

EXPLANATORY MEMORANDUM TO THE
SOCIAL SECURITY (SHARED ADDITIONAL PENSION)
(MISCELLANEOUS AMENDMENTS) REGULATIONS 2005

2005 No. 1551

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. The instrument amends existing regulations to provide for the administration of claims to the shared additional pension including the time and manner in which a claim is made, the payday and periodicity of payments, exportability, time limits for deferral and the restrictions that will apply in the accrual and calculation of increments or a lump sum.

2.2. The instruments amended are:

- the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968);
- the Social Security Benefit (Persons Abroad) Regulations 1975 (S.I. 1975/563);
- the Social Security (Overlapping Benefit) Regulations 1979 (S.I. 1979/597);
- the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 (S.I. 1979/642);
- the Social Security (General Benefit) Regulations 1982 (S.I. 1982/1408);
- the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 (S.I. 1988/664); and
- the Social Security (Deferral of Retirement Pensions) Regulations 2005 (S.I. 2005/453).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None

4. Legislative Background

4.1. The amendments made by the instrument give effect to the provisions required for claiming, paying and deferring the shared additional pension. In addition, it includes shared additional pension in the supplementary deferral arrangements introduced in the Pensions Act 2004.

4.2. Currently, there are no specific provisions to enable the administration of a shared additional pension. The oversight occurred because it was mistakenly assumed that a shared additional pension came within the ambit of the provisions relating to the administration of State Pension generally. During the course of work to develop the regulations required to underpin the new deferral arrangements it became apparent that specific legislative provision was required.

5. Extent

5.1. This instrument applies to Great Britain. Similar Statutory Rules are to be introduced in respect of Northern Ireland.

6. European Convention on Human Rights

6.1. Not applicable

7. Policy background

7.1. Provisions for allowing the capitalised value of additional State Pension to be shared as part of the divorce settlement between former parties to a marriage were introduced in the Welfare Reform and Pensions Act 1999 for divorces where proceedings were lodged on or after 1 December 2000. Pension sharing is not mandatory but is an option available to the divorcing couple and the court in deciding how a couple's financial assets should be apportioned. In all cases where an application for a financial settlement has been made, either party to the divorce who will be entitled to additional State Pension must obtain a valuation of their entitlement accrued up to the point of divorce. This valuation is a "cash equivalent transfer value" (CETV) based on tables prepared and provided by the Government Actuary's Department (GAD) and it provides a notional pot of money for the Court to consider when deciding how the couple's financial assets should be apportioned. If a pension sharing order is made as part of the financial settlement the court will order the percentage split. The notional pot of money awarded to the former spouse will be subject to a reverse CETV calculation in order to calculate a weekly amount based on actuarial factors relevant to the recipient. When the former spouse reaches State Pension age the benefit payable as a result of the pension sharing order is known as shared additional pension. It is payable to the former spouse in their own right for their lifetime, thus ensuring a secure income in retirement.

7.2. Regulation 2 provides that where a person is already receiving a State Pension at the time entitlement to shared additional pension arises, a separate claim is not required; where entitlement to both benefits arises at the same time, a claim to State Pension would be treated as a claim for shared additional pension. It provides that shared additional pension is payable on the same day as the recipient's State Pension or, if State Pension is not payable, on a Monday. Regulation 2 also enables a person who has deferred a shared additional pension to make an advance claim 4 months before ending his deferment.

7.3. Regulation 3 amends the existing provisions for posthumous claims for shared additional pension to parallel provisions in force for State Pension brought in by S.I. 2005/453. However, as there are no provisions for spousal inheritance of shared additional pension the 3 month limitation on death arrears will apply in all cases. In addition, it stipulates a 12 month time limit

in which a claim to shared additional pension must be made with effect from 6 April 2006.

- 7.4. Regulation 4 makes provision for shared additional pension to be payable abroad subject to the same restrictions on index-proofing as apply to the State Pension.
- 7.5. Regulation 5 excludes shared additional pension from the overlapping benefit provisions to prevent it ‘overlapping’ against any other contributory or non-contributory benefit and ensure that it is payable in addition to other state benefits and pensions to which the recipient is entitled.
- 7.6. Regulations 6 and 9 define the restrictions that will apply when accruing increments or the lump sum on shared additional pension. In particular, they provide that a person will not accrue increments or a lump sum while serving a term of imprisonment under sentence. This is to ensure that the person is not able to benefit from deferral in a situation where the pension would not have been payable had they claimed it instead.
- 7.7. Regulation 6 also provides that where a person entitled to a State Pension, based on their own contributions or that of their late or former spouse, has decided to “de-retire” i.e. elect to stop receiving their pension temporarily in order to build up increments or a lump sum, they will also be treated as “de-retiring” in respect of their shared additional pension. This will enable them to accrue deferral benefits on this part of their entitlement as well.
- 7.8. Regulation 8 provides that where an award of shared additional pension is subsequently revised amounts paid under the original award may be offset against the arrears due under the revised award.
- 7.9. Regulation 10 gradually extends the time limits in which a claim for backdated shared additional pension must be made to 12 months.
- 7.10. The instrument was considered by the Social Security Advisory Committee at its meeting on 25th May 2005. The Committee agreed not to consult on the instrument.

8. Regulatory and costs impacts

- 8.1. A Regulatory Impact Assessment has not been produced for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2. The impact on the Public Sector comprises programme and administration costs. It is not possible to disaggregate these costs from those for State Pension generally.

9. Contact

9.1. **Michelle Mathieson** at the Department for Work and Pensions – tel. 0207 712 2851 or e-mail: Michelle.mathieson@dwp.gsi.gov.uk can answer any queries on the instrument.