EXPLANATORY MEMORANDUM TO THE

CONTRACTING-OUT, PROTECTED RIGHTS AND SAFEGUARDED RIGHTS (TRANSFER PAYMENT) AMENDMENT REGULATIONS 2005

2005 No. 555

1. This explanatory memorandum has been prepared by The Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument will make changes to the regulations governing the transfer of different types of contracted-out rights to overseas pension schemes or arrangements, removing some differences in the current position. The amendments will allow transfers of Guaranteed Minimum Pensions to be made to "overseas arrangements" (non-occupational overseas pension plans), and will remove the condition that the transferring scheme must establish that the member has permanently emigrated overseas.

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

3.1 None

4. Legislative Background

4.1 Pension rights which effectively replace the state additional pension under "contracting out" arrangements are subject to special conditions set out in DWP legislation. Special rules also apply to "safeguarded rights" which derive from contracted-out rights under a pension sharing on divorce order. Provisions affecting transfers of contracted-out and safeguarded rights are contained in the Contracting-out (Transfer and Transfer Payment) Regulations 1996, the Protected Rights (Transfer Payment) Regulations 1996 and the Pension Sharing (Pension Credit Benefit) Regulations 2000.

4.2 The provisions contained in this instrument make amendments to the particular regulations dealing with the transfer overseas of different types of contracted-out rights, introducing more consistency of treatment. At present, the legislation allows contracted-out rights to be transferred overseas to an occupational pension scheme or to an "overseas arrangement", except Guaranteed Minimum Pensions which can only be transferred to the former type of scheme. Furthermore the definition of "overseas arrangement" is currently missing from the Protected Rights transfer regulations and there are some minor differences in wording between the different sets of transfer regulations. The DWP legislation cited above currently specifies that the transferring scheme must establish that the member has permanently emigrated in order to make an overseas transfer of contracted-out rights. Inland Revenue (IR) pensions tax rules generally limit overseas transfers to cases of permanent emigration, but the procedures are not currently applied to contracted-out rights.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 Contracted-out pension rights are provided by various types of contracted-out pension schemes to replace, wholly or partially, pension which the member would otherwise have accrued in the state additional pension scheme (currently the State Second Pension, formerly the State Earnings Related Pension Scheme). Both contracted-out scheme and member benefit from rebates of National Insurance contributions. In recognition of the status of contracted-out pension rights, DWP legislation sets out special conditions applying to them. In general, IR pensions tax rules apply to contracted-out rights as well as to contracted-in rights.

7.2 The Department received representations that the interface between Inland Revenue procedures for overseas transfers and DWP legislation should be rationalised (IR procedures for overseas transfers apply only to contracted-in rights) and that Guaranteed Minimum Pensions should be allowed to be transferred to non-occupational overseas pension arrangements, in line with other types of contracted-out rights.

7.3 The amendments contained in this instrument remove inconsistencies between the regulations applying to overseas transfers of different types of contracted-out rights. The condition requiring the transferring pension scheme to establish that the member has permanently emigrated overseas is also removed. From 6 April 2005 Inland Revenue will apply its rules for overseas transfer payments to contracted-out rights as well as to contracted-in rights (often both types of rights are held for the member by the transferring scheme). This means that the same IR rules will apply to the whole of the pension rights to be transferred, with some extra conditions applying to any contracted-out rights under the DWP legislation (as amended).

7.4 Consultation was undertaken with the UK pensions industry and the consultation document was published on the DWP website. Only eight consultation responses were received; these were generally in favour of the proposed changes.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it imposes no new costs on business, charities or voluntary bodies.

8.2 The instrument imposes no new costs on the public sector.

9. Contact

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