EXPLANATORY MEMORANDUM TO

THE NATIONAL INSURANCE CONTRIBUTIONS CREDITS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2011

2011 No. 709

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 This instrument:

- amends the Social Security (Credits) Regulations 1975 (S.I. 1975/556) to end awards of National Insurance contribution credits for the tax year in which people reach age 16 and the two following tax years for the purposes of building up entitlement to a basic state pension ("starting credits"). In future, no National Insurance contribution credits will be awarded in these circumstances for any tax year commencing on or after 6 April 2010; and
- inserts a new provision into the same Regulations to introduce National Insurance contribution credits in respect of a claim for a basic state pension or bereavement benefits for specified adults who provide care for children under 12. In future, National Insurance contribution credits will be awarded in these circumstances for a tax year commencing on or after 6 April 2011.

2.2 The instrument also makes a minor amendment to the Social Security (Contributions Credits for Parents and Carers) Regulations 2010 (S.I. 2010/19) to include kinship carers in Scotland in the definition of "engaged in caring". Kinship carers are foster carers known or related to a child.

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

None.

4. Legislative Context

4.1 In certain circumstances, people may be awarded credits on their National Insurance contributions record in order to help them satisfy entitlement on a claim to certain social security benefits. This means they do not actually pay National Insurance contributions, but are credited with them. Currently, people have these credits added to their National Insurance contributions record if they satisfy certain conditions, for example, if they are:

- incapable of work through illness or disability;
- unemployed and available for, and actively seeking, work;
- on an approved training course;
- on jury service;
- serving a prison sentence for a conviction which was subsequently quashed;
- receiving Jobseeker's Allowance; and
- receiving Incapacity Benefit or Employment and Support Allowance.

Starting credits

4.2 Since April 1975, National Insurance contributions have been credited to people for the tax year in which they reach age 16 and the following two tax years to help them satisfy the National Insurance contribution conditions on a claim for basic state pension entitlement and for bereavement benefits ("starting credits"). The policy intention was to ensure that young people staying on in education beyond the minimum school leaving age did not lose future benefit entitlement as a result. There is no requirement for the individual to be in the UK at the relevant age. This was mainly to ensure that young people being educated outside the UK were not penalised.

4.3 The amendments made by these Regulations provide that an award of starting credits will not be made in respect of any tax year commencing on or after 6 April 2010. Changes that were introduced on 6 April 2010 mean that starting credits will be largely irrelevant for state pension purposes for people who have lived and worked in the UK most of their lives. Special rules will apply to some people, for instance, those registering for a National Insurance number having entered the UK as an adult migrant.

4.4 From 6 April 2010, the reduction in the number of qualifying years needed for a full basic State Pension to 30 years, means that few people who have spent most of their working lives in the UK will need starting credits for this purpose.

National Insurance credits for specified adults who provide care for children under 12

4.5 Representations have been made about the help with childcare given by grandparents. For example, it is recognised that many grandparents look after their grandchildren to enable the child's parents to work. For some, this may mean sacrificing their own incomes in retirement.

4.6 In the 2009 Budget, it was announced that grandparents looking after children aged 12 or younger, where the primary carer works, will be credited with National Insurance contributions towards their state pension. It was also confirmed that this protection would not be restricted to grandparents but would also cover other adult relatives providing familial childcare. The Government has progressed this proposal.

5. Territorial Extent and Application

This instrument applies to Great Britain. Separate but corresponding provision will be made for Northern Ireland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

Starting credits

7.1 The Government has decided that awards of starting credits should be stopped from 6 April 2010 but existing awards will remain in place. Starting credits are awarded for the tax years in which a person attains the age of 16, 17 and 18, up to the level needed to make it a qualifying year that counts towards entitlement on a claim for basic State Pension and Bereavement Benefits.

7.2 Starting credits currently assist the satisfaction of the National Insurance contribution condition for:

- Widowed Mother's Allowance;
- Widowed Parent's Allowance;
- Bereavement Allowance;
- Widow's Pension; and
- a Category A or Category B state pension,

as appropriate.

7.3 Starting credits are awarded on a claim for one of these benefits; there is no requirement to have been in the UK at the relevant time, so people coming to the UK, even for a relatively short time, and who obtain a National Insurance number, acquire starting credits.

7.4 There was a requirement for people reaching state pension age before 6 April 2010 to have at least a quarter of the total number of qualifying years needed for a full basic state pension to receive any basic state pension at all. This has been removed and so a person can now acquire a basic state pension of 10% of the full amount based on the award of starting credits alone. A person with no real connection to the UK can now become entitled to UK state pension in this way.

7.5 The removal of starting credits will have no effect on future State Pension customers until at least 2025 and any subsequent effect will be negligible for the majority of people who have spent their working lives in the UK.

7.6 However, a small number of young people, currently below age 18, may be adversely affected. These are people who marry or form a civil partnership, and have responsibility for children, and whose spouse or civil partner dies relatively early in their working life. In order to get the full amount of Widowed Parent's Allowance, there is a condition that 90% of the "working life" (from the start of the tax year in which age 16 is reached until the end of the tax year before the one in which death occurs) is covered by qualifying years of National Insurance contributions or credits. Where young people are concerned, starting credits may have a significant effect on entitlement.

7.7 In order to protect the position of bereaved people who would be affected in this way, starting credits will continue to be awarded for the purposes of Widowed Parent's Allowance and Bereavement Allowance only.

National Insurance credits for specified adults who provide care for children under 12

7.8 Weekly Class 3 National Insurance credits will be made available to help specified adults who provide care for a child under 12, to satisfy the conditions of entitlement to a basic state pension and bereavement benefits. The National Insurance credits cannot be awarded automatically; they must be applied for. National Insurance credits will be transferred from Child Benefit recipients to an eligible applicant.

7.9 Since 2008, it has been possible to transfer Home Responsibilities Protection and now National Insurance credits from Child Benefit recipients (for example from mother to father), as long as the person from whom the National Insurance credits are being transferred has a qualifying year and does not need the protection for their basic state pension (or their State Second Pension). A similar condition will apply in relation to specified adults caring for a child under 12. This avoids any problem that such relatives might be treated more favourably than parents. An application countersigned by the Child Benefit recipient is required, although discretion on countersigning may be applied in certain circumstances.

7.10 Applications will need to be made after the end of the relevant tax year so checks can be made that the Child Benefit recipient has a qualifying year. The need for the Child Benefit recipient to have a qualifying year removes the risk that the person needs the National Insurance credit to satisfy the conditions for entitlement for their own State Pension. There will not be any time limits on applications.

7.11 Unlike transferring National Insurance credits between Child Benefit recipients where there is a need for them to live at the same address, for these National Insurance credits, it is unlikely (although possible) that the applicant will live at the same address as the Child Benefit recipient at the time of the application. Therefore, the same address or surname is not being used as a means of validation.

7.12 Where applications are made by more than one person, the applications will be reviewed before any National Insurance credits are awarded. Awarding National Insurance credits for the relevant weeks rather than complete years will reduce the volume of such “rival” applications. So too, will the need for applications at the end of the relevant tax year; it will only be possible to determine whether National Insurance credits may be transferred some time after the relevant tax year has ended. This results from the condition (as with transfers between parents) for the Child Benefit recipient to have a qualifying year by other means (National Insurance credits or National Insurance contributions). This means that patterns of childcare can be recorded and submitted with the application – for instance, a child may spend alternate weeks with their different grandmothers and at the end of the year, each grandmother can apply for the weeks they provided childcare.

Consolidation

7.13 There are currently no plans to consolidate the regulations amended by this instrument. Informal consolidation of this instrument will be provided in due course by way of "The Law Relating to Social Security" (Blue Volumes) which is available online on the DWP website free of charge to the public at

http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/

8. Consultation outcome

8.1 A public consultation was held between 15 October 2010 and 26 November 2010[1]. Because this issue is of limited impact on the general public and likely to be of very restricted interest, a six-week public consultation was considered appropriate.

8.2 The Department for Work and Pensions also flagged the consultation with around 80 key stakeholders who it believed would have an interest in the changes. The proposals were also presented to the Social Security Advisory Committee, as part of the Committee's remit is to consider the effect of new provisions on customers and staff. The Committee welcomed the presentation. The Committee also agreed at a later date, that the regulations need not be referred to it.

8.3 Comments were received from four organisations. All were in support of the changes made by this instrument. Comments made were used to:

- ensure this legislation helps protect the position of bereaved people who would have been affected by a complete withdrawal of starting credits, by continuing to award them for the purposes of Widowed Parent's Allowance and Bereavement Allowance; and
- define the specified adults who should receive National Insurance contribution credits when providing care for children under 12.

8.4 The comments received will be published on the Department for Work and Pensions' website along with the Government's response.

9. Guidance

9.1 The Department for Work and Pensions will raise awareness of the new National Insurance credit by use of a customer factsheet.

9.2 This information, including the application form for the new National Insurance credit, will be made available online via Government websites.

9.3 Publicising the new National Insurance credit and the wider state pension reforms, will ensure that individuals take any necessary immediate action to protect or enhance entitlement to contributory state benefits and the state pension.

10. Impact

10.1 There is no impact on business, charities or the voluntary sector.

10.2 The impact on the public sector is negligible.

[1] A link to the consultation including the consultation document is here:

http://www.dwp.gov.uk/consultations/2010/ni-credits-changes-consult.shtml

10.3 A full impact assessment has not been published for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 Through analysis of administrative data, surveys and other sources, the Department for Work and Pensions will continue to monitor:

- state pension and contributory benefit awards and accrual;
- the level and distribution of pensioners' and benefit recipients' total incomes; and
- the level of understanding of the state pension and contributory benefits systems.

12.2 The Department for Work and Pensions will continue to report on progress against its public service agreements in its annual and departmental reports.

12.3 The Department for Work and Pensions' Secretary of State will produce a report on the operation of the provisions of the Pensions Act 2007 in 2014 or earlier and will include this subsequent provision.

12.4 Similar arrangements will apply following the changes to benefits that have been introduced in the Welfare Reform Act 2009.

13. Contact

Paul Lapraik at the Department for Work and Pensions, telephone number: 020 7449 7772 or e-mail: STATE.PENSIONS@DWP.GSI.GOV.UK, can answer any queries regarding the instrument.