EXPLANATORY MEMORANDUM TO

THE PENSIONS INCREASE (MODIFICATION) REGULATIONS 2017

2017 No. 418

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations modify the provisions of section 59 of the Social Security Pensions Act 1975 by re-defining "base period". This will enable all public service pensions beginning before 11 April 2016 to be uprated by the full amount of the increase provided for in the Pensions Increase (Review) Order 2017: that is, 1%. Public service pensions beginning on or after 11 April 2016 only will receive a proportionate fraction of this increase.

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 negative resolution 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 Sections 59 and 59A of the Social Security Pensions Act 1975 ("the 1975 Act") provide that the Minister for the Civil Service shall, by order, provide that the annual rate of an official pension may be increased by the same percentage as that specified in the annual direction given by the Secretary of State for Work and Pensions pursuant to section 151 of the Social Security Administration Act 1992 ("the 1992 Act"). This enabling power was transferred to HM Treasury by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).

4.2 Where the pension began since the last direction given by the Secretary of State for Work and Pensions (the beginning of the "base period" as defined in section 59(7) of the 1975 Act) the increase is a fraction of the percentage provided for in the latest direction.

4.3 Under section 59(7) of the 1975 Act, section 59 of that Act has effect as if it were contained in the Pensions (Increase) Act 1971 ("the 1971 Act").

4.4 Section 5(3) of the 1971 Act give the Treasury power, if it is satisfied in the case of any official pension that it is proper to do so, to direct by regulations that the provisions of the 1971 Act shall apply in relation to that pension subject to such modifications, adaptations and exceptions as may be specified in the regulations.

4.5 By virtue of section 9(1) of the 1971 Act, references in the Act apply in relation to any allowance, benefit or compensation whether it takes the form of periodical payments or of a gratuity or other lump sum.

5. Extent and Territorial Application

5.1 The instrument extends to all of the United Kingdom.

5.2 The instrument applies to all of the United Kingdom.

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 Public service pensions in payment, preserved pensions and preserved lump sums are increased annually to take account of increases in the cost of living so that they maintain their purchasing power. Where the increases have begun within the last year they are increased by a pro-rata amount.

7.2 The pro-rata calculation applies to pensions which began during the "base-period". This is defined in section 59(7) of the Social Security Pensions Act 1975 as "*the period ending with the coming into force of that direction and beginning with the coming into force of the last previous such direction*". The direction referred to is that made by the Secretary of State for Work and Pensions under section 151 of the Social Security Administration Act 1992.

7.3 In 2016 no such direction was made, so under the definition of the "base period" for pro-rata calculations without modification the pro-rate increase in public service pension payments would be based on a factor of $1/24^{th}$ not $1/12^{th}$ and the period would extend back to the direction made in 2015. This would mean all pensions coming into payment during that period would receive a smaller increase than would usually be expected.

7.4 These regulations modify the definition of base period in relation to the direction coming into force on 10 April 2017 only, to specify that it begins on 11 April 2016. The pro-rata increase will therefore only apply to those pensions coming into payment during the year before the 2017 direction, and be based on a factor of 1/12. This accords with the intention of the 1975 Act.

Consolidation

7.5 The instrument provides for a one off modification and does not require a consolidation exercise.

8. Consultation outcome

8.1 These Regulations do not require a consultation exercise.

9. Guidance

9.1 No guidance notes are provided for the public in relation to these Regulations. Related guidance for the Pensions Increase (Review) Order 2017 is produced by HM Treasury.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

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 instrument will not be reviewed or monitored on a regular basis as it provides for a one off modification.

13. Contact

13.1 Eloise Kohler at the Treasury (telephone 0207 270 2403 or email eloise.kohler@hmtreasury.gsi.gov.uk) can answer any queries regarding the Regulations.