

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY BENEFIT (PERSONS ABROAD) (AMENDMENT)**  
**REGULATIONS**

**2010 No. 788**

**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 This instrument is required in order to complete the legislative requirements which will enable a Category B state pension to be claimed independently by a spouse or civil partner. The proposed change will apply only to state pension recipients who are subject to the rules that limit the application of the annual uprating of benefits.

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

3.1 None

**4. Legislative Context**

4.1 Section 48A (category B retirement pensions for married persons or civil partners) of the Social Security Contributions and Benefits Act 1992 was amended by Part 1 of the Pensions Act 2007 and the Civil Partnership Act 2004. The effect of those amendments were to enable, from 6 April 2010, married people or civil partners to make independent choices about when to claim a pension based on the National Insurance contribution record of their spouse or civil partner.

4.2 These regulations make consequential amendments to the Social Security Benefit (Persons Abroad) Regulations 1975 (the 1975 Regulations) so that the changes above are properly applied in respect of persons living abroad. These Regulations also make provision in relation to uprating of those pensions now claimed independently.

4.3 The opportunity has been taken to update with the correct references cross references in the 1975 Regulations to legislation that has been repealed, revoked or re-enacted.

**5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

5.2 Equivalent provision will be made for Northern Ireland by statutory rules.

**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 set out their aims for pensions reform in the May 2006 White Paper “*Security in retirement: towards a new pensions system*” (Cm 6841).<sup>1</sup> The changes enacted by the Pensions Act 2007 are intended to make the state pension fairer, simpler and more generous, so that it can provide a solid foundation on which people can save for their retirement. This instrument makes consequential amendments relating to the 2007 Act changes outlined at paragraph 4.1.

7.2 A married woman whose National Insurance record is deficient can receive a state pension of up to £57.05 (April 2009 rates) based on her husband’s contributions. Currently, her entitlement to such a pension is conditional on her husband having been awarded state pension. The Pensions Act 2007 removes this condition so that, provided he has reached state pension age and has a sufficient record of National Insurance contributions, his wife will be able to make an independent claim for a retirement pension based on his record, even if he has chosen to defer his own retirement pension. This change takes effect from 6 April 2010 for both new and existing awards of retirement pension. It will also apply to married men and civil partners, who, under provisions introduced by the Pensions Act 1995 and the Civil Partnership Act 2004 respectively, will be able to get a retirement pension based on a wife’s or civil partner’s record of National Insurance contributions provided the wife or civil partner was born on or after 6 April 1950 and has reached state pension age. As a consequence, if a husband decides to defer his retirement pension it no longer means that his wife must wait before she can take her retirement pension based on his record.

7.3 At present a woman may only be awarded a state pension based on her husband’s record after her husband has been awarded his state pension. The rate of her state pension is fixed in direct relation to the date of the award of his state pension. Under current law, the Secretary of State has to review the rate of UK retirement pensions in payment and uprate them by the movement in prices. This yearly exercise is primarily intended to benefit pensioners living in the UK. The Government also needs to uprate the UK retirement pensions paid to recipients living outside the UK in an EEA country and Switzerland or a country with which the UK has a reciprocal social security agreement that allows the uprating to be paid. All other UK retirement pension recipients living outside the UK are excluded.

7.4 From 6 April 2010 it will no longer be possible in every case, to use a husband’s state pension to fix the rate of his wife’s pension - it will be possible for her to claim her pension before his pension has been awarded. The amendment to the 1975 Regulations will enable DWP to use the date on which the spouse or civil partner claims their pension to fix the rate at which it will be paid. This will apply where no state pension has been claimed by the contributor.

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<sup>1</sup> The White Paper can be accessed at: <http://www.dwp.gov.uk/policy/pensions-reform/security-in-retirement/>

- **Consolidation**

7.5 There are no immediate plans to consolidate the regulations as amended by this instrument. Informal consolidation will be provided by way of “The Law Relating to Social Security” (Blue Volumes), available on line 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 The principle of decoupling the claims for state pensions was originally consulted upon and established through the formal consultation on pensions reform which ran from 25 May 2006 to 11 September 2006. The consultation, on the White Paper *Security in Retirement: towards a new pensions system*, resulted in 350 responses, and Ministers and DWP officials engaged with stakeholders and members of the public in a range of other ways to widen the debate and increase people’s understanding of the issues. Respondents focussed on the proposals for state pensions, personal accounts, private pensions and extending working lives. After its publication, agreement on the broad direction of travel and the core principles of the package was given by most parties. There were some differences of opinion on the detail of the policy, but there was nonetheless a broad consensus on the ultimate outcomes that must be realised. There was widespread welcome for the package of reforms that the White Paper proposed. The changes to the arrangements for claims from married couples and civil partners formed part of that consultation and of the Pensions Bill that followed.

8.2 Having established the principle of decoupling these consequential changes are needed to fully deliver the change. These amendment regulations represent no shift in policy.

8.3 If no amendment was made to the regulations, some customers would be waiting, with their claim for state pension undetermined until their spouse or civil partner claims his or her own pension. This would not be consistent with the policy intention which has already been consulted on, namely that people should be able to claim a state pension independently of their spouse or civil partner.

8.4 The Social Security and Advisory Committee considered the Regulations on 3 February and 5 March and decided that it would not be necessary for the Committee to consider the Regulations formally.

8.5 For these reasons, it is considered that no further consultation is necessary.

## **9. Guidance**

9.1 The legislation forms a small part of the overall pension reforms. The Department has adopted a two-phased strategy for communicating the changes relating to pension reform and equalisation. In the short term, activity has focused on ensuring that information available to customers in the Department’s leaflets and on its website accurately reflects the forthcoming changes. The longer term communication strategy focuses more on developing messages specifically targeted at

individual audience groups which, as a result of the changes, will need to take a particular course of action. This activity is supported by information for benefits and pension advisers available on the DWP website.

**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, which form part of the overall state pension reform and equalisation changes, will be monitored through analysis of administrative data, surveys and other sources.

**13. Contact**

Teresa Cox at the Department for Work and Pensions Tel: 0207 449 7146 or email: [Teresa.Cox@dwp.gsi.gov.uk](mailto:Teresa.Cox@dwp.gsi.gov.uk) can answer any queries regarding the instrument.