

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (EXEMPTION FROM CLAIMING RETIREMENT
PENSION) REGULATIONS 2010**

2010 No. 1794

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

This instrument will enable customers approaching pensionable age (“State Pension age”) who are in receipt of certain DWP benefits, to be awarded State Pension without having to make a claim.

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

None.

4. Legislative Context

4.1 While entitlement to a DWP benefit usually depends on a person making a claim to that benefit, the Social Security Administration Act enables regulations to be made to provide exceptions to this requirement. For example, Winter Fuel Payments can be made without a claim being made.

4.2 In some cases, where the person is already receiving DWP benefits, we have enough information to calculate a State Pension award accurately. However, the current legislation requires the customer to make a claim in all circumstances.

4.3 Introducing this proposed legislation will mean a significant proportion of customers on DWP benefits, for whom we hold the personal details and National Insurance contributions information we need to calculate the State Pension award, will be awarded it automatically, without having to make a claim.

5. Territorial Extent and Application

This instrument applies to Great Britain. Northern Ireland is currently considering the business case for adopting these processes.

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 Each year, around 175,000 people receiving DWP benefits go on to claim State Pension. To do this they currently have to make contact with the Department and provide all their details afresh when they make that claim. This is inefficient for the Department and frustrating for the customer. Under these proposals, most of these customers will be able to receive their State Pension without having to provide any information or make a claim.
- 7.2 All customers on DWP benefits approaching State Pension age will receive new, tailored letters informing them that the Department will contact them about their State Pension entitlement and that they do not need to contact us unless they have not heard anything by a specified date (two weeks before their State Pension age), except where they wish to defer their State Pension or inform DWP of any additional communications needs.
- 7.3 Eight weeks prior to their State Pension age we will gather information from our computer systems and from the National Insurance Records computer system. Where the proposed regulations permit us to make an award of State Pension without requiring a claim from the customer, and we have all the information we need, we will decide the award and issue an award notice.
- 7.4 The award notice will instruct the customer to check the information and let us know if any of the details that we have based the award upon are incorrect. Customers who are exempt from making a claim will be told that they do not need to make a claim.
- 7.5 Where we do need further information from the customer to determine the award, we will contact them and obtain only the missing details.
- 7.6 In deciding when it would be safe to make automatic awards of State Pension, we have considered the rules around the deferral of State Pension. Under current legislation a person has a right to put off getting their State Pension in order to be able, at a later date, to get extra State Pension or a lump-sum payment. The intention is to encourage people to extend their working lives and thereby improve their retirement income. These proposals do not work counter to that policy as we have built into the legislation that only people on five key benefits¹ can be exempted from having to claim their State Pension. The nature of the benefits chosen is such that recipients are highly unlikely to request deferral. Also, because of the information we have available in these cases, we are most likely to be able to automate these awards successfully.
- 7.7 In some instances, there are extra complexities around making the decision on whether or not to claim State Pension. This is where the customer is on a benefit (for example, Widows Benefit or Carers Allowance, both of which may continue to be paid past State Pension age) which means they have particularly complex choices to make on reaching State Pension age. It would be wrong for the Department to pre-empt that choice for them and automate their award of State Pension. Therefore we have made provision that, whenever one of these benefits is in payment, we will not automate the award of State Pension. Instead, we will always contact the person to give them the information they need to make the choice that is right for them.
- 7.8 In developing the regulations, we have also considered the impact of sanctions provisions. Under legislation relating to the exempt benefits, there are some occasions

¹ Income Support; Incapacity Benefit; Job Seeker's Allowance; Employment and Support Allowance and Pension Credit

where a sanction can be applied – for example where a person has not satisfied a Jobseeker’s Allowance labour market condition - where the payment of benefit is reduced to nil. Unless a sanction relates to fraud, we determined that these sanctions would have no impact on a person’s entitlement to State Pension. Therefore the regulations have been written so that if one of the exempt benefits *would* have been in payment, but for the application of a sanction, we treat the customer as though they were receiving that benefit, and exempt them from having to claim State Pension accordingly.

7.9 Lastly, we recognise that, while making the process much easier for existing DWP customers, the fact that we will require a claim in some cases and not in others could cause confusion. So, the regulations contain a simple provision to ensure a customer is certain whether or not they need to make a claim. This is that a claim will be required unless the customer receives from the Secretary of State (normally by two weeks before their State Pension age) a written notification that they do not need to make a claim.

- **Consolidation**

This legislation will be included in the ‘Law Relating to Social Security’ (referred to as ‘The Blue Books’) which are regularly updated and are available to the public at no cost via the internet². Changes will also be made to volume 6 of the Decision Makers Guide (DMG) which is also available free on the DWP internet³. It is also the Department’s intention to consolidate the Social Security (Claims and Payments) Regulations within the next two years, dependent on resource availability.

8. Consultation outcome

8.1 These proposals were submitted for public consultation from 1 February 2010 to 12 March 2010. Six responses were received, which were broadly positive. Most of the comments made were requests for clarification about detailed processes and for assurances on how certain groups would be handled, which we were able to provide. While the government code of practice on consultation recommends a minimum 12-week consultation period, we concluded that the 6-week period was sufficient in this instance. This was because these are operational measures designed to enable customers to receive their State Pension more easily and no one will be disadvantaged as a result of them. There is no policy shift in terms of entitlement to, or amount of, pension payments. The process has been designed based on customer feedback and has been tested with customers and evaluated in a pilot phase. In addition, we worked with a group of pension customers to assure our proposed processes and review our notifications. We also consulted informally with members of the DWP Policy and Strategy forum ahead of the formal consultation. This group includes customer representative organisations such as Citizens Advice.

8.2 This instrument was considered by the Social Security Advisory Committee (SSAC) on 7 April 2010, and again on 7 July 2010. SSAC decided not to ask for the proposed regulations to be formally referred.

8.3 SSAC was broadly supportive of the proposals but did have questions about the Department’s policy of identifying itself to customers when making outbound telephone

2 http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/c_0031.pdf.

3 Decision Makers Guide: <http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

calls. The nub of SSAC's concern was that, as we increase outbound calling, we may create incentives for unscrupulous people to contact the public purporting to be DWP with a view to extracting valuable personal details from the customer. They queried whether sufficient controls were in place to provide assurance to customers that a DWP call was bone fide. We are proposing further discussions with SSAC to assure them of the DWP policy on this, as it is a wider issue than one relating solely to these proposals.

8.4 Another question raised was whether aiming to make automated awards by two weeks before State Pension age (at the latest) was too close to the entitlement date and could cause an income gap for customers if the date was missed. We have provided assurance that processes such as automated reminders to staff will mean that this risk is negligible.

9. Guidance

9.1 On-line guidance has been developed for staff in the Pension, Disability and Carers Service who will be administering State Pension, with awareness material for Jobcentre Plus staff who advise people on working age benefits about moving to State Pension.

9.2 The prime source of information for customers will be the tailored letter and accompanying booklet issued three to four months ahead of State Pension age. Departmental leaflets and internet material will also be updated.

10. Impact

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector will be positive, providing economies from fewer and shorter contacts with customers.

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

11. Regulating small business

This instrument does not impact on small business.

12. Monitoring & review

Plans are in place to monitor the success of the new process. Key success factors being measured, through surveys, Management Information and clerical counts are as follows:

- Customer Perception/reputation (through qualitative and quantitative surveys);
- Level of customer understanding of letters;
- Number of automated awards;
- Reduction in the remaining contacts/conversations with customers;
- Reduction in overall contacts;
- Improved opportunity for DWP to better manage workflow, due to shift from unmanaged, inbound contacts to outbound telephone calls.

13. Contact

Lucinda Baldwin at the Department for Work and Pensions, Tel: 01253 689091, or email: lucinda.baldwin@dwp.gsi.gov.uk can answer any queries regarding the instrument.