

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (CLAIMS AND PAYMENTS) AMENDMENT**  
**REGULATIONS 2008**

**2008 No. 441**

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. **Description**

This instrument makes amendments to the Social Security (Claims and Payments) Regulations 1987. In particular it;

- introduces a new category of case whereby the Department is able to make an award of benefit without first requiring a claim; and
- clarifies the wording of an existing category of case which has been identified as being defective.

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

None

4. **Legislative Background**

4.1 Section 1(1) of the Social Security Administration Act 1992 provides in summary that no person shall be entitled to any benefit unless, in addition to satisfying other conditions of entitlement, he claims it within the prescribed time and in the prescribed manner. That provision does however provide for prescribed exceptions to be made to that fundamental rule.

4.2 Those prescribed exceptions where a claim is not required as a condition of entitlement to benefit are set out in regulation 3 of the Claims and Payments Regulations. With each particular exception the Department can afford to make what might be called an “automatic” award without the prior requirement of a claim, because it already possesses sufficient information to do so.

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

- 5.1 This instrument applies to Great Britain. 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**

- 7.1 Regulation 2 substitutes a new paragraph for the existing paragraph in regulation 3 of the Claims and Payments Regulations. The existing paragraph provides that a claim is not required for a Category B retirement pension where the beneficiary is already entitled to a Category A retirement pension or to a graduated retirement benefit and then marries or enters into a civil partnership. The amended version carries forward this exception to the general rule that a claim is required, with the added proviso that the spouse or civil partner in question must themselves be entitled to a Category A retirement pension. It is felt necessary to make this amendment because, without the spouse or civil partner being entitled to a Category A retirement pension, there can be no entitlement to a Category B retirement pension on the part of the spouse, regardless of whether or not a claim is made for it. The change is therefore designed to clarify the wording of the legislation although entitlement to the benefit itself is unaffected.
- 7.2 Regulation 2 also introduces a new category of case involving awards of Category B retirement pension. It again affects those who are already entitled to a Category A retirement pension or to a graduated retirement benefit. The new provision is that where the beneficiary has a spouse or civil partner who becomes entitled to a Category A retirement pension in his or her own right, the beneficiary will not need to make a separate claim for Category B retirement pension. If the Category B retirement pension exceeds the Category A retirement pension already being received, the DWP will pay the additional amount automatically.

## Consultation

- 7.3 These regulations have not been referred to the Social Security Advisory Committee because the Committee has agreed, in accordance with section 173(1)(b) of the Social Security Administration Act 1992, that they should not be so referred.

## Consolidation and Guidance

- 7.4 Informal consolidation of this instrument will be included in due course in the Department's "the law relating to Social Security" (the Blue Volumes) which are available at no cost to the public on the internet at:  
<http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>

It is also the Department's intention to consolidate the Claims and Payments Regulations after the changes consequential upon the introduction of Employment and Support Allowance have been made.

## **8. Impact**

- 8.1 A full impact assessment has not been published for this instrument as it has no impact on the private or voluntary sectors.
- 8.2 The regulations impose no new administrative costs on the public sector.

## **9. Contact**

Paul Mackrell at the Department for Work and Pensions can answer any queries regarding this instrument. He can be contacted on tel: 020 7962 8021 or by e-mail to: [paul.mackrell@dwp.gsi.gov.uk](mailto:paul.mackrell@dwp.gsi.gov.uk)