

**EXPLANATORY MEMORANDUM TO  
THE TRANSFER OF STATE PENSIONS AND BENEFITS (AMENDMENT)  
REGULATIONS 2010**

**2010 No. 1825**

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 instrument amends the Transfer of State Pensions and Benefits Regulations 2007 (S.I. 2007/1398) (“The Transfer Regulations”) to amend the contributory benefit rights, built up through paying or crediting National Insurance contributions, that can be transferred to the Pension Scheme of the European Union (PSEU).

2.2 These amendments bring rights that may be transferred out under the Transfer Regulations into line with the rights which may be transferred in under the PSEU, as provided by Council Regulation (EEC, Euratom, ECSC) No. 259/68 laying down staff regulations of officials and the conditions of employment of other servants of the European Union (“the Council Regulation”).

2.3 The amendments provide that no rights may be transferred which represent the period during which a person is in active employment as an official of the European Union, other than periods of:

- secondment by the relevant EU institution; or
- during periods of personal leave sanctioned by that institution.

2.4 The instrument also modernises references and terminology to correspond with changes introduced by the Lisbon Treaty and to provide ambulatory cross references to definitions in the Council Regulation.

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

3.1 None

**4. Legislative Context**

4.1 A person employed by an EU institution is, under the Council Regulation, entitled to transfer the cash equivalent value of the contributions and credits held on their National Insurance account that would provide rights to UK contributory State benefits to PSEU. The Transfer Regulations establish the underpinning administrative procedures in domestic legislation required to cater for such transfers.

4.2 The transfer provisions in the Council Regulation are designed to ensure parity of treatment between people employed in EU institutions and those employed within EU Member States. Persons employed within EU Member States are covered by Council Regulation (EC) No 883/04 of 29 April 2004 on the coordination of social security systems, which replaced Council Regulation (EC) No 1408/71 for the majority of Member States from 1 May 2010.

4.3 The Secretary of State has exercised the power in paragraph 1A of Schedule 2 to the European Communities Act 1972 to amend the Transfer Regulations to provide that references to an Article of, or an Annex to, the Council Regulation are references to that Article or Annex as amended from time to time (regulations 3(4) of these Regulations). It appears to the Secretary of State that it is expedient that this be the case because:

- the Council Regulation is frequently amended: it was amended 96 times between its adoption and the last consolidation in 2004; it is preferable that these amendments have an automatic effect on the Transfer Regulations rather than the Transfer Regulations be updated every time there is an amendment;
- the Transfer Regulations do not implement the Council Regulation, but provide the machinery by which the UK can comply with the Council Regulation;
- the Council Regulation and the Transfer Regulations have effect in respect of persons taking up active employment with an EU institution and desiring to transfer accrued pension rights; the target group is therefore not extensive relative to persons with UK pensions rights generally;
- on joining the EU institution, persons will become subject to (and aware of) the Council Regulation and will not be prejudiced by ambulatory references in the Transfer Regulations.

## **5. Territorial Extent and Application**

5.1 This instrument applies to the United Kingdom.

## **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**

- *What is being done and why*

7.1 The Transfer Regulations provide the administrative procedures necessary to enable a person employed by an EU institution to apply to have their contributory benefit rights valued and transferred. However, the Transfer Regulations allow all tax years held on a person's National Insurance account that would provide rights to contributory State benefits to be included in the cash equivalent transfer valuation. Typically, this would mean that all tax years from the date the person entered the National Insurance scheme to the date on which the transfer application was received would be included in the valuation. This approach conflicts with provisions in Articles 11(2) and (3) of the Council Regulation that are intended to prevent the transfer of rights for periods for which the person is already covered under PSEU.

7.2 The changes provided by the instrument seek to more closely reflect the provisions in the Council Regulation and therefore avoid such duplication of cover. They confine the contributory State benefit rights a person is able to transfer to tax years before they started work with the EU institution or those for which rights were built up during a period of leave on personal grounds or secondment that had been sanctioned by the institution. The practical effect is to exclude the value of any contributory benefit rights held on a person's National Insurance record resulting from contributions or credits built up outside of these periods. These rights would remain in the UK State scheme and give rise to State Pension entitlement at State Pension age, subject to the entitlement conditions.

7.3 The instrument also modernises references to take account of changes in terminology made by the Lisbon Treaty and changes a number of definitions to ensure consistency with their use in the Council Regulation.

7.4 Since June 2007 - when the Transfer Regulations were introduced the Department has received just over 900 transfer applications and of these more than 300 transfer payments have been made. The overall cash equivalent transfer valuation in the 2009/10 financial year was over £2.4 million amounting to an average transfer value of around £25,800 per case. In any given financial year around 5 per cent. of the caseload will have contributions and/or credits on the National Insurance account which will remain within the UK State scheme.

7.5 We do not hold information on the number of people eligible to apply to the UK for a transfer valuation.

- ***Consolidation***

7.6 As the instrument being amended was made relatively recently there are no immediate plans to consolidate the legislation. An informal consolidated text will be available to the public free of charge via "The Law Relating to Social Security" (Blue Volumes), on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

## **8. Consultation outcome**

8.1 The Department has consulted with PSEU representatives on an informal basis who have agreed that the measures covered by this instrument restore the policy intent. No formal public consultation was considered necessary as there is no significant policy change. The instrument is intended to provide an administrative translation of EU policy into domestic legislation therefore there is no scope to change the instrument as a result of consultation.

## **9. Guidance**

9.1 The Department will update existing guidance and literature to reflect the changes made by this instrument. Applications are currently being assessed in line with the revised interpretation of the rules. Updated guidance will be produced for

inclusion on the website of the UK Permanent Representative to the EU, an operational arm of the Foreign and Commonwealth Office. Guidance will not be made available to the general public as the provisions are only of relevance to members of PSEU.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The effect of these changes will be monitored through analysis of administrative data. The Department for Work and Pensions will use existing procedures to examine a proportion of transfer applications to ensure the revised rules have been understood and are being applied consistently.

## **13. Contact**

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