

## **EXPLANATORY MEMORANDUM**

### **THE SOCIAL SECURITY BENEFIT (PERSONS ABROAD) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010 S.R. 2010 No. 110**

#### **1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under the powers conferred by sections 113(1)(a) and 171(1) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1 The Regulations amend the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978 (“the Persons Abroad Regulations”) to make provision to fix the rate at which a Category B pension will be paid, in circumstances where no Category A pension has been claimed by the contributing spouse or civil partner; and the person and their spouse or civil partner live abroad in a country where the annual uprating of the State Pension does not apply. They also extend existing provisions to married men and civil partners and update a number of legislative references.
- 2.2 Regulation 1 provides for citation and commencement of the Regulations. It provides that the Regulations come into operation on 6 April 2010.
- 2.3 Regulation 2 updates a number of legislative references in the Persons Abroad Regulations.
- 2.4 Paragraph (2) amends regulation 1 of the Persons Abroad Regulations to insert a definition of “the other party”. The definition is relevant to the amendment of regulation 5(3) of those Regulations.
- 2.5 Paragraph (3) amends regulation 4 to replace references to provisions of the Social Security (Northern Ireland) Act 1975 and the Social Security Pensions (Northern Ireland) Order 1975 with references to provisions in the Social Security Contributions and Benefits (Northern Ireland) Act 1992. It also replaces a reference to the Social Security (Maximum Additional Component) Regulations (Northern Ireland) 1979 with a reference to the Social Security (Maximum Additional Pension) Regulations (Northern Ireland) 2010 (SR 2010 No. 62).
- 2.6 Paragraph (4)(a) amends regulation 5(1) to update references to the uprating provisions in the Social Security (Northern Ireland) Order 1986 with

references to provisions in the Social Security Administration (Northern Ireland) Act 1992.

- 2.7 Paragraph (4)(b)(i) and (ii) amends regulation 5(3)(a) and (aa) of the Persons Abroad Regulations to extend those provisions to married men and civil partners. Paragraph 4(b)(iii) inserts a new sub-paragraph (ba) into regulation 5(3) to provide that, in cases other than those where sub-paragraphs (a) to (b) apply, a person entitled to a Category B retirement pension does not receive any additional benefit payable by virtue of an up-rating order if that person and their spouse or civil partner were not ordinarily resident in Northern Ireland immediately before the up-rating order came into operation.

### **3. Background**

- 3.1 A married woman who has limited or no entitlement to State Pension due to a deficient contribution record may be entitled to a Category B pension based on her husband's contribution record. Changes introduced by the Pensions (Northern Ireland) Order 1995 and the Civil Partnership Act 2004 extend Category B pension rights to married men and civil partners from April 2010.
- 3.2 Currently the award of a Category B pension to a married woman is dependent on her husband claiming his Category A pension. The Pensions Act (Northern Ireland) 2008 removes this requirement from April 2010. The Regulations complete the legislative requirements necessary to permit this easement.
- 3.3 The rate of State Pension is reviewed annually and uprated at least in line with the movement in prices. This ensures that the State Pension maintains its value and is primarily intended to benefit pensioners living in Britain and Northern Ireland. State Pension is also uprated in respect of people living in:
- an EEA country or Switzerland;
  - a country with which a reciprocal social security agreement covering uprating exists.
- 3.4 The Persons Abroad Regulations provide that the annual uprating of the State Pension does not apply to persons living in certain countries, the circumstances in which the annual uprating is not to be applied and the point at which the rate of a Category B pension is to be fixed.
- 3.5 At present, because a Category B pension can be awarded only after entitlement to the husband's Category A pension has been decided, in circumstances where a person is living abroad and is not entitled to up-ratings, its rate is fixed in direct relation to the date of the Category A pension award.

- 3.6 From April 2010 this will no longer be possible in all cases as a Category B pension may be awarded before the contributor spouse or civil partner is awarded their Category A pension. In such cases, it is proposed to use the date from which the Category B pension is awarded to fix the rate at which it will be paid.

#### **4. Consultation**

As the Regulations make, in relation to Northern Ireland, only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain they do not have to be submitted to the Social Security Advisory Committee.

#### **5. Equality Impact**

The proposed Regulations are consequential on the Pensions Act (Northern Ireland) 2008 which was the subject of a full Equality Impact Assessment published in October 2007. The change places recipients of Category B pensions in the same position as recipients of Category A pensions who are affected by the uprating rules for persons living abroad.

#### **6. Regulatory Impact**

These Regulations do not require a Regulatory Impact Assessment as they do not impose any new costs on business, charities, social enterprise or voluntary bodies.

#### **7. Financial Implications**

Additional benefit costs for Northern Ireland will arise through future contributory benefit and State Pension entitlements. These will be met from the Annually Managed Expenditure budget.

#### **8. Section 24 of the Northern Ireland Act 1998**

The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule is not incompatible with any of the Convention rights, is not incompatible with Community law, does not discriminate against a person or class of person on the ground of religious belief or political opinion, and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

#### **9. EU Implications**

Not applicable.

#### **10. Parity or Replicatory Measure**

The corresponding Great Britain Regulations are the Social Security Benefit (Persons Abroad) (Amendment) Regulations 2010 which come

into force on 6th April 2010. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.