

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)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.4) Regulations 2017, reg 1, 2 reg 1(2)(b), 3 reg 1(2)(a).

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 Cat B RP for certain widows, benefits for which a claim is not required, the calculation of notional

income in pension flexibilities cases for ESA, IS, JSA and SPC, and the treatment of certain income in SPC.

CHANGES

Exemption from the Past Presence Test (PPT)

- 3 Following a UT decision¹ on 17.03.16, 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 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, Reg 9C; SS(DLA) Regs, Reg 2C; SS(AA)Regs, 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 Cat B RP where a widow is treated as entitled to WP, 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 WMA between age 65 and pensionable age².

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

Benefits for which a claim is not required

- 6 [DMG 02009](#) 3. gives guidance on when a claim is not required for Cat A RP, Cat B RP and SP. From 6.12.18 this will only apply where the beneficiary is a woman who has reached pensionable age and is entitled to WMA, on her ceasing to be so entitled¹.

Notional Income and Non-State Pensions in IS, ESA(IR), JSA(IB) & SPC

- 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 an SPC claimant, or those JSA(IB), IS and ESA(IR) claimants with a partner over the qualifying age for SPC¹ choose not to access their pension pot, they can be fixed with notional income². See DMG memo [12/15](#) and DMG [28617](#) for IS and JSA(IB), [51535](#) for ESA(IR) and [85453](#) for SPC for full details.

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

- 8 Notional income is currently calculated by pension providers as per HMRC “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)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, 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, DWP guidance (DMG Memo [12/15](#)) was amended to ensure that the notional income figure provided by pension providers and applied 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 DWP 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. 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 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.

1 JSA Regs, reg 105(4); IS (Gen) Regs, reg 42(2B); ESA Regs, reg 106(6); SPC Regs, reg 18(3)

Deductions from benefits in SPC

- 11 These regulations clarify that, subject to certain adjustments, deductions (such as repayment of an overpayment) from SP are ignored when calculating a claimant’s

income for SPC purposes¹. DMs should continue to take the full amount of benefit into account before any deduction(s) in such cases.

1 SPC Regs, reg 15(3)

Example

Andrea is in receipt of SP 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 SP of £144.55 a week. For SPC purposes, Andrea's weekly SP amount is £159.55 – the amount of SP 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 SPC purposes¹. DMs should take the adjusted amount into account in these cases. See [DMG 85095](#) for more information.

1 SPC Regs, reg 15(4)

ANNOTATIONS

Please annotate the number of this Memo DMG 23/17 against the following DMG paragraphs:

DMG 02009; DMG 071716, DMG 28617, DMG 51535, DMG 75166, DMG 85091(HEADING), DMG 85095 (HEADING), DMG 85453

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