EXPLANATORY MEMORANDUM TO

THE BEREAVEMENT SUPPORT PAYMENT REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions ("the Department") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Pensions Act 2014[1] ("the Act") introduces a new social security benefit called Bereavement Support Payment for surviving spouses and civil partners who are widowed on or after 6 April 2017.

2.2 This instrument provides some of the details of the new scheme. In particular, it specifies the amount to be paid, the duration of the payments, payments for those who are prisoners and territories in which a person must reside in order to receive the new benefit.

2.3 The Bereavement Support Payment is designed to be a more effective and supportive system that meets the needs of all in the future without encouraging long term benefit dependency.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and specified territories (any part of the Channel Islands not subject to a reciprocal agreement order). This is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

4.1 The Department proposes to bring section 30 of the Pensions Act 2014 into force for all purposes on 6th April 2017 by Commencement Order. It intends to bring these regulations into force on the same day. The main entitlement provisions for Bereavement Support Payment are contained in section 30 of the Act. The Act says the claimant must be under pensionable age when their spouse or civil partner dies and they must live in Great Britain or a specified territory. The claimant is not entitled if the death occurs before 6 April 2017 or for any period after the claimant reaches pensionable age.

4.2 Additionally the Act makes clear the claimant is only entitled to the benefit if the deceased spouse or civil partner has made sufficient National Insurance contributions.

[1] http://www.legislation.gov.uk/ukpga/2014/19/contents

The contribution conditions in section 31 of the Act are that the deceased must have paid National Insurance contributions at a certain level for any one year prior to their death. The deceased can be treated as having paid contributions in certain circumstances.

4.3 This instrument is needed to provide details underpinning the implementation of the new benefit. This is the first use of the regulation making powers in Part 5 of the Act.

4.4 We also plan to make consequential amendments of other legislation to include references to Bereavement Support Payment in early 2017. This will include for example amendments to the Social Security (Claims and Payments) Regulations 1987[2] to set out how Bereavement Support Payment is claimed.

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain and specified territories.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Minister for Welfare Delivery, Caroline Nokes, has made the following statement regarding Human Rights:

"In my view the provisions of the Bereavement Support Regulations 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 Bereavement Support Payment will replace the current suite of bereavement benefits for those whose spouse or civil partner dies on or after 6 April 2017. Those already in receipt of bereavement benefits will continue to receive their current benefit for the lifetime of their award. This reform is part of the wider welfare reform agenda to provide a more effective and supportive system that meets the needs of all in the future without encouraging long term benefit dependency.

7.2 Bereavement Support Payment entails a shift in the focus of bereavement benefits, to a short term source of support providing help with the more immediate costs caused by the death of a spouse or civil partner. It is not intended as an income replacement benefit.

The existing benefits

7.3 The current system is complex, comprising of 3 different benefits.

7.4 Bereavement Payment – A £2,000 tax-free lump sum intended to help with expenses arising on bereavement. To qualify the recipient must generally be under state pension age and in addition the deceased must have paid sufficient National Insurance contributions in any one tax year during their working life.

7.5 Bereavement Allowance – A taxable weekly benefit payable for 52 weeks to widows/widowers aged between 45 and pensionable age without dependent children.

[2] http://www.legislation.gov.uk/uksi/1987/1968

The amount of Bereavement Allowance payable to a widow/widower aged between 45 and 54 is related to their age at date of entitlement. The weekly rate is reduced by 7% for each year they are younger than 55 when they become entitled, so they get 93% rate at age 54, falling to 30% at age 45. Those aged 55 or over at the date of entitlement get the full rate of Bereavement Allowance.

7.6 Widowed Parents Allowance - A taxable weekly benefit payable to widows/widowers with dependent children for whom the surviving spouse is eligible to receive Child Benefit.

7.7 To qualify for Bereavement Allowance or Widowed Parents Allowance the deceased spouse must have paid sufficient National Insurance contributions. For the standard basic rate of benefit the late spouse/civil partner must have made sufficient contributions for about 90 per cent of the years in their working life. If they made fewer contributions than that, a smaller basic rate will be paid, provided that they made sufficient contributions for at least a quarter of their working life.

7.8 The current complicated payment system and eligibility conditions make it difficult for people to anticipate how much they will receive and for how long. This causes extra uncertainty at what is for many already a very uncertain time.

7.9 Additionally the ongoing nature of payments under Widowed Parent's Allowance, which can continue for up to 20 years in extreme cases, without any encouragement to maintain contact with the labour market, risks creating welfare dependency.

7.10 A further criticism is that because entitlement ceases if the claimant remarries this can provide an artificial disincentive to those who wish to form new relationships after bereavement.

Reforming the bereavement benefits system

7.11 The objectives for reforming the bereavement benefit system as set out in the consultation prior to the passage of the Act were to simplify the payment and contribution conditions, to make the system more accessible, and for the system to be fair and promote self-dependency.

7.12 The new benefit is designed to both simplify the current bereavement benefit provision and to extend eligibility to those under the age of 45 without dependent children. Further, the National Insurance contribution requirements for the new benefit are generally more generous than for the current benefits. A surviving spouse or civil partner will be entitled to receive the full payment if their deceased spouse or civil partner paid (or was treated as paying) the relevant amount of National Insurance contributions for any one year prior to their death.

7.13 Unlike the current bereavement benefits a claimant can get Bereavement Support Payment at the same time as receiving their full entitlement to other benefits which are based on National Insurance contributions. Payments will be subject to a disregard within the calculation of income-based benefits; Payments will also not be counted as benefit income when calculating the maximum amount of other benefits a person can be paid. Additionally Payments will not cease if the claimant marries, remarries or forms a civil partnership.

7.14 The amount of the new benefit received will not be means tested and the payments will not be taxable. This is on the grounds that it is designed to support people with the additional costs of bereavement, rather than to support everyday living costs.

7.15 A claimant will only stop receiving Bereavement Support Payment if they die, reach state pension age or are convicted of a criminal offence and sent to prison.

Duration of Bereavement Support Payment

7.16 To mitigate long term benefit dependency, Bereavement Support Payment will be payable for a maximum of 19 months (consisting of a single initial larger payment with up to 18 subsequent smaller monthly payments) from the date of death.

7.17 Fewer payments may be made depending on how long after the death the claimant applies for the benefit. Given the vulnerability of this claimant group there will be a period from the date of death in which the claimant can make a claim without losing any money. If a claim is received more than 3 months after the date of death payments can be backdated for three months before the date of claim. This time limit is extended to 12 months for the initial higher payment to help ensure that people do not miss out on this payment. For example, if the death is on 1 January 2018 and a claim is made on 15 June 2018, the claimant will be entitled to an initial lump sum followed by 16 times the monthly instalment amount. But if the claim is made on 15 June 2019, the claimant will not be entitled to the initial lump sum and will be entitled to only 4 times the monthly instalment amount.

Rates of Bereavement Support Payment

7.18 Recipients with dependent children will receive a maximum of an initial larger payment of £3500 and 18 subsequent monthly payments of £350 (higher rate), and those without dependent children will receive a maximum of an initial larger payment of £2500 and 18 monthly instalments of £100 (standard rate).

7.19 The Regulations set out who is entitled to receive the higher rate of Bereavement Support Payment. If a person was pregnant or entitled to child benefit when their spouse or civil partner died they will receive the higher rate.

7.20 Additionally a person who later becomes entitled to child benefit for a child who was living with themselves and/or their deceased spouse or civil partner immediately prior to the death will be entitled to the higher rate from the date child benefit was awarded.

7.21 Once entitlement to the higher rate is established the recipient will remain entitled to the higher rate for the duration of the award regardless of whether or not entitlement to child benefit ceases or the pregnancy does not result in a live birth.

Payment dates

7.22 The initial larger payment will be payable as soon as practicable after the date of death so long as the claim is made 12 months or less after the date of death. If the claim is made more than 12 months after the date of death the initial larger payment will not be made.

7.23 The first monthly instalment will be payable on the monthly recurrence of the date of death with each subsequent instalment being payable on each monthly recurrence of the date of death, the last payment falling due on the 19th monthly recurrence of the date of death.

7.24 In cases where a calendar month within the payable period does not contain a recurrence of the date of death the instalment would be payable on the date immediately preceding that date. For example, if the date of death was 31 March 2018 the first monthly instalment would be payable on 30 April 2018, the second on 31 May 2018 and so on.

Payments to Prisoners

7.25 A claimant will stop receiving Bereavement Support Payment if they are convicted of a criminal offence and sentenced to a term of imprisonment either in a prison or in a secure hospital. Bereavement Support Payment will not be payable for the period of the sentence imposed, inclusive of the first and last days of that sentence.

7.26 If a person is remanded in custody in connection with a criminal offence Bereavement Support Payment will be suspended during the period the person is in custody. Should no sentence be subsequently imposed on the person for the offence any payments which fell due during the time the person was remanded in custody will be paid upon their release. If a sentence is imposed, including a suspended sentence, then Bereavement Support Payment will not be payable for the period the person was remanded in custody.

7.27 If a person is sentenced to a period of imprisonment for a civil offence Bereavement Support Payment will continue to be paid throughout.

7.28 Should a person be sentenced outside of Great Britain for an act which would not be punishable by imprisonment in Great Britain Bereavement Support Payment will continue to be paid throughout. For example in some countries, a person may become a prisoner for saying the wrong thing politically. If this was the case, because they would not be a prisoner for committing the same act in Great Britain we would not treat them as a prisoner and would continue to pay Bereavement Support Payment.

Territories where Bereavement Support Payment is payable

7.29 Finally, these regulations specify the territory (apart from Great Britain) in which the claimant must normally live to be entitled to Bereavement Support Payment. The territory specified by these regulations is any part of the Channel Islands which is not subject to a reciprocal agreement order (currently Sark).

Winners and Losers

7.30 Bereavement Support Payment is a new social security benefit and is not directly comparable with the existing benefits for bereavement. However, those who mainly stand to gain from the new benefit are those who are aged under 45 when they are widowed and are without dependent children as well as those on lower incomes who are also in receipt of other benefits.

7.31 The main group who notionally lose as a result of the reforms are those who would previously have remained on Widowed Parent's Allowance for many years.

7.32 Nobody receiving the current benefits will be worse off as a result of the introduction of Bereavement Support Payment as those in receipt of the current benefits will continue to receive these for the natural lifetime of their awards.

Consolidation

7.33 Informal consolidated text of instruments is available to the public free of charge via 'the National Archive' website http://www.legislation.gov.uk/.

8. Consultation outcome

8.1 The Act followed a government consultation document published in December 2011 entitled *Bereavement Benefit for the 21st Century*[3] which sought views on proposals to reform the current system.

8.2 The summary of responses to the consultation published in July 2012[4] concluded that "overall respondents welcomed the suggestion of simplifying the payment system for bereavement benefits".

8.3 The responses to the consultation played a major part in the design of the new benefit including the decision to make most of the payments as a series of instalments instead of as a single lump sum, more generous provision for those with dependent children and the decision that the new benefit will not be taxable.

8.4 In November 2015 the Social Security Advisory Committee ("SSAC") produced a report entitled *Bereavement Benefit Reform*[5] looking at the support available for the bereaved and the anticipated impacts of Bereavement Support Payment. Again, the reforms were welcomed, however recommendations were made that the Department consider extending the duration of payments further than 12 months and extending the new benefit to cohabitees.

8.5 In March 2016 the Work and Pensions Select Committee also produced a report, this time looking at the Department's proposals for benefits to support the bereaved. The report was entitled *Support for the bereaved*[6]. The recommendations mirrored those of the SSAC, however the recommendation on extending duration went further to recommend a payment period of 18 months.

8.6 After having considered these recommendations from both committees, the Department has decided to accept the recommendation to extend the payment period from the proposed 12 months. This ensures that the payments do not end on the anniversary of the death, which could have created extra distress for the claimant. The Department has designed the payment structure to consist of a maximum of an initial higher payment to be followed by 18 smaller monthly instalments.

8.7 As this instrument is being made less than 6 months from the date the enabling provision in the Act comes into effect it is exempt from formal referral to the SSAC.

9. Guidance

9.1 All customer communications are being reviewed and updated and a new application form has been developed for the new benefit. Additionally the Department is developing appropriate instructions and scripts for staff who deliver and advise on bereavement benefits. These will be available before the new benefit is introduced.

9.2 Information about the measures will be included in material about the new scheme which will be available on GOV.UK https://www.gov.uk/ prior to the start date for the new benefit.

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[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220372/bereavement-benefit.pdf.

[4] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181257/bereavement-benefit-consultation-response.pdf

[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/473680/bereavement-benefit-reform-ssac-op16-nov-2015.pdf

[6] http://www.publications.parliament.uk/pa/cm201516/cmselect/cmworpen/551/551.pdf

9.3 Stakeholders including Registrars, Funeral Directors, Cruse, and Citizen's Advice will also be provided with guidance before the instrument comes into force to raise their awareness of the changes as they are a key information point for bereaved people.

10. Impact

10.1 There is no direct impact on business, charities and voluntary bodies. The Department will engage with stakeholders such as Citizens Advice to ensure its advisers are familiar with the new scheme, and are able to advise individuals requesting information about bereavement benefits as appropriate.

10.2 The impact on the public sector is that there will be an additional cost to the Department of approximately £45m across the first 2 years of the reform. However, once the benefit reaches steady state savings are expected to be around £100m per year.

10.3 An Impact Assessment has not been prepared for this instrument. The impact of the introduction of Bereavement Support Payment was considered in the Impact Assessment published in April 2013 for the Pensions Bill which became the Act. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253613/d-pensions-bill-bereavement-benefits-ia-oct-2013.pdf.

11. Regulating small business

11.1 The instrument does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Department regularly publishes information on benefit expenditure which is used to monitor trends and inform policy development. Administrative data on Bereavement Support Payment will be published on the Department for Work and Pensions' tabulation tool http://tabulation-tool.dwp.gov.uk/100pc/tabtool.html and will be used to monitor the impact of the reforms.

13. Contact

13.1 Lisa Sutherland at the Department for Work and Pensions (Tel: 07827 280999 or e-mail: lisa.sutherland@dwp.gsi.gov.uk) can answer any queries regarding this instrument.