

SPAIN - CHANGES IN SOCIAL SECURITY

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For some time now there has been a persistent question among experts in social security forecasting from European countries. Is your current model viable in the medium and long term? The reply, far from offering tranquillity, shows deep uncertainty about the systems which, like the Spanish, are governed by the way payments are distributed.

José María Carpena, de Sagardoy Abogados, enumera las reformas más novedosas en materia de Seguridad Social introducidas por la reciente Ley 40/2007, de 4 de diciembre.

Esta ley incide en aspectos tan importantes como la jubilación, la incapacidad temporal, la incapacidad permanente y las prestaciones por supervivencia.

Esta última es la más importante ya que alude a la pensión de viudedad. Se introduce una concesión en los supuestos de parejas de hecho que acrediten una convivencia estable y notarial durante al menos cinco años, así como dependencia económica del heredero.

Estas prestaciones abarcan un espectro de la población al que, hasta ahora, no se le había reconocido este derecho y la carga adicional para la Seguridad Social que suponía.

As a consequence, the countries, and Spain isn't or couldn't be an exception, are adopting changes of greater or lesser importance which aim to make access more difficult to specific payments as well as fight against fraud. The recent Law 40/2007, of 4 December, is in the context of these reforms.

The Law affects issues as important as retirement, temporary incapacity, permanent incapacity and survivors' benefits.

Access to retirement has been made more difficult and now requires a minimum of 15 years' contributions, of which two must be made within the 15 years immediately before exercising the right. The part of the salary related to additional payments is no longer taken into account. To ease the impact of the measure, it will be applied in a gradual and progressive manner, with full effect from 2013. On the other hand staying in work past 65 years is encouraged through increasing the pension amount within defined parameters.

Partial retirement rules are also changed, making them more difficult and less attractive for companies. In fact, a large part of the advantages, like a reduction in contributions disappear while the requirements to be able to apply for it are made more difficult.

The procedure for handling temporary incapacity after the limit of 12 months is modified in depth. Assessments must be made within a limited timescale so as not as to prolong abusively this payment.

Permanent incapacity changes, make the minimum period of contributions required for the youngest workers more flexible. On the other hand the way of calculating the pension amount as a result of a common illness is modified to make it similar to that established for a retirement pension. The pension for a major invalidity is increased by a fixed amount to compensate for a person caring for the invalid, without taking into account the amount of the retirement pension.

The survivors' benefits form the greatest changes that have to do with modifications to widows' pensions. Specifically, it changes the concession made to partners who can prove a stable and notarised relationship for at least five years, as well as economic dependence of the surviving partner on a variable percentage depending on whether there are children or not of the relationship with a right to an orphan's pension. Modifications are also introduced for obtaining a widow's pension in the case of marriage, with a right only to a temporary and not a life pension. At the same time, the equating of partners to married couples also extends the treatment for widowhood to death benefit as well as indemnities for death from accidents at work or occupational illness.

All these measures, if they are analysed carefully, give rise to a paradoxical situation. On the one hand, there are clearly some that put a brake on the financial costs of the system, which are, in essence, those related to retirement and temporary incapacity. On the other hand the survivors' benefits provide for a section of the population that up until now was not recognised by law and which supposes an additional cost for the system, as well as from certain measures related to retirement and major illness.

One can show therefore that the Social Security reforms, while necessary, are not easy to implement, given that it is necessary to recognise the rights of the people. The sword of Damocles hangs over the Administration as it moves to achieve a balance. In its hands it has to maintain that balance, making sure it doesn't make a wrong move that could upset the precarious stability of the system.

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