

Department for
Work and Pensions, Adjudication and Constitutional Issues Division

[REDACTED]
Secretary,
Social Security Advisory Committee
New Court,
Carey Street,
London
WC2A 2LS

18 January 2008

Dear [REDACTED],

I would be grateful if you could place the enclosed draft amending Regulations before the Committee at the meeting scheduled for 6th February. I would also like to assure the Committee that any amendments to these Regulations that may arise between now and final publication would be limited to minor points of drafting.

These Regulations deal with a single issue, namely an amendment to regulation 3 of the Social Security (Claims and Payments) Regulations 1987 ("the Claims and Payments Regulations"). Specifically an amendment is proposed to the circumstances in which a person is to be awarded a Category B State Retirement Pension without first being obliged to make a claim for it.

Background

Section 1(1) of the Social Security Administration Act 1992 provides:

Except in such cases as may be prescribed, and subject to the following provisions of this section and to section 3 below, no person shall be entitled to any benefit unless, in addition to any other conditions relating to that benefit being satisfied-

- (a) *he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations under this Part of this Act; or*
- (b) *he is treated by virtue of such regulations as making a claim for it.*

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 has to hand up-to-date sufficient information. Clearly there are advantages to the beneficiary whenever an award can be made automatically. Not only is the benefit of the individual guaranteed, but it avoids putting them through the unnecessary and often unwelcome process of making a claim. As the Department’s computer systems become more comprehensive it would seem likely that there will be further scope to add to the number of exceptions listed in regulation 3 over time.

September 2007 Changes

The Committee may recall that in September 2007 three additional exceptions were inserted into regulation 3. This was achieved through the Social Security (Miscellaneous Amendments) (No.4) Regulations 2007 (SI 2007/2470). Those three new exceptions were inserted as paragraphs (ca), (cb) and (da).

Paragraph (ca) provides for a person, already entitled to a category or retirement pension other than Category A, to be awarded a Category A retirement pension if the event of divorce or dissolution of a civil partnership.

Paragraph (cb) provides for a person, already entitled to a Category A retirement pension or a graduated retirement benefit, to be awarded a Category B retirement pension automatically should they marry or enter a civil partnership.

Paragraph (da) provides for a person to be awarded a bereavement payment automatically where they are over pensionable age and satisfy the conditions of entitlement under section 36(1) of the Social Security Contributions and Benefits Act 1992.

The Proposed Change

The proposed change focuses upon the new paragraph 3(cb) in two respects.

Firstly we wish to add another circumstance in which a person can be awarded a Category B retirement pension automatically. This is where the spouse or civil partner of a person successfully claims a Category A retirement pension in their own right, thereby triggering a potential entitlement to a Category B retirement pension for the person in question. The emphasis here is upon the word “potential” because, under current legislation, unless the person claims their Category B retirement pension, there is no entitlement.

The legal position has been challenged in the Courts (notably SoS for Work and Pensions v Nelligan [2003] EWCA Civ 555) but the position that a person in these circumstances is not exempt from the requirement in section 1(1) of the Administration Act to make a claim has been confirmed.

Operational colleagues dealing with claims for state retirement pension advise that they are now in a position to be able to award a Category B retirement pension in these circumstances automatically. The necessary prerequisite is that the beneficiary is already entitled to either a Category A retirement pension or to a graduated retirement benefit. This has been written into the proposed Regulation. The proposal will mean that entitlement will now be triggered by the individual's spouse or civil partner claiming a Category A retirement pension in their own right, whether that claim is made upon reaching state pension age or after a period of deferral.

The proposal will only benefit a person whose Category B retirement pension exceeds their Category A retirement pension. Unless that happens the existing Category A award will continue as before and no award of Category B will be made. If, however, the Category B pension exceeds the Category A pension, the person will continue to receive the Category A pension as before but with an additional amount of Category B pension (representing the amount by which the Category B pension exceeds the Category A pension). Members will appreciate that the provisions of the Social Security (Overlapping Benefits) Regulations 1979 operate to prevent the payment of both pensions in full.

We cannot envisage a situation in which a person would not wish to receive what would amount to an increased amount of retirement pension. If there were to be such a case however, we believe that a person could surrender their award in accordance with the approach set out by Commissioner Jacobs in CJSJA 1332/01.

The second change is by way of correcting the existing drafting of paragraph (cb). It has come to light that the current wording is inadequate. At present it provides that an award of Category B retirement pension will be made automatically when a person, already entitled to either a Category A retirement pension or a graduated retirement benefit, marries or enters into a civil partnership. The suggestion is that the age, National Insurance contribution record and social security status of the new spouse or partner is entirely irrelevant. In reality of course it is very much to the point. Unless that spouse or partner is entitled to a Category A retirement pension in their own right, there can be no entitlement to a Category B for the individual concerned. The wording is therefore being clarified on this point.

I would emphasise that this second change is to some extent cosmetic in that substantive benefit legislation operates to ensure that a Category B pension cannot be awarded unless the spouse or civil partner has a Category A pension in their own right. In other words the existing wording of paragraph (cb) has not resulted in any incorrect awards of Category B pension, nor could it. However we are taking this opportunity to put this matter right.

The change itself is set out in the following table -

Existing wording of para (cb)	Proposed new wording of new para (cb)
3. It shall not be a condition of entitlement to benefit that a claim be made for it in the following cases:	
<p>(cb) in the case of a Category B retirement pension where the beneficiary—</p> <p>(i) is entitled to either a Category A retirement pension or to a graduated retirement benefit or to both; and</p> <p>(ii) marries or enters into a civil partnership;</p>	<p>(cb) in the case of a Category B retirement pension where the beneficiary is entitled to either a Category A retirement pension or to a graduated retirement benefit or to both and</p> <p>(i) the spouse or civil partner of the beneficiary becomes entitled to a Category A retirement pension; or</p> <p>(ii) the beneficiary marries or enters into a civil partnership with a person who is entitled to a Category A retirement pension;</p>

Reason for Urgency

The reason for the urgency of this proposed measure is due to the fact that pension delivery sites are geared up to introducing this change from March 17th. The original intention was that this particular change was to have been introduced in September 2007 along with the other changes I have already mentioned. Because of an oversight however it was missed and we now need to make this change urgently.

Conclusion

I would respectfully suggest that this is not an issue that would warrant a referral by the Committee. Indeed it should be readily apparent that the proposal is a wholly beneficial one. I would like to record my gratitude to the Committee's secretariat for facilitating a late addition to February's agenda. I shall of course be happy to explain anything which might arise at that meeting.

Yours sincerely

by e-mail

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2008 No.

SOCIAL SECURITY

**The Social Security (Claims and Payments) Amendment
Regulations 2008**

Made - - - - *[] 2008*
Laid before Parliament *[] 2008*
Coming into force - - *17th March 2008*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 1(1), 189(1), (3) and (4) and 191 of the Social Security Administration Act 1992(1).

[In accordance with section 173(1)(b) of the Social Security Administration Act 1992 he has obtained the agreement of the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it.]

Citation and commencement

1. These Regulations may be cited as the Social Security (Claims and Payments) Amendment Regulations 2008 and shall come into force on 17th March 2008.

Amendment of the Social Security (Claims and Payments) Regulations 1987

2.—(1) The Social Security (Claims and Payments) Regulations 1987(2) are amended as follows.

(2) In regulation 3(3) (claims not required for entitlement to benefit in certain cases) for subparagraph (cb) substitute—

- “(cb) in the case of a Category B retirement pension where the beneficiary is entitled to either a Category A retirement pension or to a graduated retirement benefit or to both and
 - (i) the spouse or civil partner of the beneficiary becomes entitled to a Category A retirement pension; or
 - (ii) the beneficiary marries or enters into a civil partnership with a person who is entitled to a Category A retirement pension;”.

(1) 1992 c.5. Section 189(1) was amended by Schedule 7 paragraph 109(a) and Schedule 8 to the Social Security Act 1998 (c.14), Schedule 3 paragraph 57 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and Schedule 6 to the Tax Credits Act 2002 (c.21). Section 191 is cited for the meaning of the word “prescribed”.
(2) S.I. 1987/1968.
(3) Regulation 3 was amended by S.I. 1989/136, 1996/1460, 1999/2556, 1999/3178, 2000/1483, 2001/488, 2003/1589, 2005/1551 and 2007/2470.

Signed by authority of the Secretary of State for Work and Pensions

Date

Name
Parliamentary Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

This Regulation amends the Social Security (Claims and Payments) Regulations 1987.

Regulation 2 amends regulation 3 of those Regulations by substituting a new paragraph (cb). This extends the list of exceptions to the general rule that it is necessary to make a claim to be entitled to benefit. The new exception means that when a person's spouse or civil partner is awarded a Category A retirement pension, that person can be awarded a Category B retirement pension without having to claim it, providing that they are already entitled to either a Category A retirement pension or to a graduated retirement benefit.

It also amends the current position to provide that when a person who is entitled to a Category A retirement pension or a graduated retirement benefit marries or enters into a civil partnership, they can be awarded a Category B retirement pension only if their spouse or civil partner is entitled to a Category A retirement pension.

A full regulatory impact assessment has not been carried out in respect of these Regulations as they do not impose a cost on business, charities or the voluntary sector.