EXPLANATORY MEMORANDUM TO

THE PENSIONS ACT 2014 (CONSEQUENTIAL, SUPPLEMENTARY AND INCIDENTAL AMENDMENTS) ORDER 2017

2017 No. 422

1. Introduction

1.1 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 supports the introduction of a new social security benefit called Bereavement Support Payment (BSP) which will replace the current range of Bereavement Benefits - Bereavement Payment (BP), Bereavement Allowance (BA) and Widowed Parent's Allowance (WPA). BSP is for surviving spouses and civil partners who are widowed on or after 6 April 2017. The current Bereavement Benefits are for surviving spouses and civil partners who are widowed before 6 April 2017. This instrument removes references to the current Bereavement Benefits in secondary legislation and replaces them with references to BSP as necessary.

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 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 30 of the Pensions Act 2014 sets out the main entitlement provisions for BSP which will come fully into force on 6 April 2017. Detailed provisions are contained in the Bereavement Support Payment Regulations 2017[1], which will come into force on the same day. This instrument comes into force on the same day for the purposes of a claim for BSP.

4.2 With the introduction of BSP, this instrument makes amendments which omit references to BA and BP from secondary legislation (Schedule 16 to the Pensions Act 2014 makes similar omissions from primary legislation). References to WPA are not omitted from existing primary or secondary legislation for the reasons given in paragraph 4.3. Where appropriate, this instrument includes references to the new BSP. Articles 2 and 3 of this instrument contain commencement provisions which ensure that the appropriate legislation is in force for the appropriate case.

[1] http://www.legislation.gov.uk/id/ukdsi/2017/9780111153062

4.3 Bereavement Allowance (BA), Bereavement Payment (BP) and Widowed Parent's Allowance (WPA) remain in force for the purposes of deaths before 6 April 2017. The Pensions Act 2014 treats these three existing benefits in a different way. The primary legislation on WPA is not repealed (see for example paragraph 12 of Schedule 16 to the Pensions Act 2014). This instrument therefore does not revoke the secondary legislation on WPA. The primary legislation on BA and BP is repealed (see for example paragraphs 8 and 13 of Schedule 16 to the Pensions Act 2014). This instrument therefore revokes the secondary legislation on BA and BP. Those revocations only come into force once such claims for BA and BP come to an end.

4.4 In summary, articles 2 and 3 of this instrument provide that (1) the secondary legislation on BA and BP remains in force in relation to claims for deaths before 6 April 2017 and (2) the secondary legislation on Bereavement Support Payment (BSP) comes into force in relation to claims for deaths on or after 6 April 2017.

4.5 Legislation dealing with the administration of social security benefits, including Bereavement Benefits, is contained in the Social Security Administration Act 1992, the Social Security Act 1998 and associated regulations. Those Acts were amended by the Pensions Act 2014 Act to include references to BSP. This instrument amends regulations made under those Acts to extend existing administrative arrangements to do with claims, decision-making, payments and overpayments to BSP.

4.6 The other provisions in this instrument are mostly minor consequential or supplementary amendments to secondary legislation.

5. Extent and Territorial Application

5.1 Articles 1, 18, 22 and 28 extend to the United Kingdom, articles 39, 41 and 42 extend to England and Wales and article 46 extends to England, Wales and Northern Ireland. The remaining articles extent to Great Britain.

5.2 The territorial application of this instrument is the same except that articles 41 and 42 apply to England only and article 46 applies to England and Wales only.

5.3 Subject to the agreement of the Northern Ireland Assembly, the Department for Communities in Northern Ireland will be producing corresponding legislation for Northern Ireland.

6. European Convention on Human Rights

6.1 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

7.1 These amendments ensure that existing secondary legislation make reference to BSP where appropriate and provide for the interaction with other social security benefits as a consequence of the introduction of this new benefit. Those already in receipt of, or entitled to, existing Bereavement Benefits (BP, BA and WPA) will continue to receive their current benefit for the lifetime of their award. Once these payments have ended such references will be obsolete.

***Credits** (article 4)*

7.2 These regulations provide that National Insurance credits awarded in certain circumstances, for example caring, disability, unemployment and incapacity for work can be used to determine entitlement to Bereavement Benefits and Bereavement Allowance (BA). As National Insurance credits awarded will not be used to determine entitlement to Bereavement Support Payment (BSP), the amendments omit reference to Bereavement Benefits and BA, where appropriate. These references will be redundant with the introduction of BSP, once any existing entitlement to those benefits comes to an end.

***Persons Abroad** (article 5)*

7.3 These regulations set out the circumstances in which disqualification from receiving certain social security benefits during periods of absence from Great Britain may be removed. The amendments remove references to BA and Bereavement Payment which will be redundant with the introduction of BSP. They also ensure that these regulations continue to apply to Widowed Parent's Allowance (WPA).

***Overlapping Benefits** (article 6)*

7.4 These regulations list the social security benefits which a person cannot get at the same time as another social security benefit. Unlike BA and WPA (those bereaved before 6 April 2017), entitlement to BSP will not stop a person getting entitlement to any other contributory benefit. The amendments remove reference to BA, which will become obsolete after the introduction of BSP. By not substituting it with BSP we will ensure that the regulations do not prevent a person having entitlement to another contributory benefit.

***Widow's Benefit and Retirement Pensions** (article 7)*

7.5 A person who was entitled to WPA or BA and had not remarried or formed a new civil partnership in the interval before State Pension age is entitled to a Category B retirement pension. This is based on their late spouse or civil partner's National Insurance contributions if they reached State Pension age before the introduction of the new State Pension on 6 April 2016. Regulations 7 and 7A set out the circumstances in which the person may be treated as entitled to those benefits for the purposes of entitlement to a Category B pension.

7.6 A person reaching State Pension age on or after 6 April 2016 whose late spouse or civil partner had died or reached State Pension age before that date, may qualify for a survivor's pension under transitional arrangements if (among other conditions) they would have been entitled to a Category B pension, had the old system rules still applied to them. The Pensions Act 2014 modifies the Category B provisions to enable this to apply where the bereavement is on or after 6 April 2017 and the survivor is awarded BSP.

7.7 Regulations 7 and 7A will therefore continue to apply for the purpose of establishing entitlement to survivor's pension where the survivor received the current BA or WPA. New regulation 7B sets out the circumstances in which a person can be treated as entitled to BSP for this purpose.

***General Benefit** (article 8)*

7.8 Claimants are normally disqualified from receiving any benefit when they are undergoing imprisonment or detention in legal custody as a result of, or in connection

with, criminal proceedings. For prescribed benefits, however, disqualification applies to a claimant undergoing imprisonment or detention in legal custody in connection with criminal proceedings only where a penalty is imposed at the conclusion of those proceedings. This article amends regulations to remove reference to Bereavement Payment (BP) and Bereavement Allowance (BA) from the list of prescribed benefits, since the references will become obsolete. Section 32 of the Pensions Act 2014 and regulations made under it contain provisions for Bereavement Support Payment (BSP) disqualifications where the claimant is undergoing imprisonment or detention in legal custody.

Income Support, Jobseeker's Allowance, Housing Benefit & Employment and Support Allowance *(articles 9, 14, 25, 31, 44)*

7.9 The amendments ensure that the various payments of BSP are disregarded in the calculation of income-related benefits so that the:

- initial larger payment and any arrears which are included in the first monthly payment are treated as capital, and a 12 month disregard is applied from the date of payment, to allow for sufficient time for monies to be spent by the recipient;
- subsequent smaller monthly payments (except for arrears) are treated as income and disregarded for a month.

Claims and Payments *(article 10)*

7.10 The amendments remove references to BA and BP and extend the existing administrative arrangements relating to claims for, and payments of, Bereavement Benefits to BSP. One of the key amendments is in Article 10(7)(d) which provides the time limit for claiming a BSP lump sum. This time limit date is important because, in addition to being entitled to the higher or standard rate of BSP, if the person has claimed 12 months or less after the date of the death of their spouse or civil partner, there is an extra £3,500 at the higher rate for the first month and an extra £2,500 at the standard rate for the first month.

Social Fund (Recovery by Deductions from Benefit) *(article 11)*

7.11 A Social Fund payment can be recovered by making deductions from BA. This amendment removes the reference to BA as this will become obsolete with the introduction of BSP.

Maintenance Assessments & Special Cases *(article 12)*

7.12 The amendment ensures that BSP made on an ongoing, periodical basis will not be considered as income for the purposes of assessing a parent's circumstances when calculating the amount of child support payments they are required to make.

Payments on account, Overpayments & Recovery *(article 13)*

7.13 Where a claimant receives certain income-related benefits and a lesser amount would have been paid if another benefit (the 'prescribed benefit') had been paid on time, the amount which would not have been paid can be recovered. Regulations list the other benefits which currently include Bereavement Benefit. The amendment reflects that BSP will not be a prescribed benefit by omitting reference to Bereavement Benefit and BP from the definitions and not replacing them with BSP; and not including BSP in the list of prescribed benefits. Widowed Parent's Allowance is now the only bereavement-type payment that remains a prescribed payment.

Decisions & Appeals *(article 15)*

7.14 The amendments:

(i) add Bereavement Support Payment (BSP) to the list of benefits for which a decision would not be changed where the calculation of the award was on the basis of an official error caused by e.g. a computer glitch. If the decision was changed then the payment would reduce. This addition of BSP will prevent this happening.

(ii) provide that a decision to award BSP may be revised at any time where National Insurance contributions are repaid or returned to the contributor, where this means the person no longer satisfies the contribution conditions of entitlement to BSP.

Claims & Information *(article 16 & 30)*

7.15 Regulations provide for joint-working between Department for Work and Pensions (DWP) and local authorities (LA) in relation to claims and sharing information. The amendments ensure, by inserting references to BSP, that where information used by DWP in relation to BSP is passed to a LA, and is relevant to claims for Housing Benefit or Council Tax Reduction, the LA can use that information without further verifying it.

Maintenance Calculations & Special Cases *(article 17)* ***and Child Support Maintenance Calculation*** *(article 40)*

7.16 The amendment removes references to Bereavement Allowance (BA) from the provisions which would lead to a flat rate of Child Support Maintenance being payable were it in payment. Reference to BSP is not introduced in its place because of the differences between this and BA. BSP will also not count towards a parent's income when calculating the amount of child support they are liable to pay.

Contributions *(article 18)*

7.17 This amendment removes BA and Bereavement Payment from the list of benefits for which a person can pay voluntary Class 3 National Insurance contributions. No reference to BSP is introduced in its place. This is as a consequence of the different contribution conditions for BSP which do not include payment of Class 3 National Insurance contributions.

Inherited SERPS *(article 19)*

7.18 Under provisions of the Social Security Contributions and Benefits Act 1992 (the 1992 Act), a person whose spouse or civil partner has died can inherit 50% of their late partner's additional State Pension gained under the State Earnings Related Pension Scheme (SERPS). These Regulations provide for that inheritable percentage to be increased if the deceased had reached (or was due to reach) State Pension age before 6 October 2010. The regulations apply in respect of the 1992 Act, which sets out the rate of both WPA and BA except to the extent that it relates to BA, which does not include SERPS. The amendment omits references to BA.

Loss of benefit *(article 20)*

7.19 This amendment ensures that BSP will be a disqualifying benefit (one where fraud committed against BSP can trigger a loss of benefit reduction in a sanctionable benefit following a conviction for benefit fraud, or acceptance of a penalty in lieu of

prosecution) but will not be a sanctionable benefit (one that gets reduced by a loss of benefit penalty). Bereavement support payment (BSP) itself will not be subject to any fraud loss of benefit reduction.

State pension credit *(article 21)* ***Housing Benefit (Persons who have attained the qualifying age for State Pension Credit)*** *(article 26)* ***and Universal credit*** *(article 43)*

7.20 The amendments remove references to Bereavement Allowance (BA) from the provisions for the treatment of unearned income (which assess a person's income for the purposes of determining whether they are entitled to one of the benefits listed above). The amendments also provide a new 52 week capital disregard for the initial higher payment of BSP payable in the first month (which means the higher payment is not taken into account for that period when assessing the person's capital for the purposes of determining entitlement to the benefits listed above). They also add BSP to the Housing Benefit and State Pension Credit provisions that provide a one year disregard for arrears of benefit. The disregard in the Universal Credit provisions for arrears of benefits will encompass BSP arrears and do not need amending.

Tax Credits *(article 22)*

7.21 Tax credits awards are calculated on the basis of claimants' income. However, income from Bereavement Benefits is not included in this calculation. These regulations will ensure this continues to be the case for BSP.

Fees: Non-contentious, Gender recognition, Court of protection, Magistrates' court, Civil proceedings, Family proceedings, Upper tribunal (lands chamber), Supreme Court, First-tier tribunal (Gambling), Upper tribunal (immigration & asylum chamber) (judicial review) (England & Wales), First-tier tribunal (property chamber), Employment tribunals and the employment appeal tribunal, Courts and tribunals *(articles 23, 27, 29, 32-37, 39 & 46-48)*

7.22 Eligibility for help with paying fees for Courts and Tribunals (formerly known as fee remission) is based on two tests: the disposable capital and gross monthly income tests. An applicant will have to pass both tests in order to qualify for help with fees. Income from Bereavement Benefits is excluded in this calculation for both tests. These amendments will ensure this continues to be the case for BSP.

Social Fund Maternity and Funeral Expenses *(article 24)*

7.23 As arrears of specific benefits payable to the deceased at the date of death do not count as assets of the deceased, the amendments replace BA with BSP so that this continues to be the case for BSP.

Transfer of state pension & benefits *(article 28)*

7.24 A transfer of State Pension rights becomes an option in instances where an individual becomes employed by an appropriate European Union institution. They can then transfer their State Pension rights to the Pension Scheme of the European Communities Institutions (PSEC). Regulations prescribe the administrative process required to apply for, calculate and make a transfer payment to PSEC. In particular, they set out how an actuarial cash value is to be applied to an individual's contributory benefit rights derived from their National Insurance record when it is being transferred to the PSEC.

7.25 These amendments ensure that any entitlement to BSP is transferred along with State Pension rights to the PSEC for the period being transferred. This is so that any transferred State Pension rights continue to incorporate a value which includes any right to claim for Bereavement Support Payment (BSP). That is, the value of any BSP entitlement is included in the State Pension transfer value. This is because the Pension Scheme of the European Communities Institutions provides survivor benefits.

Rate of Bereavement Benefits *(article 38)*

7.26 These regulations set the rate of Bereavement Allowance (BA). This amendment deletes references to BA as it will not need uprating where a late spouse or civil partner dies on or after 6 April 2017.

Council tax reduction schemes (prescribed requirements) (England) *(article 41)* ***and Council tax reduction schemes (default scheme) (England)*** *(article 42)*

7.27 The amendment will remove reference to BA from the provisions on the meaning of income in respect of pensioners and replace it with BSP so that it is not included as income when calculating the amount of council tax reduction a person might be entitled to.

Legal aid (information about financial resources) *(article 45)*

7.28 These regulations give the relevant authority the power to request information from the relevant Secretary of State or relevant Northern Ireland Department about a prescribed benefit an individual is receiving, for the purposes of assessing the financial resources of the individual in the course of assessing eligibility for legal aid.

7.29 This amendment inserts BSP as a prescribed benefit under the regulations. As a result of this amendment, the relevant authority will have the power to request information on these payments from other Government Departments.

Consolidation

7.30 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 Pensions Act 2014 followed a government consultation document published in December 2011 entitled Bereavement Benefit for the 21st Century[2] which sought views on proposals to reform the current system.

8.2 The summary of responses to the consultation published in July 2012[3] 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.

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220372/bereavement-benefit.pdf.
[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181257/bereavement-benefit-consultation-response.pdf

8.4 In November 2015 the Social Security Advisory Committee ("SSAC") produced a report entitled *Bereavement Benefit Reform*[4] looking at the support available for the bereaved and the anticipated impacts of Bereavement Support Payment. Again, the reforms were welcomed, however SSAC recommended that the Department consider extending the duration of payments further than 12 months and extending the new benefit to cohabitees. The recommendation for cohabitees was considered, but not taken forward as this is our current position for cohabitees across all benefits. It would be difficult to justify this as an exception in this case.

8.5 In March 2016 the Work and Pensions Select Committee also produced a report on the Department's proposals for benefits to support the bereaved. The report was entitled *Support for the bereaved*[5]. The Committee's recommendations mirrored those made by SSAC, however the recommendation on extending duration went further to recommend a payment period of 18 months.

8.6 Having considered the reports from both Committees, the Department decided to accept the recommendation to extend the payment period beyond 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 This instrument is an Order making consequential, supplementary and incidental amendments. It is therefore exempt from formal referral to the SSAC. Nevertheless, the instrument has been referred to SSAC informally for their information. For similar reasons, there is no requirement to consult the Local Authority Associations, but the amendments relating to Housing Benefit were referred to those Associations for their information.

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.

9.3 Stakeholders including Registrars, Funeral Directors, Cruse, and Citizens Advice Bureau 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 or 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.

[4] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/473680/bereavement-benefit-reform-ssac-op16-nov-2015.pdf
[5] http://www.publications.parliament.uk/pa/cm201516/cmselect/cmworpen/551/551.pdf

10.2 The impact on the public sector is negligible from these consequentials.

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 legislation 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 Anila Naseem at the Department for Work and Pensions Telephone: (Tel: 0113 2324899 or e-mail: anila.naseem@dwp.gsi.gov.uk) can answer any queries regarding this instrument.