

## OCTOBER 2017 MISCELLANEOUS AMENDMENTS

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### INTRODUCTION

- 1 This memo provides guidance on the Social Security (Miscellaneous Amendments No.4) Regulations (S.I. 2017 No. 1015)<sup>1</sup>. The regulations mentioned in this Memo come into force on 16.11.17<sup>2</sup>.

*1 The Social Security (Miscellaneous Amendments No.4) Regulations 2017, reg 1, 2 reg 1(2)(b).*

### BACKGROUND

- 2 This memo provides guidance on changes to the legislation relating to exemptions to the Past Presence Test, and the calculation of notional income in pension flexibilities cases for UC.

### CHANGES

#### Exemption from the Past Presence Test (PPT)

- 3 Following a UT decision<sup>1</sup> on 17.3.16, the way the PPT is applied to refugees, people with humanitarian protection and their family members was changed.

*1 [2016] UKUT 149 {AAC}*

4 From 16.11.17, this is formalised in legislation so that the PPT shall not apply to a person<sup>1</sup> 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 rules<sup>2</sup>.

*1 SS(PIP) Regs, Reg 23A 2 Immigration Act 1971, s3(2)*

## **Notional Income and Non-State Pensions**

5 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”.

6 Any income generated from a pension pot in UC is retirement pension income<sup>1</sup>. Where one partner in a joint UC claim has reached the qualifying age for SPC<sup>2</sup> and has a pension pot but does not apply to make use of that income, then notional retirement pension income may apply<sup>3</sup>. ADM [H5171](#) et seq provides further guidance.

*1 UC Regs, regs 61(1)(a) & 67, 2 SPC Act 02, s 1(6), 3 UC Regs, reg 74(3)*

7 Notional retirement pension income is calculated by pension providers as per HMRC’s “capped drawdown” rules, and based on 150% of the maximum annual annuity which can be purchased (calculated with reference to Government Actuary Department (“GAD”) tables)<sup>1</sup>. As “capped drawdown” effectively no longer exists, this would result in an unfair calculation of notional retirement pension income being applied in joint UC awards.

*1 UC, PIP, JSA, & ESA (C&P) Regs, reg 41(3)(b)*

8 Following the introduction of pension flexibilities in April 2015 and in order to ensure that claimants were not disadvantaged, DWP guidance (DMG Memo [13/15](#)) 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.

9 From 16.11.17, these regulations<sup>1</sup> amend the existing legislation to reflect the way that DWP has been calculating notional retirement pension income<sup>2</sup> since April 2015. For UC purposes this will be the rate of annuity that can be purchased by the pension pot<sup>1</sup>. DMs should take this to mean 100% of the rate of annuity that the pension pot

would generate (calculated with reference to Government Actuary Department (“GAD”) tables). This information is generally provided by the relevant pension provider on form UC36/ PPR1 when the claimant first declares a non-state pension. ADM [H5173](#) and [H5182](#) et seq. provide further guidance on calculating the amount of notional retirement pension income.

*1 The SS (Misc Amdt No.4)Regs, reg 10; 2 UC Regs, reg 74(4), SPC Regs, reg 18(3)*

## **ANNOTATIONS**

Please annotate the number of this Memo ADM 28/17 against the following ADM paragraphs:

C2027, H5171, H5173, H5182

## **CONTACTS**

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

**DMA Leeds: October 2017**