

OCTOBER 2017 MISCELLANEOUS AMENDMENTS

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INTRODUCTION

1. This memo provides guidance on the Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2017 (S.R. 2017 No. 218)¹. The regulations come into force on 16.11.17², except for those described in paragraphs 5 and 6 of this Memo, which come into force on 6.12.18³.

¹ The Social Security (Miscellaneous Amendments No.2) Regulations (Northern Ireland) 2017, reg 1, 2 reg 1(1), 3 reg 1(2)

BACKGROUND

2. This memo provides guidance on a number of changes to the legislation relating to exemptions to the Past Presence Test, the conditions of entitlement to Category B Retirement Pension for certain widows, benefits for which a claim is not required, the calculation of notional income in pension flexibilities cases for Employment and Support Allowance, Income Support, Jobseeker's Allowance and State Pension Credit, and the treatment of certain income in State Pension Credit.

CHANGES

Exemption from the Past Presence Test

3. Following an Upper Tribunal decision¹ on 17.03.16, the Past Presence Test is no longer to be applied to refugees, people with humanitarian protection and their family members.

1 MM & SI v SSWP (DLA) [2016] UKUT 149 {AAC}

4. From 16.11.17 this is formalised in legislation so that the Past Presence Test shall not apply to a person¹ who has

1. been granted refugee status or humanitarian protection; or
2. leave to enter or remain in the United Kingdom as the dependant of a person granted refugee status or humanitarian protection

under the immigration rules².

1 SS(ICA) Regs (NI), Reg 9C; SS(DLA) Regs (NI), Reg 2C; SS(AA) Regs (NI), Reg 2C; 2 Immigration Act 1971, s3(2)

Category B Retirement Pension - women treated as receiving widow's pension before 9.4.01

5. DMG 75166 gives guidance on entitlement to Category B Retirement Pension where a widow is treated as entitled to Widows Pension, if there would have been entitlement or payability but for certain conditions. A change means that, from 6.12.18, the condition of having reached age 65 will be amended to having reached pensionable age¹. Another change from 6.12.18 adds the condition of having ceased to be entitled to Widowed Mother's Allowance between age 65 and pensionable age².

1 SS (WB & RP) Regs (NI), reg 7(e); 2 reg 7(g)

Benefits for which a claim is not required

6. DMG 2009 3. gives guidance on when a claim is not required for Category A Retirement Pension, Category B Retirement Pension and

State Pension. From 6.12.18 this will only apply where the beneficiary is a woman who has reached pensionable age and is entitled to Widowed Mother's Allowance, on her ceasing to be so entitled¹.

1 SS (C&P) Regs (NI), reg 3(1)(d)

Notional Income and Non-State Pensions in Income Support, Employment and Support Allowance (Income Related), Jobseeker's Allowance (Income Based) & State Pension Credit

7. Since April 2015 people have had greater flexibility in how they access their pension savings, generally known as "pension flexibilities". These flexibilities allow an individual to be able to choose what they want to do with their "pension pot". When a State Pension Credit claimant, or those income-based Jobseeker's Allowance, Income Support and income-related Employment and Support Allowance claimants with a partner over the qualifying age for State Pension Credit¹ choose not to access their pension pot, they can be fixed with notional income². See DMG memo Vol 5/102, 9/31 & 14/58 and DMG 28617 for Income Support and income-based Jobseeker's Allowance, 51535 for income-related Employment and Support Allowance and 85453 for State Pension Credit for full details.

1 SPC Act (NI) 02, s 1(6), 2 JSA Regs (NI), reg 105(3); IS (Gen) Regs (NI), reg 42(2A); ESA Regs (NI), reg 106(4); SPC Regs (NI), reg 18(2)

8. Notional income is currently calculated by pension providers as per Her Majesty's Customs and Revenue's "capped drawdown" rules, and based on 150% of the maximum annual annuity which can be purchased (calculated with reference to Government Actuary Department tables)¹. As "capped drawdown" effectively no longer exists, this would result in an unfair calculation of notional income being applied to claimant's benefit awards.

1 SS (C&P) Regs (NI), reg 7(6)(b) & 32(5)(b)

9. Following the introduction of pension flexibilities in April 2015 and in order to ensure that claimants were not disadvantaged, Departmental guidance (DMG memo Vol 5/102, 9/31 & 14/58) was amended to ensure that the notional income figure provided by pension providers and applied in in such cases would be 100% of the rate of the annuity that the pension pot would generate.
10. From 16.11.17 existing legislation is amended to reflect the way that the Department has been calculating the amount of notional income calculated in the relevant income-related benefits. This will be the rate of annuity that can be purchased by the pension pot¹. Decision makers should take this to mean 100% of the rate of annuity that the pension pot would generate (calculated with reference to Government Actuary Department tables). This information will generally be provided by the relevant pension provider on form PPR1, issued in the first instance to the claimant once a Non-State Pension interest is declared.

Deductions from Benefits in State Pension Credit

11. These regulations clarify that, subject to certain adjustments, deductions (such as repayment of an overpayment) from State Pension Credit are ignored when calculating a claimant's income for State Pension Credit purposes¹. Decision makers should continue to take the full amount of benefit into account before any deduction(s) in such cases.

1 SPC Regs (NI), reg 15(3)

Example

Andrea is in receipt of State Pension at the rate of £159.55 a week. Andrea is also repaying an overpayment at the rate of £15.00 a week, meaning that she actually receives State Pension of £144.55 a week. For State Pension Credit purposes, Andrea's weekly State Pension amount is £159.55 – the amount of State Pension before the deduction was made.

12. These regulations also add deductions as a result of a pension sharing order to the list of adjustments allowed when calculating a claimant's income for State Pension Credit purposes¹. Decision makers should take the adjusted amount into account in these cases. See DMG 85095 for more information.

1 SPC Regs (NI), reg 15(4)

ANNOTATIONS

Please annotate the number of this DMG Memo Vols 1/113, 2/68, 5/109, 9/41, 12/24 & 14/66 against the following DMG paragraphs:

DMG 2009; DMG 071716, DMG 28617, DMG 51535, DMG 75166, DMG 85091 (HEADING), DMG 85095 (HEADING), DMG 85453

CONTACTS

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