

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CREDITS) (AMENDMENT)
REGULATIONS 2010

2010 No. 385

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 primary purpose of this instrument is to insert a new regulation into the Social Security (Credits) Regulations 1975 (S.I. 1975/556) to provide for National Insurance contributions credits for the accompanying spouse or civil partner of a member of Her Majesty's forces who is on an assignment outside the United Kingdom.
 - 2.2 It also makes minor amendments to the Social Security (Credits) Regulations 1975 to include:
 - a time limit for applications for credits for limited capability for work; and
 - provision for credits for a mixed week of Employment and Support Allowance and Statutory Sick Pay.
 - 2.3 It also amends the Social Security (Contributions Credits for Parents and Carers) Regulations 2010 (S.I. 2010/19), to re-instate those persons receiving Income Support who should not have been excluded from the need to make an application for credits.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.
4. **Legislative Context**
 - 4.1 In July 2008, the Government published the Command Paper (Cm 7424) *"The Nation's Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans"*¹ which set out a Government-wide commitment to end any disadvantage that armed service causes for members of Her Majesty's forces and their families.

¹ <http://www.mod.uk/NR/rdonlyres/415BB952-6850-45D0-B82D-C221CD0F6252/0/Cm7424.pdf>

4.2 The DWP has agreed to introduce a new Class 1 National Insurance credit for spouses and civil partners who have accompanied members of Her Majesty's forces on an assignment outside the UK, as part of its contribution to the Command Paper commitment. The credit will help ensure that these spouses and civil partners are not disadvantaged when it comes to claiming contributory UK social security benefits.

4.3 In certain circumstances, people may get credits on their National Insurance record. This means they do not actually pay National Insurance contributions, but are credited with them. Currently, people will get these credits added to their National Insurance record if they satisfy certain conditions, for example, if they were:

- incapable of work through illness or disability;
- unemployed and available for, and actively seeking, work; on an approved training course;
- doing jury service;
- serving a prison sentence for a conviction which was subsequently quashed;
- getting Jobseeker's Allowance;
- getting Incapacity Benefit or Employment and Support Allowance.

4.4 Regulation 2(3) inserts a new regulation into the Social Security (Credits) Regulations 1975 to provide for credits of National Insurance contributions to the accompanying spouse or civil partner of a member of Her Majesty's forces who is on an assignment outside the United Kingdom.

4.5 The following Statutory Instruments are associated with these regulations:

- The Social Security (Credits) Regulations 1975 (S.I. 1975/556); and
- The Social Security (Contributions Credits for Parents and Carers) Regulations 2010 (S.I. 2010/19).

5. Territorial Extent and Application

This instrument applies to Great Britain. Separate but corresponding provision will be made for 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

What is being done and why

7.1 The Government has given a commitment to introduce Class 1 National Insurance credits for spouses and civil partners of members of Her Majesty's forces where the spouse or civil partner is on an accompanied assignment outside the UK and the spouse or civil partner is unable to

maintain their National Insurance contribution record for state benefit purposes. This will help protect their eligibility to a State Pension and to contribution-based benefits such as Jobseeker's Allowance and Employment and Support Allowance.

- 7.2 The spouse or civil partner will need to apply for the credit when each accompanied assignment outside the UK ends. An official, working for or on behalf of the Defence Council, such as a families or welfare officer, will validate the application. Validated applications will be submitted to Her Majesty's Revenue & Customs (HMRC) to check the National Insurance details and record the credit on the customer's National Insurance record by updating the National Insurance and PAYE Service (NPS).
- 7.3 The credit will be recorded on the NPS in respect of the period during which the spouse or civil partner was accompanying the member of Her Majesty's forces on an assignment outside the UK. Separate applications should be made at the end of each accompanied assignment outside the UK.
- 7.4 Where there is a need for an application to be made part way through an assignment, if, for example, a person needs the new credit to get sickness benefits, provision has been made to allow an application from the spouse or civil partner of a member of Her Majesty's forces on an accompanied assignment outside the UK, for a past period to the current date, even if the assignment continues. A subsequent application can be made at the end of the assignment adjoining the date of the interim application to ensure the customer does not miss out.
- 7.5 An application will be "late" if it is received after the end of the tax year following the tax year in which the end date of the assignment falls. The legislation provides discretion as to the time in which the applications can be made.
- 7.6 If a member of Her Majesty's forces or their spouse or civil partner has to return to the UK on a temporary basis, then entitlement to the credit will still exist. For example, a spouse, civil partner or member of Her Majesty's forces may go into hospital in the UK but the other spouse or civil partner remains outside the UK; entitlement to the credit will continue.
- 7.7 Entitlement to the credit also continues where a member of Her Majesty's forces and their spouse or civil partner are on an accompanied assignment outside the UK (in Germany for example) and the member of Her Majesty's forces is then required to go to another country on an operational assignment, but their spouse or civil partner remains in Germany.
- 7.8 There are no nationality or citizenship requirements. Nationality or citizenship of the member of Her Majesty's forces does not determine entitlement to the credit, neither is nationality or citizenship of the spouse or civil partner relevant.

7.9 Currently, there are around 15,000 married members of the regular or reserved forces based outside the UK.

7.10 There are currently no plans to consolidate the regulations amended by this instrument. Informal consolidation of this instrument will be provided in due course by way of "The Law Relating to Social Security" (Blue Volumes) which is available online on the DWP website free of charge to the public at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

8. Consultation outcome

8.1 In July 2008, responding to the needs of the service community, the Government published the Command Paper (Cm 7424) "*The Nation's Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans*" which set out a government-wide commitment to end any disadvantage that armed service causes for members of the regular or reserve forces and their families.

8.2 The Command Paper states:

- "Service life overseas can impact on accompanying families in two ways. First, it may reduce the ability of spouses and civil partners to obtain paid employment and maintain a National Insurance contribution record – this may adversely affect their contribution record for basic State Pension as well as their access to contribution-based working-age benefits. Second, families may not always be treated as if they were in the UK when assessing eligibility to certain entitlements. We will tackle both these areas of disadvantage."
- "The Department for Work and Pensions has accepted that accompanying spouses or civil partners of Service personnel posted overseas may, in some locations, have difficulty obtaining employment and thus maintaining their NI contribution record. Although the details are subject to further work between DWP, MOD and HM Revenue and Customs, DWP Ministers have agreed to consider awarding Class 1 National Insurance Credits in these circumstances. This will protect the eligibility of Service spouses and civil partners to a basic State Pension and contribution-based working-age benefits, provided other relevant criteria are met."

8.3 In July 2009, the Ministry of Defence (MoD) issued a further Consultation Paper: "*The Nation's Commitment to the Armed Forces Community: Consistent and Enduring Support*"². It set out the Government's initial thinking on how it might secure consistent and enduring support for Her Majesty's Forces community, with broad and wide-ranging ideas to be explored through public consultation.

² <http://www.official-documents.gov.uk/document/cm76/7674/7674.pdf>

8.4 In Chapter 2: “Consistent and Enduring Support”, in the section under the heading “Legal Duty on Public Bodies”, consultation question 6 asked, “Should such a duty relate to Service personnel, families and veterans? Is there anyone else who should be included?”

8.5 Of the responses to the first question, 20 said “Yes”, with two saying “No”. With regard to the second question, five said “Yes” and 12 said “No”. This shows that the service community support the introduction of the changes proposed in the Command Paper.

8.6 The MoD asked its external reference group to monitor delivery, and to report annually on the content of the Command Paper. The first annual report was submitted in November 2009³.

8.7 The draft Regulations were presented to the Social Security Advisory Committee in December 2009 and it was concluded that no further consultation was necessary.

9. Guidance

9.1 The Department will raise awareness of the new credits for spouses and civil partners of members of Her Majesty’s forces in a number of ways:

- drafting a customer factsheet; and
- providing advice to go into the packs given to members of Her Majesty’s forces when an assignment outside the UK is about to end.

9.2 Information, including the application form for the credits, will be made available online via, the DWP and MoD websites.

9.3 The Department is also liaising with Service forces’ community publications with the intention of getting articles about the credit published.

9.4 Publicising the new credit and the wider state reforms, will ensure that individuals take any necessary immediate action to protect or enhance entitlement to contributory state benefits and the state pension.

10. Impact

10.1 There is no impact on business, charities and voluntary bodies.

10.2 The impact on the public sector is negligible.

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

³ http://www.mod.uk/NR/rdonlyres/BBAC5D78-7183-403F-B45E-8259C27B5932/0/TheNationsCommitmentAnnualReport_2009.pdf

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The DWP will continue to monitor:

- state pension and contributory benefit awards and accrual;
- the level and distribution of pensioners' and benefit recipients' total incomes; and
- the level of understanding of the state pension and contributory benefits systems

through analysis of administrative data, surveys and other sources.

12.2 The DWP will continue to report on progress against its public service agreements in its annual and departmental reports.

12.3 The DWP Secretary of State will produce a report on the operation of the provisions of the Pensions Act 2007 in 2014 or earlier and will include this subsequent provision.

12.4 Similar arrangements will apply following the changes to benefits that have been introduced recently in the Welfare Reform Act 2009.

13. Contact

Paul Lapraik at the Department for Work and Pensions, Tel: 020 7449 7148 or e-mail: paul.lapraik@dwp.gsi.gov.uk, can answer any queries regarding the instrument.