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10 January 2014

Dear Colleagues,

Pensions Bill 2013/14 - Grand Committee

During the course of our discussions on Wednesday 8 January I offered to write to clarify a number of more technical issues. I have outlined the information requested below and hope that it is helpful.

Deferral of the single-tier pension

During the debate on clause 17, there were a number of questions about the award of arrears of state pension and I therefore agreed it would be helpful to outline the current system rules. State pension may be claimed retrospectively from an earlier date if a customer has passed their State Pension age and has not made a claim for the intervening period. This is the case in the current system and will be the case for single tier. The payment of arrears assists people who may have forgotten, or were unaware, that they had a state pension entitlement - or if they were unaware they were required to make a claim for it.

The payment of arrears is quite often used to protect a customer where their claim has been made less than 5 weeks after State Pension age was reached and the customer has therefore not yet achieved the minimum qualifying period for an increment. In this case, the claim may be treated as having been made at State Pension age, rather than the actual date. There is currently a 12 month time limit on the period for which arrears of state pension may be awarded.

The arrears are calculated using the amount of pension that has been unclaimed each week. However, the receipt of certain other benefits or allowances for the same period may reduce the state pension arrears to be paid. For example, if Carer's Allowance has already been paid and a state pension is claimed for the same period, the amount of Carer's Allowance is offset against any arrears of state pension.

There were a number of other questions raised in relation to the deferral lump sum, in particular on the issue of the savings attributable to the removal of the lump sum. As I said during debate, my officials will address these points in the Peers' briefing session to be held between the end of Grand Committee and the Bill's Report stage.

Savings Credit

There were also a number of questions on savings credit and passporting, including requests for additional data. As agreed in Committee, my officials will also address these issues as part of the Peer's briefing meeting before Report.

Contracting out and the statutory override

During the debate, there were a number of areas on which noble Lords sought clarification. I am aware of the desire to discuss these issues in Grand Committee and I do intend to address the outstanding points in the next session. However, I thought it would be helpful to provide some further information on certain aspects now to help inform our debate.

Listed changes and employee consultation

In relation to the requirement to consult with employees, the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 require most employers to consult with members in circumstances where certain changes are made which are referred to as 'listed changes'. The listed changes include circumstances where there is:

- any increase in member's contributions; and/or
- any other reduction in the rate of future accrual of benefit.

Exemption from the requirement to consult in these circumstances would only apply to a very limited group of employers, which includes schemes with less than two members, or with less than twelve members who are all trustees of that scheme.

Given that the statutory override may only be used to increase members' contributions and/or alter the future accrual of benefits, we are confident that any changes made using the override will require employers to consult with their workforce. It would of course be a matter for each employer to consider the extent of their consultation obligations in this context. However, if noble Lords are aware of any circumstances which they think may not fall into the requirement under the listed changes regulations, I would be very happy to consider the issue.

Cost share schemes

The purpose of Government amendment 48 is to provide employers sponsoring cost share schemes with a practical means of using the statutory override to recoup their increase in National Insurance (NI) costs. Our intention is that, notwithstanding any shared cost funding arrangement, the employer will be able to recoup this cost without any perverse effects.

This amendment allows the sponsoring employers to make further scheme changes to ensure that adjustments to the employees' contribution rate does not result in a corresponding increase to the employer's contribution rate, or that changes to the future accrual of benefits will not decrease member contributions due to the scheme's cost share rule.

However, the final outcome will still be that the employer recoups no more than their increase in National Insurance due to the ending of contracting out.

Definition of the National Insurance rebate

A question was also raised about the definition of the NI rebate, and what account had been taken of the planned reduction in the rebate to reflect the changes in the Pensions Act 2007 that withdraw earnings relation in State Second Pension.

The intention is that the current rebate rate of 3.4% will be the applicable rebate rate for those calculations.

It is true that without any reform of the system, the rebate would change over time, as it always has, but it is impossible to predict this with any degree of precision. We do not therefore plan for the calculation to anticipate future changes beyond the point at which the rebate will cease to exist in April 2016.

With regard to how the employer will apply the rebate rate to calculate their increase in NI costs, this is a technical and complex matter that will be fully addressed in the calculation framework provided in regulations. I am mindful that the draft regulations which will include the details that noble Lords seek are not yet available and that, as recognised during debate, such complex issues are difficult to address through correspondence. Therefore I think it would be useful for my noble Lords if we share our thinking behind the development of regulations and how we plan to address the complexities that the statutory override presents. With this in mind I would like to offer my noble Lords a separate briefing, prior to the Bill reaching Report stage, exclusively on the detail of how we intend the statutory override to work, including the calculation framework. The Bill team will be in touch in due course to arrange this.

Pension sharing on divorce

There were also some requests made in debate for further data regarding pension sharing on divorce. As discussed during Committee in the 2012/13 tax year, the Department received 10,000 requests for valuations of the Additional State Pension for the courts to consider alongside other marital assets, and it implemented 150 pension sharing orders. We do not have any data on the financial distribution of the parties subject to pension sharing as the Department acts as an agent for the courts and simply implements the orders. However, our records show that 95% of the orders are credits going to women, who historically are more likely to have lower earnings than their male counterparts. By way of background, since state pension sharing began in 2000, the lowest amount of credit was around £2.50 and the highest around £80.

We do not have any information on the cost of processing a pension sharing order as this cannot simply be disaggregated from the range of administrative activities undertaken by operational staff.

Marriage (Same Sex Couples) Act

Finally, in the debate on Wednesday, I was asked to confirm if there is any difference in the transitional arrangements that will apply to members of a civil partnership or same-sex marriage who divorce if one of them has reached state pension age before 6 April 2016.

In response, I confirmed that there were no differences in treatment between same sex spouses and civil partners who divorce (or whose civil partnership is dissolved) in relation to the applicable transitional arrangements.

Having reviewed the Official Report, I think that it is worth expanding on this answer to clarify the position in relation to basic State Pension substitution and derived entitlement for mixed age couples. A person who reaches State Pension age before 6 April 2016 whose former spouse or civil partner is in the single-tier system will still be able to use the National Insurance contributions the former spouse or civil partner had made for the period preceding implementation in 2016 to improve their own basic State Pension under the current rules following the termination of the marriage or civil partnership. This will apply irrespective of whether the person was married to a person of the same or opposite sex, or was a civil partner. Similarly they will be able to derive an increase to their basic State Pension if they are married or a civil partner, or qualify for inheritable amounts if their spouse or partner dies.

The party to the marriage or civil partnership who is in the single tier will not, as we have discussed, have access to derived basic State Pension (unless they qualify under the arrangements for certain women who paid reduced-rate contributions). However, they may inherit part of their late "current scheme" spouse's or civil partner's additional State Pension. Again, there will be no difference in treatment between survivors, whether they were in a same- or opposite-sex marriage or a civil partnership.

I hope this letter is helpful and I will place a copy in the House library. If you would like any further information on the Pensions Bill, please contact the Pensions Bill team, by email at pensions.bill@dwp.gsi.gov.uk or by phoning the Bill Manager, Michael Cordy, on 02074497508.

Yours sincerely,

A handwritten signature in black ink that reads "David". The signature is written in a cursive style with a large initial 'D'.

Lord Freud

Minister for Welfare Reform