EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS CREDITS FOR PARENTS AND CARERS) REGULATIONS 2010

2009 No. 19

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 defines 'engaged in caring' and provides the meaning of 'foster carer' for the purpose of crediting a Class 3 contribution for a parent or carer.

2.2 It also provides for the partner of a Child Benefit recipient to be entitled to a Class 3 credit in certain circumstances.

2.3 When the carer needs to apply for the credit, it sets out what is required and the time limit for making the application.

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

3.1 None

4. Legislative Context

4.1 Section 3 of the Pensions Act 2007 makes provision for 'relevant carers', such as parents and people looking after a sick or disabled person, through the award of weekly Class 3 National Insurance credits for caring activities. These credits will count for State Pension, Bereavement Allowance and Widowed Parent's Allowance and replace Home Responsibilities Protection for contributors who reach pension age on or after 6 April 2010 or who die on or after 6 April 2010 without reaching pension age before that date.

4.2 The legislation specifies an amendment to the Contributions and Benefits Act. This recognises those awarded Child Benefit for a child under 12 and approved foster parents and provides for regulations to be made to define those who are 'engaged in caring' and to specify when and how an application for credits needs to be made.

4.3 It has always been intended that those caring for at least 20 hours a week for one or more persons who each received Attendance Allowance, Constant Attendance Allowance or the middle or highest rate of the Disability Living Allowance care component would be regarded as 'engaged in caring'.

During the Report stage of the 2007 Pensions Bill in the Commons, the Minister for Pensions Reform stated that the involvement of health care and social care professionals in certifying that someone was caring for at least 20 hours a week would be explored. [Hansard reference: 18 April 2007: Column 396]

4.4 The following SIs are associated with these regulations:

- The National Insurance Contribution Credits (Transfer of Functions) Order 2009 (SI 2009/1377)
- The Pensions Act 2007 (Supplementary Provision) Order 2009

4.5 A separate instrument, which makes various amendments of existing regulations as a consequence of the changes to the state pension scheme made by the 2007 Act, was published on 20 August 2009. This is The Social Security (State Pensions and National Insurance Credits) Regulations 2009.

5. Territorial Extent and Application

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

6. European Convention on Human Rights

The Secretary of State for Work and Pensions, Yvette Cooper, has made the following statement regarding Human Rights:

"In my view the provisions of the Social Security (Contributions Credits for Parents and Carers) Regulations 2009 are compatible with the Convention rights."

7. Policy background

- ***What is being done and why***

7.1 Section 23A of the Social Security Contributions and Benefits Act 1992 provides for the award of weekly Class 3 National Insurance credits to certain carers in respect of their caring activities. These credits replace Home Responsibilities Protection and extend the range of carers whose entitlement to State Pension and Bereavement Benefits is protected. Taken together with other Pension Reforms, the intention is that caring should be recognised as being on a par with paid employment for pension purposes. The primary legislation provides that 'engaged in caring' should be defined in regulations.

7.2 The Regulations define 'engaged in caring' by providing that the credits will be awarded to those –

- Caring for at least 20 hours a week for one or more individuals each of whom are receiving a qualifying disability benefit, or in respect of whom the Secretary of State considers that level of care to be appropriate;

- Receiving Income Support and determined as regularly and substantially engaged in caring for a sick or disabled person receiving an attendance-related benefit.

7.3 The regulations also provide that the partner of a Child Benefit recipient may be awarded credits if the Child Benefit recipient has achieved a qualifying year for both basic and additional State Pension purposes through paid Class 1 contributions and certain Class 1 credits.

7.4 The credits will be available for each week of caring. They will also be available for breaks in care of up to 12 weeks to cover periods of sickness, respite care and holidays. It would be unreasonable to expect a person to be caring for 20 hours a week during every week of the tax year or to obtain employment during short breaks in care but a week which is not covered by a credited or paid contribution could result in the year not being a qualifying one for pension purposes.

7.5 The 12 week period will also include occasions where the disabled person is in hospital and has had their qualifying benefit withdrawn. Care does not necessarily cease during such times.

7.6 The credit will continue to be available for up to 12 weeks when caring ceases permanently due to the death of the person being cared for or their permanent admission to residential care.

7.7 Persons caring for a disabled person, who receive Carer's Allowance, are entitled to Class 1 credits for each week for which that benefit is payable but are subject to a system in which both the benefit and credits are withdrawn in certain circumstances – for instance, when the disabled person has been in hospital for more than the permitted period or the number of hours spent caring falls below the 35 hours a week limit. Where this occurs, it is intended that they should automatically receive a Class 3 credit for 12 weeks. This will allow them to return or prepare to return to the labour market or apply for Class 3 credits for carers based on their new circumstances.

7.8 Whilst we can only estimate roughly the numbers who will benefit from these proposals, it is considered that around 160,000 more people could start to gain a credit for the basic State Pension in 2010, including around 115,000 women. Around 240,000 more people could accrue entitlement to State Second Pension than are currently doing so, including around 145,000 women. The greatest benefit is expected from State Second Pension as many people qualifying for the carer's credit will accrue sufficient qualifying years to entitle them to a full basic State Pension even without the credit.

8. Consultation outcome

8.1 Proposals for the credits were initially put forward for public consultation in the White Paper ***Security in Retirement****: towards a new*

pension system. *http://www.dwp.gov.uk/policy/pensions-reform/security-in-retirement/index.shtml* Subsequently, there has been extensive consultation with interest groups such as Age Concern/Help the Aged and Carers UK during the development of these credits. The original provisions did not protect the pension entitlement of people who were caring for 20 hours or more a week for someone not receiving one of the qualifying benefits. Concerns were raised by lobby groups that this would exclude many of the carers who we wished to help if disabled persons were reluctant to claim a benefit related to their assistance needs. It was agreed during the passage of the Pensions Act 2007 to include this group by allowing the need for an appropriate level of care to be certified by a health or social care professional.

8.2 It has been agreed that this should be done with a 'light touch' to avoid disqualifying someone caring for a person who was not in regular contact with professional health workers in statutory agencies. Lobby groups advised that the range of people who could certify should be as broad as possible whilst maintaining credibility. For this reason, there is no prescribed list of people enabled to certify the need for care and this could, on occasion, be done by a member of a voluntary group who was in regular contact with the person being cared for.

8.3 We have also worked with Carers UK and other Government Departments to produce guidance for the certification of care requirements.

9. Guidance

9.1 The Department will need to raise awareness of the new credits among those whose State Pension entitlement might benefit from their introduction. A long term communication campaign will begin later in 2009 to support the State Pension and workplace pension reform packages, and to encourage individuals to consider working beyond State Pension age. This builds on a number of communication initiatives during 2007 and 2008, intended to address short term communication requirements while the long term campaign was being developed. The new credit was one of a number of state reforms communicated as part of that activity, through paid-for articles in targeted consumer magazines, direct mail, and via intermediaries.

9.2 The first phase of the long term campaign focuses on encouraging those most immediately or significantly affected by the April 2010 State Pension reforms to access accurate information on the personal implications (via the web, the Department's contact centres, or informed intermediaries). Although this activity will begin in October 2009, messages on the new credit will only be prominent as the period during which applications can first be made (April 2010) approaches.

9.3 The Department is currently considering how best to target and frame communication activity on the new credit to ensure that this audience is reached as efficiently as possible, with messages clearly relevant to those

affected. Expertise of key intermediaries such as Carers UK will also be drawn on.

9.4 Communicating the new credit, along with the wider state reforms, seeks to ensure not only that individuals take any necessary immediate action to protect or enhance their state entitlement, but to encourage individuals to consider the State Pension generally as a starting point for wider retirement planning.

9.5 Guidance has been drafted for the certification of care requirements.

10. Impact

10.1 There is no impact on business but there may be a small impact on charities and voluntary bodies since carers may approach volunteers to certify the need to care.

10.2 The impact on the public sector is negligible.

10.3 A full Impact Assessment has not been prepared for this instrument**.**

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Work and Pensions will continue to monitor State Pension awards and accrual, the level and distribution of pensioners' total incomes and levels of understanding of the State Pension system through analysis of administrative data, surveys and other sources. It will continue to report or progress against its Public Service agreements in its annual and departmental reports. The Secretary of State will produce a report on the operation of the provisions of the Pensions Act 2007 in 2014 or earlier.

13. Contact

Caroline Wilson at the Department for Work and Pensions Tel: 0207 449 7151 or email: Caroline.wilson@dwp.gsi.gov.uk can answer any queries regarding the instrument.