**EXPLANATORY MEMORANDUM TO**

**THE TRANSFER OF FUNCTIONS (AGE-RELATED PAYMENTS) ORDER 2013**

**2013 No. 1442**

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

## 2. Purpose of the instrument

This instrument makes changes to the Age-Related Payments Act 2004[1] to enable Her Majesty's Treasury to make 'ex gratia' payments in cases where a With-Profits Annuity was bought from Equitable life on or before 31 August 1992. The instrument will enable payments to be made to persons who are not the policyholder. These persons are excluded from the main Equitable Life Payments Scheme (provided for in the Equitable Life (Payments) Act 2010)[2] on the grounds that they did not suffer loss as a result of government maladministration.

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

None.

## 4. Legislative Context

4.1 In 2010, the Government introduced the Equitable Life (Payments) Act 2010 to establish a scheme enabling payments to be made to certain Equitable Life policyholders who has suffered financial loss as a consequence of maladministration in the regulation of Equitable Life.

4.2 The 2010 Act contains powers to make payments by implementing the Equitable Life Payments Scheme established by the Government in response to the recommendation of the Parliamentary Ombudsman's report to establish a compensation scheme. The Secondary Legislation and Scrutiny Committee may wish to note that it was not the intention for the Payments Scheme to cover policyholders who bought policies prior to 1 September 1992 as the Government considers there was no issue of maladministration at that time. However, in the Budget 2013, the Chancellor recognised the financial difficulties of this group of policyholders and announced that ex gratia payments are to be made to With-Profits Annuitants who bought their policies prior to 1 September 1992, details of which will be set out in regulations.

4.3 The Age-Related Payments Act 2004 contains provisions suitable to facilitate the ex-gratia payments. The 2004 Act enables payments to be made to persons aged over 60 and contains a broad regulation-making power in section 7. The Committee may wish to note that the powers in the Act are exercisable by the Secretary of State

[1] http://www.legislation.gov.uk/ukpga/2004/10/contents
[2] http://www.legislation.gov.uk/ukpga/2010/34/contents/enacted

in relation to social security matters whereas the proposed ex-gratia payments and the regulations are to be made by the Treasury rather than the Secretary of State.

4.4 This instrument amends section 7 to provide that the regulation-making function is to be exercisable concurrently by the Secretary of State and the Treasury in so far as the function relates to payments in cases where a with-profits annuity was bought from Equitable Life on or before 31 August 1992. The instrument is made using powers in section 1(1)(c) and (2) of the Ministers of the Crown Act 1975 (c. 26)[3].

4.5 The Committee may also wish to note that regulations made under section 7 are subject to the affirmative Parliamentary procedure giving both Houses of Parliament an opportunity to debate the ex-gratia payments.

## 5. Territorial Extent and Application

This instrument applies to Great Britain.

## 6. European Convention on Human Rights

The Secretary of State has made the following statement regarding Human Rights: "In my view the provisions of the Transfer of Functions (Age-Related Payments) Order 2013 are compatible with the Convention Rights".

## 7. Policy background

7.1 The Equitable Life is a mutual insurance company owned by its policyholder members.

7.2 In July 2008, the Parliamentary Ombudsman published a report, "Equitable Life: a decade of regulatory failure"[4]. The report said that there was evidence of "serial regulatory failure" on the part of the Government in relation to its regulation of Equitable Life in the period before 31 December 2001 and recommended the Government set up a compensation scheme.

7.3 On 11 May 2010 the new Government published its Coalition Agreement which contained a pledge to "implement the Parliamentary and Health Ombudsman's recommendation to make fair and transparent payments to Equitable Life policy holders, through an independent payment scheme, for their relative loss as a consequence of regulatory failure." The Government subsequently passed the Equitable Life (Payments) Act 2010 to establish the Equitable Life Payment Scheme.

7.4 With-Profits Annuitants who bought their policies before 1 September 1992 were excluded from the Equitable Life Payment Scheme, as the Government is of the view that there is no basis for their inclusion in the main Payment Scheme on the grounds that they did not suffer loss as a result of government maladministration. Nonetheless, in the Budget 2013, the Chancellor recognised the particular financial pressures this particular group have been under, and announced that ex-gratia

[3] http://www.legislation.gov.uk/ukpga/1975/26/enacted

[4] http://www.ombudsman.org.uk/improving-public-service/reports-and-consultations/reports/parliamentary/equitable-life-a-decade-of-regulatory-failure

payments would be made to these With-Profits Annuitants, or to their estates if they died after the Budget on 20 March 2013.

7.5 The instrument provides the necessary legislative vehicle for Treasury to make (affirmative) Regulations to enable these ex gratia payments to be made.

**Consolidation**

7.6 Informal consolidation of the instrument will be addressed by updating the relevant values in the appropriate statutory instruments in due course in the Department's "the law relating to Social Security" (the Blue Volumes). This publication is available at no cost to the public on the internet at: http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/

## 8. Consultation outcome

The Budget 2013 announcement was made in response to ongoing representations the Government has received arguing that the specific group of elderly policyholders who bought their with-profits annuity policies from Equitable Life before 1 September 1992 should be included within the wider Equitable Life Payment Scheme.

## 9. Guidance

9.1 Those appointed by the Government to make these payments will be in touch with all pre-1992 Equitable Life with-profits annuitants in advance of these payments being made. In addition, periodic updates will be provided on the Treasury website.

9.2 Similarly, internal guidance will be issued to DWP staff for handling enquiries received regarding these payments.

## 10. Impact

10.1 There is no impact on business or civil society organisations.

10.2 There are no significant costs to the public sector.

10.3 An Impact Assessment has not been prepared.

## 11. Regulating small business

This instrument does not apply to small business regulation.

## 12. Monitoring & review

This purpose of this instrument is to enable regulations to be made and as such monitoring and review arrangements for this instrument are not necessary.

## 13. Contact

David Tottey at the Department for Work and Pensions can answer any queries regarding the instrument. Tel: 020 7449 7150 or email: david.tottey@dwp.gsi.gov.uk