

**EXPLANATORY MEMORANDUM TO**  
**THE TRANSFER OF STATE PENSIONS AND BENEFITS REGULATIONS**  
**2007**

**2007 No. 1398**

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 makes provision to enable a person employed by certain European Commission institutions to apply to transfer the actuarial value of rights accrued to contributory social security pensions and benefits in Great Britain through their National Insurance contributions to the Pension Scheme of the European Communities' Institution (PSEC).

2.2 The Instrument also sets out the administrative process for applying for, calculating and making the transfer. Provision has also been made to ensure that once the transfer has been effected, the person's national insurance record is annotated to prevent transferred rights providing future contributory benefit entitlement in the UK State Pension scheme.

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

3.1 None.

**4. Legislative Background**

4.1 A person employed by a European Commission institution is not covered by the protection that normally applies to EU citizens under Regulation 1408/71 which ensures that other Member States take account of National Insurance contributions made in the UK. They are instead covered by Article 11(2) of Annex VIII to the Commission Staff Regulations which allows an official employed in an EC institution to transfer the actuarial value of their pension rights into PSEC. This provision has been in existence since 1968.

**5. Territorial Extent and Application**

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**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

- 7.1 The Government had until recently held the view that Article 11(2) of Annex VIII to the Commission Staff Regulations which provides for transfers of pension entitlements to PSEC related solely to occupational and personal pension rights. However, following the Commission's success in bringing proceedings against the Belgian and Spanish Governments that view was no longer considered tenable. The Government now accepts that the provisions in Article 11(2) apply to the State Pension also. The intention is that once the provisions are in place, we will write to some 80 EC officials who had previously submitted transfer applications to advise them to re-submit their applications should they still wish to transfer their rights.
- 7.2 The European Commission advises that there are currently around 400 officials employed in Commission institutions interested in transferring their State Pension rights to PSEC. In addition, there is an unknown quantity of former officials who may seek to utilise the provision. The experience of other member states suggests that only around half of those eligible may actually transfer. The intention is that an information pack will be put together in collaboration with Commission officials once the regulations are in place.
- 7.3 Regulation 1 provides a general description of terms used in the regulations and defines the benefits, the value of which would be included in the transfer calculation.
- 7.4 Regulation 2 describes the rights upon which future benefit entitlement would be determined that have been included or excluded from the calculation of the transfer value. Paragraph (3) provides that in determining the amount of a transfer value, no regard should be had to the rule that would ordinarily exclude those people from benefit who have not paid or been credited with contributions for a minimum number of years in their working life.
- 7.5 Regulation 3 describes the formalities for a transfer application, the process for making such an application and the time limits that will apply. Paragraph (2) will allow the Secretary of State to treat a copy of the official's application to join PSEC as a transfer application.
- 7.6 Regulation 4 stipulates what action the Secretary of State must take on receipt of a transfer application and the time limits that will apply.

Paragraph (3) will allow an individual one month to check the accuracy of the information in the statement of entitlement.

- 7.7 Regulation 5 describes how a transfer value is to be calculated.
- 7.8 Regulation 6 describes what action is required by a transferor who wishes to proceed with the transfer process.
- 7.9 Regulation 7 stipulates what action the Secretary of State must take within set time limits, once he is satisfied that the transfer application is valid and the transfer value is accurate, in order to complete the transfer process.
- 7.10 Regulation 8 provides that no benefit entitlement will be gained from contributions or credits held on a person's National Insurance account for any period that had been transferred under these regulations. In addition, it provides that where a transferor returns to work in Great Britain, he will not re-qualify for starting credits which are awarded automatically to all young people for the tax year in which he reaches age 16 and the two succeeding years whether or not he was in Great Britain at the time. It also provides that where a person is using the contribution record of his former spouse to qualify for a pension, he may do so notwithstanding the fact that the former spouse subsequently applies to transfer his contribution rights to PSEC.
- 7.11 Regulation 9 will allow the Secretary of State to revise a transfer value without the need for a fresh application where further contributions have been added to a person's National Insurance account after funds have been transferred to PSEC. Paragraph (2) stipulates that the original transfer value and interest amount must first be offset.
- 7.12 Regulation 10 will allow interest to be included in the transfer value to take account of changes between the guarantee date and the expected payment date at a rate to be determined by the Secretary of State on the advice of the Government Actuary.
- 7.13 Regulation 11 will allow for the time limits in the regulations to be extended in certain circumstances, for example, where a person disputes PSEC's assessment of the added years his transfer value would purchase.
- 7.14 Regulation 12 ensures that transfer payments are to be made from out of the Department for Work and Pensions overall funding from the Consolidated Fund.

## **8. Regulatory and costs impact**

- 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. The Government Actuary's Department has estimated that if everyone eligible to transfer opted to transfer the initial cost of transfers for staff currently in service in Community institutions would be around £5.5 million. If around 40 employees a year were to seek transfers it would cost a total of around £300,000. The costs would increase following Royal Assent of the Pensions Bill currently before Parliament.

## **9. Contact**

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