The determination will be taken to have commenced on 25 April 2019 in line with the commencement of the Advance Payment Scheme and will operate from that date.

The retrospective commencement is designed to support clients and is intended to ensure that compensation already paid by the Scottish Government under the Advance Payment Scheme to a person or their partner, will be treated as exempt income under the VEA.

The retrospective operation of the instrument will not infringe section 12 of the *Legislation Act 2003* because the retrospective operation would not disadvantage any person or impose a liability on a person other than the Commonwealth.

DOCUMENTS INCORPORATED BY REFERENCE

No.

REGULATORY IMPACT

None.

FURTHER EXPLANATION OF PROVISIONS

See: [Attachment A](#)

Statement of Compatibility with Human Rights

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

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The attached instrument engages the right to social security contained in Article 9 of the International Covenant on Economic Social and Cultural Rights. 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.

Under the VEA, income support payments are subject to a means test which assesses the income and assets of the pensioner to determine the level of payment the person is entitled to. Where an income support recipient receives a lump sum, the whole or part of the payment is generally treated as income and would be assessed under the means test for the payment which could result in the payment being reduced.

The determination will operate beneficially as a compensation payment from the Advance Payment Scheme will not be taken into account when assessing a person's rate of payment under the VEA income test. If the compensation payment is not exempted, a person in receipt of that compensation may not be eligible for an income support payment under the VEA or, if they are eligible, their rate of payment might be reduced.

The right to social security is promoted by the attached instrument in that it ensures compensation payable from the Advance Payment Scheme is not treated as income for the purposes of the means test for establishing whether certain pensions and other payments are payable.

The attached instrument is compatible with human rights because it supports a person's right to social security.

Simon Hill

Assistant Secretary, Policy Development Branch, as delegate of the Repatriation Commission Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

Section 1

This determination sets out the name of the instrument – *Veterans’ Entitlements (Exempt Lump Sum – Payments of compensation by the Scottish Government from the Advance Payment Scheme) Determination 2021*.

Section 2

This is the commencement provision. It provides that the determination commenced on 25 April 2019.

Section 3

This section sets out the primary legislation that authorises the making of the determination, namely paragraph 5H(12)(c) of the *Veterans’ Entitlements Act 1986* (VEA).

Section 4

This section defines terms used in section 5 of the determination.

A compensation payment from the Advance Payment Scheme on behalf of the Scottish Government is defined as a payment of compensation made by the Scottish Government from the Advance Payment Scheme to individuals who have suffered abuse as children while in care in Scotland prior to December 2004.

The other terms that are defined - *income support supplement*, *service pension* and *veteran payment* all refer to their VEA meanings.

Section 5

This is the operative provision of the determination. It provides that if a person or the person’s partner receives a *compensation payment from the Advance Payment Scheme on behalf of the Scottish Government* and the person is eligible for, or in receipt of, a service pension, income support supplement or veteran payment, then the amount of the *compensation payment from the Advance Payment Scheme on behalf of the Scottish Government* received by the person or the person’s partner is an exempt lump sum.

The provision is made under paragraph 5H(12)(c) of the VEA for the purposes of the definition of “ordinary income” in subsection 5H(1) of the VEA.