

2007 No. 1398

SOCIAL SECURITY

The Transfer of State Pensions and Benefits Regulations 2007

Made - - - - *4th May 2007*

Laid before Parliament *11th May 2007*

Coming into force - - *1st June 2007*

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to rights in respect of State pensions and benefits of members of the pension scheme provided for officials and servants of Community institutions and bodies(b).

Accordingly, the Secretary of State, in exercise of the power conferred by section 2(2) of that Act, makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Transfer of State Pensions and Benefits Regulations 2007 and shall come into force on 1st June 2007.

(2) In these Regulations—

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(c);

“the Communities’ scheme” means the pension scheme provided for officials and other servants of Community institutions and bodies in accordance with regulations adopted by the Council of the European Communities(d);

“guarantee date” means the date—

- (a) by reference to which the cash equivalent value of transferable rights is calculated; and
- (b) which falls within a period of three months beginning with the date on which the transfer application is received by the Secretary of State;

“relevant benefit” means benefit under—

- (a) sections 36 and 37 of the National Insurance Act 1965(e) (graduated retirement benefit);
- (b) Parts II to V and X of the 1992 Act;

(a) 1972 c.68.

(b) S.I.2006/1461.

(c) 1992 c.4.

(d) Council Regulation (EEC, Euratom, ECSC) No.259/68 of 29th February 1968 (OJ No.L 56, 4.3.1968 p.1-Special Edition 1968, 1 December 1972). The Communities’ scheme is contained in Title V, Chapter 3, Articles 77-84 and Annex VIII.

(e) 1965 c.51. Section 36 of that Act was repealed by the Social Security Act 1973 (c.38) with effect from 6th April 1975 but continues in force by virtue of regulations made under Schedule 3 to the Social Security (Consequential Provisions) Act 1975 (c.18) or under Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c.6).

(c) sections 1(2) and 2 of the Jobseekers Act 1995(a) (contribution-based jobseeker's allowance);

“statement of entitlement” means a written statement—

(a) of the amount of the cash equivalent at the guarantee date of the transferable rights which have accrued to, or in respect of, the transferor; and

(b) which contains details of the basis of how that amount has been calculated;

“transfer application” means an application referred to in regulation 3(1);

“transferor” means the person who has applied to the Secretary of State to transfer his transferable rights into the Communities' scheme.

(3) References in these Regulations to—

(a) relevant benefits include benefits under the corresponding Acts or Orders in force in Northern Ireland;

(b) provisions of the 1992 Act or of the Social Security Administration Act 1992(b) include references to the provisions in force in Northern Ireland corresponding to those provisions.

Transferable rights

2.—(1) In these Regulations, “transferable rights” means, subject to paragraph (2), any rights to relevant benefits, which, at the guarantee date, have accrued to, or in respect of, a person by virtue of—

(a) the payment by that person of Class 1, 2 or 3 contributions under the 1992 Act;

(b) that person having been credited with such contributions or with earnings; or

(c) contributions of any class paid under the National Insurance Act 1965.

(2) Paragraph (1) does not include—

(a) any rights under—

(i) section 48 of the 1992 Act(c) (use of former spouse's contributions); or

(ii) sections 82 to 86A of that Act(d) (adult dependency increases); or

(b) the cash equivalent of the value of the appropriate national health service allocation under section 162 of the Social Security Administration Act 1992(e).

(3) In determining a person's rights to relevant benefits for the purposes of this regulation, regulation 6(1) of the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979(f) (benefit at reduced rates for those who do not satisfy contribution conditions in full) shall have effect as if the words from “provided” to the end of the paragraph were omitted.

(a) 1995 c.18.

(b) 1992 c.5.

(c) Section 48 is amended by the Civil Partnership Act 2004 (c.33), Schedule 24, paragraph 24(1) and (2)(a).

(d) Section 82 is amended by the Social Security (Incapacity for Work) Act 1994 (c.18) (“the 1994 Act”), Schedule 1, paragraph 19, the Jobseekers Act 1995 (c.18), Schedule 2, paragraph 24 and Schedule 3, the Civil Partnership Act 2004, Schedule 24, paragraph 35 and the Child Benefit Act 2005 (c.6), Schedule 1, paragraph 5. Section 83 is amended by the 1994 Act, Schedule 1, paragraph 20. Section 84 is amended by the Jobseekers Act 1995, Schedule 2, paragraph 25. Section 85 is amended by the 1994 Act, Schedule 1, paragraph 22 and the Civil Partnership Act 2004, Schedule 24, paragraph 37(1) to (3) and the Child Benefit Act 2005, Schedule 1, paragraphs 1, 6(1) and (3). Section 86 is repealed by the 1994 Act, Schedule 1, paragraph 23 and Schedule 2. Section 86A is inserted by the 1994 Act, section 2(5).

(e) Section 162 is amended by the Social Security (Contributions) Act 1994 (c.1), section 2(1) and (2), the Social Security Administration (Fraud) Act 1997 (c.47), Schedule 2, the Social Security Act 1998 (c.14), Schedule 7, paragraph 99(4), the Social Security (Transfer of Functions, etc.) Act 1999 (c.2), Schedule 1, paragraph 28(2) and (3), Schedule 3, paragraph 52(2) to (11) and Schedule 5, paragraph 12, the Welfare Reform and Pensions Act 1999 (c.30), Schedule 9, paragraph 9(2) and (3), the Child Support, Pensions and Social Security Act 2000 (c.19), section 74(7), the National Insurance Contributions Act 2002 (c.19), section 4, Schedule 1, paragraph 19 and Schedule 2, the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, paragraph 189 and the National Insurance Contributions and Statutory Payments Act 2004 (c.3), Schedule 1, paragraph 3(3).

(f) S.I.1979/642; the relevant amending instruments are S.I.1990/2642 and 2000/1483.

Transfer application

3.—(1) Except where paragraph (2) applies, a person who wishes to transfer his transferable rights to the Communities' scheme must make an application to the Secretary of State.

(2) The transferor shall be treated as having made an application under paragraph (1) where the Secretary of State receives a copy of the transferor's application to become a member of the Communities' scheme.

(3) An application under paragraph (1) shall be in such form as the Secretary of State may from time to time approve.

Statement of entitlement

4.—(1) The Secretary of State shall, subject to paragraph (4), provide the transferor with a statement of entitlement before the end of the period of 14 days beginning with the guarantee date.

(2) A statement of entitlement shall remain valid for a period of seven months beginning with the day on which it is issued by the Secretary of State.

(3) Where the transferor is not satisfied as to the accuracy of any of the information contained in the statement of entitlement, he shall notify the Secretary of State accordingly within one month of receiving it.

(4) The Secretary of State need not provide a statement of entitlement to a transferor if he has provided a statement of entitlement to that transferor in the previous twelve months.

Calculation of the cash equivalent of transferable rights

5.—(1) The cash equivalent of the transferor's transferable rights is to be calculated and verified in such manner as may be approved by, or on behalf of, the Government Actuary.

(2) Where, at the guarantee date, the transferor is in receipt of one or more relevant benefits, the cash equivalent of any amounts paid in respect of that benefit or those benefits shall be deducted from the total cash equivalent of his transferable rights.

Notice of intention to complete transfer

6. A transfer of a transferor's transferable rights to the Communities' scheme may only take place where the Secretary of State has been notified in writing, before the expiry of the period referred to in regulation 4(2), that the transferor wishes the transfer to take place.

Action to be taken by the Secretary of State

7.—(1) Paragraphs (2) and (3) apply where the Secretary of State receives a notice under regulation 6.

(2) Where the Secretary of State is satisfied that the cash equivalent of the transferor's transferable rights is correct, he must transfer into the Communities' scheme—

- (a) an amount in respect of that cash equivalent; and
- (b) interest accruing on that amount by virtue of regulation 10,

before the end of the period of ten months beginning with the guarantee date.

(3) Where the Secretary of State is not satisfied as to the accuracy of the cash equivalent of the transferor's transferable rights, he shall notify the transferor accordingly and issue a revised statement of entitlement.

(4) Where—

- (a) the Secretary of State receives a notice from a transferor indicating that he wishes to complete a transfer of his transferable rights to the Communities' scheme; and
- (b) that notice is received after the expiry of the period referred to in regulation 4(2),

he shall notify the transferor that his application is invalid and that a new application must be made and a new statement of entitlement obtained in accordance with the provisions of these Regulations.

Effect of making a cash equivalent transfer payment

8.—(1) This regulation applies where the cash equivalent of the transferor’s transferable rights has been transferred into the Communities’ scheme.

(2) Section 22(4) of the 1992 Act(**a**) (earnings factors) shall be read as if it included the following—

“or

(c) in a case where the cash equivalent of a person’s transferable rights has been transferred in accordance with the Transfer of State Pensions and Benefits Regulations 2007, for the tax year in which that payment was made and any earlier tax year—

(i) in the case of 1987-88 or any subsequent tax year, from so much of his earnings as did not exceed the upper earnings limit and upon which primary Class 1 contributions have been paid, treated as paid or credited and from Class 2 and Class 3 contributions; and

(ii) in the case of any earlier tax year, from any of his Class 1, 2 or 3 contributions.”.

(3) Nothing in the 1992 Act or in regulations made under it shall operate—

(a) to entitle the transferor to payment of a relevant benefit from the day on which the transfer takes place;

(b) to credit a transferor with any earnings or contributions which accrue from his transferable rights; or

(c) to enable the transferor to reduce the number of years in his working life for the purposes of satisfying the second condition in paragraph 5 of Schedule 3 to the 1992 Act(**b**) by reference to those rights.

(4) Where the transferor returns to work in the United Kingdom, he shall not be entitled to credits under—

(a) regulation 4 of the Social Security (Credits) Regulations 1975(**c**) (starting credits); or

(b) regulation 4 of the Social Security (Credits) Regulations (Northern Ireland) 1975(**d**) (starting credits).

(5) Where, at the date on which the cash equivalent of his transferable rights was transferred, a transferor’s former spouse or civil partner is treating the contributions of the transferor as if they were his own contributions in accordance with section 48 of the 1992 Act (use of former spouse’s contributions), that transfer shall not have the effect of causing the former spouse’s or civil partner’s Category A pension to be re-calculated.

Incorrect amount transferred

9.—(1) Paragraph (2) applies where—

(a) an amount in respect of the cash equivalent of the transferor’s transferable rights has been transferred into the Communities’ scheme (“the transferred amount”); and

(b) it subsequently transpires that the cash equivalent of the transferor’s transferable rights was greater than the transferred amount.

(a) Section 22(4) is amended by the Social Security Act 1998 (c.14), Schedule 7, paragraph 61.

(b) Paragraph 5 of Schedule 3 is amended by the Pensions Act 1995 (c.26), section 129.

(c) S.I.1975/556; the relevant amending instruments are S.I.1988/1545 and 2000/1483.

(d) S.R.1975 No.113; the relevant amending regulations are S.R.1988 No.326 and 2001 No.108.

(2) The Secretary of State shall transfer into the Communities' scheme an amount equal to the difference between—

- (a) the cash equivalent of the transferor's transferable rights and the transferred amount; and
- (b) the interest accrued under regulation 10 on the cash equivalent of the transferor's transferable rights and the interest accrued under that regulation on the transferred amount.

Interest

10.—(1) Interest shall accrue on the cash equivalent of the transferor's transferable rights in respect of the period beginning on the guarantee date and ending on the day on which an amount in respect of that cash equivalent is transferred by virtue of regulation 7(2).

(2) Interest shall accrue under paragraph (1) at an annual rate to be determined by the Secretary of State on the advice of the Government Actuary.

Time limits

11. The periods specified in regulations 4, 6 and 7 may be extended by the Secretary of State if he considers it reasonable to do so in any particular case.

Financial provision

12. Payments of cash equivalents of transferable rights made by the Secretary of State by virtue of these Regulations shall be paid out of monies provided by Parliament.

Signed by authority of the Secretary of State for Work and Pensions.

4th May 2007

Bill McKenzie
Parliamentary Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972 (c.68) in pursuance of Article 11(2) of Annex VIII to the Staff Regulations set out in Council Regulation 259/68 (OJ No.L 56, 4.3.1968 p.1-Special Edition 1968, 1 December 1972). This allows for a person's rights which have accrued by virtue of his National Insurance contributions, to be transferred to the pension scheme for officials and servants of Community institutions and bodies ("the Communities' scheme") if he so wishes.

Regulation 2 prescribes which rights are transferable to the Communities' scheme.

Regulation 3 prescribes that a person who wishes to transfer his transferable rights must make an application to the Secretary of State.

Regulation 4 requires the Secretary of State to provide the transferor with a statement of entitlement within 14 days of the guarantee date and provides that the statement shall remain valid for seven months. It also allows the transferor to challenge the statement within one month and prescribes that no statement of entitlement need be provided if one has been provided in the previous 12 months.

Regulation 5 prescribes how the cash equivalent of the transferable rights is to be calculated.

Regulation 6 prescribes that the transferor must notify the Secretary of State if he wishes to proceed with the transfer and regulation 7 prescribes the action to be taken by the Secretary of State when he receives that notice.

Regulation 8 prescribes the effect of the transfer on entitlement to state benefits.

Regulation 9 prescribes what is to happen if it transpires after the transfer that the cash equivalent value is greater than the amount transferred.

Regulation 10 allows for interest to accrue on the cash equivalent.

Regulation 11 allows for time limits to be extended by the Secretary of State.

Regulation 12 provides that transfer payments shall be paid out of monies provided by Parliament.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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