

**EXPLANATORY MEMORANDUM TO
THE AGE-RELATED PAYMENTS REGULATIONS 2013**

2013 No. 2980

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument makes provision for HM Treasury to make payments to persons who bought a with-profits annuity from the Equitable Life Assurance Society (Equitable Life) on or before 31 August 1992, and were alive and aged over 60 on 20 March 2013. These persons have not received the income they hoped for in their retirement, and are excluded from the main Equitable Life Payments Scheme (provided for in the Equitable Life (Payments) Act 2010) on the grounds that they did not suffer a loss as a result of government maladministration.

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

None.

4. Legislative Context

4.1 The Regulations are made under section 7(1), (1A), (2) and (3) of the Age-Related Payments Act 2004. This section provides for payments to be made to persons aged over 60. A transfer of functions order (the Transfer of Functions (Age-Related Payments) Order 2013 (S.I. 2013/ 1442)) has been made to enable regulations to be made under that Act by Her Majesty's Treasury (concurrently with the Secretary of State) for payments in a case where a with-profits annuity has been purchased (whether or not by the recipient of the payment) from the Equitable Life Assurance Society on or before 31st August 1992.

4.2 The Regulations make provision for HM Treasury to make a payment to qualifying persons who bought a with-profits annuity from Equitable Life on or before 31 August 1992 (qualifying Equitable Life annuitants). Qualifying persons are those who on 20 March 2013 were alive and at least 60 years of age and were eligible to receive an annuity payment from Prudential under a relevant with-profits annuity policy.

4.3 Regulation 2 provides for a qualifying Equitable Life annuitant to be entitled to a single payment of £5000 regardless of the number of relevant with-profits annuity policies (as defined in the regulations) under which he is eligible to receive an annuity payment.

4.4 If a qualifying Equitable Life annuitant is entitled to a payment of £5000 in respect of an individual with-profits annuity policy, and dies before a payment can be made, the payment will be made to his estate.

4.5 In the case of a joint with-profits annuity policy, only the person who is in receipt of an annuity payment under the policy at the time a payment is to be made is eligible to the payment. “In receipt” will be treated as including those joint annuitants who are eligible to be but not yet actually in receipt of a relevant annuity payment from Prudential, where the other joint annuitant dies whilst a payment under these regulations is being administered. This does not entitle both joint annuitants to a payment of £5000 – only one of the joint annuitants receives a payment. As specified above at 4.3, a qualifying annuitant will receive only one payment regardless of the number of relevant with-profits annuity policies (as defined in the regulations) under which he is eligible to receive an annuity payment. This covers both individual and joint with-profits annuity policies. If a qualifying Equitable Life annuitant is entitled to a payment of £5000 in respect of a joint with-profits annuity policy, and dies before a payment can be made, the payment will be made to the estate if all the other persons eligible to receive a financial benefit under the contract have died.

4.6 Regulation 3 provides for a qualifying Equitable Life annuitant to be entitled to a further payment of £5000 if he or she is in receipt of state pension credit (as defined in the regulations) on 1st November 2013. A qualifying Equitable Life annuitant is only entitled to one further payment, regardless of the number of relevant with-profits annuity policies under which he or she is entitled to receive a payment. In the case of a joint with-profits annuity policy, only the qualifying Equitable Life annuitant who is in receipt of an annuity payment under the policy at the time the payment is to be made is eligible to that payment. If a qualifying Equitable Life annuitant dies before a further payment of £5000 is made, his or her estate will not be eligible to receive the payment as entitlement to this further payment ceases upon death.

4.7 Regulation 4 sets out the procedure for making and applying for a payment. It provides that these payments will be made without the need for a qualifying person to make an application for a payment, and that the Treasury must make a payment once it is satisfied of a qualifying person’s entitlement to it. However, in certain cases, entitlement is subject to the requirement to make an application for the payment. Under regulation 2(6), a personal representative of a person entitled to a payment must make an application for such a payment. Where possible, an application under this regulation will be initiated by the Treasury using policyholder information supplied by the Prudential. Under regulation 3(7) a person who is in receipt of a “similar benefit” from another EEA State or Switzerland must make an application for payment.

4.8 Regulation 4(2) provides that a person entitled to a payment of £5000 may make an application for payment if they do not receive a payment they are entitled to by April 2014. Regulation 4(3) provides that a person entitled to a further payment of £5000 by virtue of being in receipt of state pension credit may make an application if they do not receive that payment by 5 April 2014.

4.9 Regulation 5 provides that provides that payments made under these Regulations are to be tax-free in the hands of recipients and do not affect eligibility for state funded means-tested support.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.¹

¹ Under the regulations payments can be made to eligible recipients in Northern Ireland and elsewhere overseas.

6. European Convention on Human Rights

The Economic Secretary to the Treasury has made the following statement regarding Human Rights: “In my view the provisions of the Age-Related Payments Regulations 2013 are compatible with the Convention Rights”.

7. Policy background

7.1 The Equitable Life is a mutual insurance company owned by its policyholder members. From the 1950s until 1988 Equitable Life sold significant volumes of policies that included a guaranteed annuity rate. In the 1990s interest rates and inflation made it more expensive for Equitable Life to pay out on guaranteed annuity rate policies. In order to try and manage these costs, it implemented a policy of offering differential terminal bonus rates. However, in July 2000 the House of Lords determined that this policy was unlawful. Equitable Life ran into financial difficulties when it was unable to meet £1.5 billion in liabilities which the court’s decision established that it owed. Unable to find a buyer to secure a fresh injection of capital, Equitable Life announced its closure to new business on 8 December 2000.

7.2 In July 2008, the Parliamentary Ombudsman published a report, “Equitable Life: a decade of regulatory failure”. The report said that there was evidence of “serial regulatory failure” on the part of the Government in relation to its regulation of Equitable Life in the period before 31 December 2001 and recommended the Government set up a compensation scheme.

7.3 On 11 May 2010 the Coalition Government published its Coalition Agreement which contained a pledge to “implement the Parliamentary and Health Ombudsman’s recommendation to make fair and transparent payments to Equitable Life policy holders, through an independent payment scheme, for their relative loss as a consequence of regulatory failure.”

7.4 The Government concluded that the relative losses suffered by policyholders who invested from September 1992 onwards and who should receive payments, amounted to £4.3 billion. However, in light of the Parliamentary Ombudsman’s recommendation that it “is appropriate to consider the potential impact on the public purse of any payment of compensation”, the Government decided that £1.5 billion should be made available for the payments scheme. The Government subsequently passed the Equitable Life (Payments) Act 2010 to establish the Equitable Life Payments Scheme.

7.5 With-profits annuitants who bought their annuity policies from Equitable Life before 1 September 1992 were excluded from the Scheme. The Government remains of the view that there is no basis for their inclusion in the Scheme on the grounds that they did not suffer loss as a result of government maladministration in the regulation of Equitable Life. However, in the Budget 2013, the Chancellor recognised the particular financial pressures this particular group are under, and announced a package of payments to be made to such policyholders.

7.6 The Government will make payments to persons who bought a with-profits annuity from the Equitable Life Assurance Society (Equitable Life) on or before 31 August 1992, and were alive and aged over 60 on 20 March 2013. An additional £5000 will be available to policyholders who meet the above criteria and are also in receipt of state pension credit

or an equivalent benefit. The payments will be made in this financial year (2013-14), or earlier if possible, and will be separate from the main Equitable Life Payment Scheme.

Consolidation

7.7 None.

8. Consultation outcome

The Budget 2013 announcement was made in response to ongoing representations the Government has received arguing that a specific group of elderly policyholders who bought their with-profits annuity policies from Equitable Life on or before 31 August 1992 should be included within the wider Equitable Life Payment Scheme (see point 7.5).

9. Guidance

The Treasury does not propose to issue guidance on the Regulations. The Prudential Assurance Society (the Prudential), which currently makes annuity payments to these annuitants, has been appointed by the Government to make the payments. The Prudential has used the policyholder information it already holds to contact those eligible for a payment. This was to provide these individuals with information about the payments in advance of them being made.

In addition, periodic updates will continue to be provided on the Treasury website.

10. Impact

10.1 There is no impact on business or civil society organisations.

10.2 There are no significant costs to the public sector.

10.3 An Impact Assessment has not been prepared. This is because this policy decision only concerns making one off payments to a small and specific group of individuals as soon as possible. Furthermore these payments are to be made free from any effect upon tax and social security benefits. Therefore the only definitive impact of this policy is a positive financial one for those targeted by it.

11. Regulating small business

This instrument does not apply to small business, or impose any additional regulatory requirements on them.

12. Monitoring & review

HM Treasury will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

Queries regarding this statutory instrument should be directed to Paul Marsh at HM Treasury, tel: 020 7270 5809 or email: paul.marsh@hmtreasury.gsi.gov.uk