EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT AND SUPPORT ALLOWANCE (UP-RATING MODIFICATION) (TRANSITIONAL) REGULATIONS 2008

2008 No. 3270

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

2. Purpose of the instrument

2.1 As part of the Government's strategy for welfare reform, the Welfare Reform Act 2007 provides for the introduction of Employment and Support Allowance. For new claimants Employment and Support Allowance replaced Incapacity Benefit, Severe Disablement Allowance and Income Support claimed on the grounds of incapacity for work from 27 October 2008. Existing benefits continue in payment.

2.2 The Government plans to transfer people claiming existing incapacity benefits to Employment and Support Allowance between 2010 and the end of 2013. In the Welfare Reform Green Paper 'No one written off: rewarding welfare to reform responsibility' (Cm 7363) it was proposed that people with an age addition would have their benefit frozen as part of the process of aligning the rate of their benefit with Employment and Support Allowance over time.

2.3 In the White Paper 'Raising expectations and increasing support' (Cm 7506) the Government explained that its policy had changed and it now intends to align the rates more slowly than originally planned. People with an age addition will now have their benefit increased by at least half the Rossi index pending migration to Employment and Support Allowance

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Part 1 of the Welfare Reform Act 2007 provides for a new benefit, Employment and Support Allowance, to replace Incapacity Benefit and Income Support claimed on the grounds of incapacity for work from 27 October 2008. The Government intends to migrate people from existing incapacity benefits to Employment and Support Allowance and schedule 4 to the Welfare Reform Act provides the powers for that transition to take place,

so in time all claimants with a health condition or disability are entitled to the same level of benefit and support. Paragraph 10 of schedule 4 to the Welfare Reform Act provides the power to modify the annual up-rating of Incapacity Benefit and Severe Disablement Allowance. We are doing so in order to smooth the transition to Employment and Support Allowance and to prevent differences widening over time.

5. Territorial Extent and Application

5.1 This instrument extends to Great Britain.

6. European Convention on Human Rights

The Minister for Disabled People, Jonathan Shaw, has made the following statement regarding Human Rights:

In my view the provisions of the Employment and Support Allowance (Up-rating Modification) (Transitional) Amendment) Regulations 2008 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The Government intends to move to a system where all claimants claiming incapacity benefits receive the same amount of benefit. In order to prevent the differences widening for people with an age addition it is necessary to modify the up-rating arrangements. Regulation 2 modifies the effect of section 150 of the Social Security Administration Act 1992 so that the up-rating order made under that section may reduce certain amounts. This means that from April 2009 the amounts for age additions will be reduced as part of plans to phase such additions out. Claimants will however still receive overall benefit increases as the personal allowances are being increased in line with the Rossi index.

Consolidation

7.2 Informal consolidation will be included in due course in the Departments' "The Law Relating to Social Security" (the Blue Volumes) which are available on the internet at http://www.dwp.gov.uk/advisers/docs/lawvols/blue/vol/ at no cost to the public.

8. Consultation outcome

8.1 These regulations make necessary changes to the uprating arrangements for people in receipt of age additions with their IB or SDA. The policies were subject to formal consultation period lasting 12 weeks on its

strategy for welfare reform as set out in its Green Paper 'No one written off: reforming welfare to reward responsibility' (Cm 7363) published in July 2008. The government's response was published in the White Paper 'Raising expectations and increasing support' (Cm7506) on 10 December 2008.

8.2 Officials continue to meet voluntary organisations on request to listen to their concerns in relation to the detailed policy. As Employment and Support Allowance has moved into the implementation stage Jobcentre Plus is sharing the development of operational plans with representative organisations through a series of events, including workshops and presentations at existing forums and local meetings. Jobcentre Plus will continue to keep representative organisations informed as operational plans develop.

9. Guidance

9.1 Jobcentre Plus provides extensive guidance to decision-makers who decide questions of eligibility for social security. The guidance for Incapacity Benefit and Severe Disablement Allowance will be updated to reflect the changes proposed by these regulations.

10. Impact

10.1 An impact assessment has not been completed for these regulation as there is not an impact on business.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument. However, an Impact Assessment has been completed for the wider set of rate alignment measures announced in the White Paper 'Raising expectations and increasing support' (Cm 7506) and can be found at http://www.dwp.gov.uk/welfarereform/raisingexpectations/impact-assessment.pdf

11. Regulating small business

11.1 This legislation does not apply to small business.

12. Monitoring & review

12.1 As with other social security benefits this policy will be subject to ongoing review. The rates of benefit including the value of age additions are reviewed annually by the Secretary of State as part of the annual up-rating of benefits. There will be a full evaluation of the outcomes that result from Employment and Support Allowance legislation. This will consider both policy impacts and the wider performance of the Employment and Support Allowance regime, including the experience for customers claiming the new allowance and the effect on their behaviour.

13. Contact

13.1 Trevor Pendergast at the Department for Work and Pensions (Tel: 0207 449 5639); e-mail: trevor.pendergast@dwp.gsi.gov.uk can answer any queries regarding the instrument.