

**EXPLANATORY MEMORANDUM TO
THE PENSIONS ACT 2008 (ABOLITION OF SAFEGUARDED RIGHTS)
(CONSEQUENTIAL) ORDER 2009**

2009 No. 598

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. **Purpose of the instrument**
 - 2.1 The Order will remove references in pensions secondary legislation to safeguarded rights. These rights arise when a member's rights in an occupational or personal pension scheme which is contracted-out of the state second pension are shared on divorce or dissolution of a civil partnership.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The Pensions Act 2008 ("the Act") abolishes safeguarded rights. In consequence, the Order removes references to safeguarded rights in various Statutory Instruments.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to Great Britain.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy Background**
 - *What is being done and why*
 - 7.1 When a divorcing couple or civil partners seek a financial settlement, the court must take into account the value of any pensions held by either party to the divorce or dissolution of a civil partnership. In order to achieve a fair settlement one of the options open to the court is to make a pension sharing order requiring a percentage of the value (or a lump sum in Scotland) of the pension scheme member's shareable pension rights to be transferred to the former spouse. The former

spouse's share is then discharged into a pension arrangement as a pension credit.

- 7.2 When the value of a divorced or dissolved civil partner scheme member's shareable pension rights includes contracted-out rights, the former spouse's share of those rights is known as "safeguarded rights". These rights are subject to a detailed regulatory regime. The regulatory regime did not guarantee the former spouse member a minimum amount of pension and served no useful purpose. Therefore the regulatory regime is being abolished. Removing the regulatory regime also removes an administrative burden from pension schemes.

Consolidation

- 7.3 Informal consolidation of the instrument will be included in due course in the Department's "The law relating to Social Security" (the Blue Volumes), which are available at no cost to the public on the internet at <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>

8. Consultation outcome

- 8.1 The Government consulted on the abolition of safeguarded rights as part of the Deregulatory Review of Private Pensions. The abolition of safeguarded rights was warmly welcomed. The Government's response to the consultation is at <http://www.dwp.gov.uk/pensionsreform/pdfs/Formal-response-to-the-consultation-December-2007.pdf>. The Act has abolished safeguarded rights.
- 8.2 There is no requirement to consult on this instrument. The provisions are entirely consequential to the provisions in the Pensions Act 2008.

9. Guidance

- 9.1 Pension schemes will be made aware of the change by an HMRC newsletter to all pension scheme administrators.

10. Impact

- 10.1 The impact on business, charities and voluntary bodies is beneficial but negligible.
- 10.2 The impact on the public sector is negligible.
- 10.3 An assessment of the impact of this order was included in the impact assessment that accompanied the Pensions Act 2008. The relevant extract is attached to this memorandum. It remains up to date.

11. Regulating small business

11.1 There is negligible impact on small business.

12. Monitoring and Review

12.1 No monitoring or review is required as a result of this instrument.

13. Contact

13.1 Dave Nicks at the Department for Work and Pensions (Tel: 020 7962 8828 or e-mail: dave.nicks@dwp.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Analysis & Evidence

Policy Option: Repeal safeguarded rights

Description: Repeal current requirements which relate to safeguarded rights

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off	Yr	
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 0		Total Cost (PV) £ 0
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Estimates are that there would be a small number of individuals affected by the change and therefore minimal savings for pension schemes
	One-off	Yr	
	£ 0		
	Average Annual Benefit		
	£ Negligible		Total Benefit (PV) £ Negligible
Other key non-monetised benefits by 'main affected groups' Administrators of pension schemes -they would not have to ensure that safeguarded rights are treated differently from pension credits rights. Individuals will have more flexibility when transferring their rights and when the pension credit comes into payment.			

Key Assumptions/Sensitivities/Risks

10,000 pension sharing orders per annum . 4,000-5,000 pension sharing orders per year affected by the change

Price Base Year 2007	Time Period Years 43	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	Great Britain			
On what date will the policy be implemented?	October 2008			
Which organisation(s) will enforce the policy?	HMRC			
What is the total annual cost of enforcement for these organisations?	£ Negligible			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ Negligible			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large

Are any of these organisations exempt?	No	No	N/A	N/A
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Impact on Admin Burdens Baseline (2005 Prices)				(Increase -
Increase	£ N/A	Decrease	£ N/A	Net
				£ N/A

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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