

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Social Security Act 1991

Social Security (Pension Valuation Factor) Determination 2018

Purpose

The purpose of the *Social Security (Pension Valuation Factor) Determination 2018* (instrument) is to repeal the *Social Security (Pension Valuation Factor) Determination 1998*, and to determine the updated pension valuation factor that applies to a person for a relevant year for section 1120 of the *Social Security Act 1991* (the Act). The pension valuation factor is required in order to determine the value of asset-tested income streams that are defined benefit income streams, under section 1120 of the Act.

This instrument also sets out a way of treating different non-discretionary ways of indexing a person's defined benefit income stream so as to treat similar real levels of indexing in the same way regardless of the way the indexing is done.

In addition to the power to make this Determination under subsection 1120(3) of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument. Accordingly, the *Social Security (Pension Valuation Factor) Determination 1998* will be repealed by this instrument.

Background

A defined benefit income stream, which is defined by subsection 9(1F) of the Act, may be subject to the assets test. Subsection 1120(1) of the Act specifies that section 1120 applies to asset-tested income streams that are defined benefit income streams. When the defined benefit income stream is subject to the assets test, its value as an asset must be determined. Subsection 1120(3) of the Act states that the value of the defined benefit income stream that is subject to the assets test is to be determined by multiplying the annual payments that are payable to the person by the relevant pension valuation factor. The relevant pension valuation factor is the pension valuation factor that applies to the person in accordance with the determination made by the Minister for Families and Social Services.

The factors apply to defined benefit income streams, unless a determination made under subsection 9A(5) applies to that income stream. A defined benefit income stream may be asset-test exempt income if the Secretary has made a determination to that effect under subsection 9A(5) of the Act, in accordance with *Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) (Social Security) Determination 2015*.

Commencement

The instrument commences on the day after it is registered.

Consultation

The Department of Social Services has consulted with the Australian Government Actuary, and the Department of the Treasury regarding this instrument.

Regulation Impact Statement (RIS)

This instrument does not require a Regulatory Impact Statement (RIS). This instrument will have no more than a minor regulatory impact on business, community organisations or individuals and will have no, or minimal, compliance costs or competition impact.

Explanation of the provisions

Section 1 provides how the instrument is to be cited, that is, as the *Social Security (Pension Valuation Factor) Determination 2018*.

Section 2 provides that the instrument commences on the day after it is registered.

Section 3 provides that the authority for making this instrument is subsection 1120(3) of the *Social Security Act 1991*.

Section 4

A legislative note provides a signpost definition for:

- “defined benefit scheme”; and
- “governing rules”.

Section 4 contains definitions used in the instrument as follows:

Act means the *Social Security Act 1991*.

relevant year means the 12 month period for which the value of a person’s income stream is being worked out for section 1120 of the Act.

Section 5 provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 6 operates so that in cases where a defined benefit income stream for a relevant year is indexed, then the pension valuation factor that applies to the person for that year, is the pension valuation factor that is mentioned in Schedule 2. In each case, the relevant pension valuation factor listed in Schedule 2 is that factor that corresponds to the age of the person and the indexation factor for the person’s income stream. The age of the person is taken to be the age of the person on the person’s next birthday following the beginning of the relevant year. The rate of the indexation factor is to be worked out in accordance with sections 7 and 8 of the instrument.

Section 7 describes how the indexation factor for a defined benefit income stream is to be worked out in cases where the indexation of the income stream is non-discretionary.

Subsection 7(1) provides that for the purposes of section 6, the indexation factor for the defined benefit income stream is worked out in accordance with section 7, if, under the

governing rules of the fund paying a person's defined benefit income stream, the income stream is indexed in a non-discretionary way.

Subsection 7(2) provides that if the income stream (being the defined benefit income stream under section 6) is indexed by reference to movements in salary, the indexation factor is taken to be a rate of at least 4 per cent but less than 5 per cent. The term "movements in salary" can refer to salary indices that are published by the Australian Statistician, and the movements in these indices.

Subsection 7(3) provides that if the income stream (being the defined benefit income stream under section 6) is indexed by reference to movements in a price index published by the Australian Statistician, the indexation factor is taken to be a rate of at least 2.5 per cent but less than 3 per cent.

Subsection 7(4) provides that if the income stream (being the defined benefit income stream under section 6) is indexed in accordance with a rate set by the governing rules of the income stream, then the indexation factor is taken to be the range of rates set out in the schedule that includes that rate.

Subsection 7(5) provides that if an income stream (being the defined benefit income stream under section 6) is indexed by more than 8 per cent, then the indexation factor is taken to be at a rate of 8 per cent.

Subsection 7(6) provides that an income stream (being the defined benefit income stream under section 6) will be taken to be indexed in a non-discretionary way if subsection 8(1) of the instrument does not apply to the income stream.

Section 8 of the instrument describes how the indexation factor for a defined benefit income stream is to be worked out, in cases where the indexation of the income stream is discretionary.

Subsection 8(1) provides that for the purposes of section 6, the indexation factor for the defined benefit income stream is worked out in accordance with section 8, if, under the governing rules of the fund paying a person's defined benefit income stream, the defined benefit income stream is indexed at the discretion of the trustees for the fund that provides the income stream.

Subsection 8(2) provides that the indexation factor is the average of the indexation factors determined for the person's income stream for the 5 years immediately preceding the relevant year, unless subsection 8(4) applies.

Subsection 8(3) provides that the average of the indexation factors is the sum of the indexation factors determined for the person's income stream, or for a class of income streams that includes the person's income stream, for the 5 year period referred to in subsection 8(2), divided by 5.

Subsection 8(4) provides that the indexation factor for the defined benefit income stream is taken to be the range of rates in Schedule 2 that includes the average indexation factor worked out under subsection 8(3).

Subsection 8(5) provides that if the fund that provides the defined benefit income stream has been in existence, or making income stream payments to the person, for less than 5 years, then the indexation factor is taken to be a rate of at least 2.5 per cent but less than 3 per cent.

Subsection 8(6) provides that if the income stream (being the defined benefit income stream under section 6) is indexed by more than 8 per cent, then the indexation factor is taken to be at a rate of 8 per cent.

Schedule 1 – Repeals

Item 1 repeals the *Social Security (Pension Valuation Factor) Determination 1998*.

Schedule 2 – Pension Valuation Factors

Schedule 2 contains the pension valuation factors. In each case, the relevant pension valuation factor listed is that factor that corresponds to the age of the person and the indexation factor for the person's income stream.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Social Security (Pension Valuation Factor) Determination 2018

The instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

Under subsection 1120(3) of the *Social Security Act 1991*, the Minister for Families and Social Services has the power to set the pension valuation factors for determining the asset value for defined benefit income streams to be used for means test purposes via a legislative instrument. Under subsection 1120(3), the relevant pension valuation factor in the instrument is multiplied by the annual payment for the defined benefit income stream to determine the assessable asset value for the social security assets test.

Human rights implications

The instrument engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights. The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The instrument is compatible with human rights as it is purely administrative in nature, and does not interfere with a person accessing a minimum level of benefits.

Conclusion

The instrument is compatible with human rights as it does not interfere with a person's access to a minimum level of social security benefits. The instrument supports a person's human right to social security.

The Hon Paul Fletcher MP, Minister for Families and Social Services