



03 JUL 2020

Dear

On 7 June 2020, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- 1. What part of the United Kingdom State Pension scheme does the case Ombudsman's Office 429683, August 2018, Chief Ombudsman Peter Boshier v MSD refer to?*
- 2. Do the Social Security Act 2018 provisions previously due to be changed in July 2020, now in November 2020, refer to voluntary pensions?*

On 15 June 2020, you emailed the Ministry requesting, under Act, the following information:

- 1. Please explain in detail why it is that National Insurance contributions from employers/employees which result in a State Earnings-Related Pension Scheme (SERPS) pension, a separate pension from the basic pension which results from National Insurance contributions, are deemed directly deductible, yet those contributions into an employer's or private scheme are not?*
- 2. Which UK State Pension was the case Ombudsman's Office 429683, August 2018, Chief Ombudsman Peter Boshier v MSD referring to?*

The Ministry will answer both of your requests in this response.

Please note that the second part of your request made on 15 June 2020 is the same as the first part of your request made on 7 June 2020. Therefore, these questions are answered together.

I will answer your questions in turn.

1) Ombudsman's Office 429683, August 2018, Chief Ombudsman Peter Boshier v MSD

In the Ombudsman's case referenced above, the party voluntarily continued to make National Insurance contributions after they left the United Kingdom (UK). Under UK legislation, those are considered to be voluntary contributions.

A person who lives in the UK is required to make compulsory contributions to the UK National Insurance scheme (or, between 1978 and 2016, they could contribute to a

contracted-out 2nd tier pension scheme as an alternative). There are only limited instances where people can make UK voluntary contributions to the UK National Insurance scheme, including the following:

- A person can continue to make contributions if they move from the UK to another country. This can only occur if the person had worked in the UK immediately before leaving there and had previously lived in the UK for at least 3 years in a row or paid at least 3 years of contributions.
- A person can make voluntary contributions where they do not have enough years of National Insurance contributions to get the full State Pension. A person can usually only pay for gaps in their National Insurance contributions covering the past 6 years.

The instances where people can make UK contributions on a voluntary basis are determined under UK legislation and this information is held as part of their National Insurance records. As the Ministry does not have access to these records, we are reliant on the UK Pension Service to confirm whether a person has made voluntary contributions to the UK National Insurance scheme or not, and which part of the UK National Insurance scheme any contributions may have referred to. Please note, when voluntary contributions are made, they are usually not broken down into categories such as 'UK State Pension', 'SERPS' or 'State Second Pension'.

Moreover, please note, it is not relevant where the voluntary contributions were made to. The relevant factor for determining whether voluntary contributions were made is that the contributions were paid in instances where there was no legal obligation to pay them under UK legislation.

For the reasons outlined above, the Ministry is unable to answer this part of your request. To obtain further information on this question, the Ministry would have to contact authorities in the UK to request more detailed information on the specifics of this case. I am therefore refusing this part of your request under section 18(g) of the Act as the information you have requested is not held by the Ministry and I have no grounds to believe that the information is held by another department or Minister of the Crown or organisation.

2) Changes to the Social Security Act 2018

Changes to the Social Security Act 2018 that were due to be implemented in July 2020 are now scheduled to occur in November 2020. Section 36 of the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill amends section 187 of the Social Security Act 2018 regarding the definition of 'overseas pension'.

Once these changes come into effect on the expected implementation date of 9 November 2020, any overseas pension attributable to voluntary contributions will not be included in the definition of overseas pension, and will therefore not be subject to direct deduction.

3) Direct deduction of SERPS contributions

Section 187 of the Social Security Act 2018 defines an overseas pension as being a benefit, pension, or periodical allowance, or any part of it, that—

- a) is granted elsewhere than in New Zealand; and
- b) is determined by MSD to be a payment that is part of a programme that—
 - i. provides benefits, pensions, or periodical allowances for any of the contingencies for which benefits, pensions, or allowances may be paid under NZ benefits legislation; and
 - ii. is administered by or on behalf of the Government of the country from which the benefit, pension, or periodical allowance is received.

SERPS pensions fit within the definition of overseas pensions because they meet the two criteria set out in section 187(b)(i) and (ii) as shown above. The SERPS scheme pays UK contributory benefits and pensions for the same types of circumstances for which New Zealand benefits and pensions are paid. In addition, the SERPS scheme is administered by the Pension Service and the Department for Work and Pensions on behalf of the UK Government. As a SERPS pension is an overseas pension that meets the two criteria set out in section 187(b) above, SERPS pensions are subject to the direct deduction policy as set out in section 189 of the Social Security Act 2018.

Between 6 April 1978 and 5 April 2016, a person could 'contract out' of the SERPS scheme or its successor, the State Second Pension scheme. A person could only contract out if they were part of a private pension scheme (such as a workplace or personal pension scheme). This private pension scheme would have to require that person to build up sufficient contributions to replace the value of the pension paid out under the SERPS or the State Second Pension scheme.

Contracted out pensions only meet the first requirement set out in section 187 (b)(i) of the Social Security Act 2018 as shown above. They do not meet the second requirement of being administered by or on behalf of the Government of the country from which the pension originates as set out in section 187(b)(ii). As contracted-out pensions do not meet both of the requirements specified in section 187(b), they are not defined as an overseas pension and are therefore not deductible under section 189 of the Social Security Act 2018.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government
- to increase the ability of the public to participate in the making and administration of our laws and policies
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter available to the wider public. The Ministry will do this by publishing this letter on the Ministry of Social Development's website. Your personal details will be deleted and the Ministry will not

publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response regarding your questions about the UK National Insurance scheme, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Julia Bergman', with a long horizontal line extending to the right.

Julia Bergman
General Manager
Disability, Seniors and International Policy