EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (WIDOW'S BENEFIT AND RETIREMENT PENSIONS) (AMENDMENT) REGULATIONS 2023

2023 No. 1237

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument amends regulation 10 of the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979[1] so that a Category D retirement pension can continue to be claimed by those resident in a European Economic Area (EEA) state or Switzerland, provided a claimant is covered by a relevant agreement.

2.2 While regulation 10 of the 1979 Regulations requires claimants to be resident in Great Britain on their 80th birthday or the date of claim, if later, the European Court of Justice's judgment in the case of *Lucy Stewart V Secretary of State for Work and Pensions (2011)*[2] *("*the *Stewart Judgment")* modifies this requirement so that, in practice, residents in an EEA state or Switzerland can also claim a Category D retirement pension.

2.3 The Retained EU Law (Revocation and Reform) Act 2023[3] will sunset the effect of the *Stewart Judgment* on the residence conditions for future Category D retirement pension claimants; this instrument maintains the existing residence conditions which result from the *Stewart Judgment* and gives it effect in domestic legislation insofar as it applies to the Category D retirement pension.

3. Matters of special interest to Parliament

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

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, jurisdictions(s) which the instrument forms part of the law of) is Great Britain.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

4.3 Corresponding provisions are being made in Northern Ireland.

---

[1] https://www.legislation.gov.uk/uksi/1979/642.

[2] https://curia.europa.eu/juris/document/document.jsf;jsessionid=69D30FF2A01CEAF1D601A916D6DA6FF4?text=&docid=107933&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1573681.

[3] https://www.legislation.gov.uk/ukpga/2023/28/enacted#:~:text=An%20Act%20to%20revoke%20certain,to%20enable%20the%20updating%20of.

5. European Convention on Human Rights

5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Category D retirement pension is a non-contributory benefit for older pensioners. The eligibility conditions for the benefit are set out in Section 78 of the Social Security Contributions and Benefits Act 1992[4] and regulation 10 of the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979.

6.2 The legislation specifies that to claim a Category D retirement pension a claimant must: i) be ordinarily resident in Great Britain and aged 80 (or over) on the date of their claim, ii) not be entitled to another category of state pension, or only entitled to another category of state pension payable at a weekly rate less than the Category D retirement pension, and iii) have resided in Great Britain for at least 10 years out of a 20-year period which includes the day before they turned 80 or any day thereafter. This does not have to be 10 years of continuous uninterrupted residence.

6.3 The effect of the *Stewart Judgment* is that the condition of residence in Great Britain (in regulation 10(b) of the 1979 Regulations) on the 80th birthday or the date of claim, if later, cannot be applied to deny entitlement to persons resident in a European Economic Area (EEA) state or Switzerland. As a result, the requirement in regulation 10(b) of the 1979 Regulations was disapplied so that claims to a Category D pension could be made by those residing in an EEA state or Switzerland.

6.4 The *Stewart Judgment* formed part of retained European Union (EU) case law following the United Kingdom's (UK's) withdrawal from the EU. Under Section 2 of the Retained EU Law (Revocation and Reform) Act 2023, directly effective rights recognised in retained EU case law will sunset at the end of 2023.

7. Policy background

What is being done and why?

7.1 While the *Stewart Judgment* prompted a change in the residence conditions for a Category D retirement pension, the existing legislation was not amended to give effect to the judgment. Instead, the legislation was read with the residence condition disapplied in order to be consistent with the *Stewart Judgment*.

7.2 The Retained EU Law (Revocation and Reform) Act 2023 will sunset directly effective rights recognised in retained EU case law at the end of 2023. This means that, from 2024, the *Stewart Judgment* will cease to have effect for those not in scope of the UK-EU Withdrawal Agreement[5].

7.3 This legislation is being made to maintain the effect of the *Stewart Judgment,* to ensure that those who are resident in the EEA or Switzerland, and who are in scope of a relevant agreement, can continue to claim a Category D retirement pension while resident in those countries. The relevant agreements are listed in regulation 2(b) of the statutory instrument and include the Protocol on Social Security Coordination to the Trade and

[4] https://www.legislation.gov.uk/ukpga/1992/4/section/78.
[5] https://www.legislation.gov.uk/eut/withdrawal-agreement/contents/adopted.

Cooperation Agreement[6], which covers the future relationship between the UK and the EU.

Explanations

What did any law do before the changes to be made by this instrument?

7.4 The current legislation restricts claims for a Category D retirement pension to those ordinarily resident in Great Britain. However, the *Stewart Judgment* disapplied this requirement for those ordinarily resident in a European Economic Area (EEA) state or Switzerland.

Why is it being changed?

7.5 The Retained EU Law (Revocation and Reform) Act 2023 means that the *Stewart Judgment* will cease to have direct effect. These Regulations amend current legislation to maintain the effect of the *Stewart Judgment* on Category D retirement pension residence conditions.

What will it now do?

7.6 The instrument will amend legislation to maintain the existing residence conditions – that claims for a Category D retirement pension can be made by those ordinarily resident in an EEA state or Switzerland.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

8.2 This instrument does however relate to the reform of retained European Union law because it gives effect to the *Stewart Judgment* insofar as it applies to Category D retirement pensions for those not in scope of the UK-EU Withdrawal Agreement.

9. Consolidation

9.1 Informal consolidated text of instruments is available to the public free of charge via the National Archives website[7].

10. Consultation outcome

10.1 The Social Security Advisory Committee has been consulted on the Regulations and has agreed that they do not need to be formally referred to the Committee.

10.2 No formal consultation has been carried out on these Regulations.

11. Guidance

11.1 These Regulations maintain the existing Category D retirement pension residence conditions, and so no new guidance will be provided as a result of these Regulations.

---

6 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982648/TS_8.2021_UK_EU_EAEC_Trade_and_Cooperation_Agreement.pdf.

7 www.legislation.gov.uk.

12. Impact

12.1 There is no, or no significant impact on business, charities or voluntary bodies.

12.2 There is no, or no significant impact on the public sector as the Regulations maintain the existing Category D retirement pension residence conditions.

12.3 A full Impact Assessment has not been prepared for this instrument because the Regulations maintain the existing Category D retirement pension residence conditions.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 It is not foreseen that monitoring and evaluation will be necessary as these Regulations amend legislation to maintain the existing Category D retirement pension residence conditions.

15. Contact

15.1 Robert Eagleton at the Department for Work and Pensions, email: londoncaxtonhouse.statepensionsenquiries@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Cathy Payne, Deputy Director for State Pensions Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Paul Maynard, Parliamentary Under-Secretary of State, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.