EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (DEFERRAL OF RETIREMENT PENSIONS) (AMENDMENT) REGULATIONS 2011

2011 No. 786

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 is required in order to close a gap in existing legislation and provide the legislative framework for the accrual of a lump-sum payment for a person whose state pension is payable in arrears. The amendment was only identified very recently and unless the Department prescribes a start of a deferral period the legislation cannot calculate a lump sum, with the result that people who are deferring would not be able to take a lump sum from 6th April 2011.

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

3.1 None.

4. Legislative Context

4.1 The Social Security (Deferral of Retirement Pensions) Regulations 2005 provide for the setting of the start of a period of deferment when a person has decided to delay claiming their state pension. They do so by reference to the Social Security (Claims and Payments) Regulations 1987. These regulations were amended from April 2010 by the Social Security (Miscellaneous Amendments) (No. 6) Regulations 2009 and the reference is no longer complete. An additional reference is now required.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

5.2 Equivalent provision will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Existing social security legislation provides the current arrangements for the deferral of state pension. People may improve their state pension entitlement if they defer taking their state pension – either by not claiming their state pension when they reach state pension age or, if they already receive their state pension, by deciding to give it up for a period of time. When they do take their state pension they may be entitled to either a weekly increase in their state pension or a one-off lump sum payment.

7.2 Lump sum payments are calculated by reference to "accrual periods". An accrual period is defined in Schedule 5 to the Social Security Contributions and Benefits Act 1992. Regulations provide when an accrual period should begin. The Department for Work and Pensions has recently identified that these regulations have not been amended to take account of changes to payment arrangements introduced from April 2010. Unless the Department prescribes a start of a deferral period the legislation cannot be used to calculate a lump sum, with the result that people who are deferring would not be able to take a lump sum from 6th April 2011

7.3 A consequential amendment is needed to regulation 2 of the Social Security (Deferral of Retirement Pensions) Regulations 2005 to reflect these new arrangements.

7.4 At present regulation 2 of the Social Security (Deferral of Retirement Pensions) Regulations 2005 only covers people who reached state pension age before 6 April 2010 and their state pension is payable in advance. The regulation provides that an accrual period starts from a person's pay day. In these cases this is the start of the benefit week. The existing provisions do not cover those people who reach state pension age on or after 6 April 2010 and their state pension is payable in arrears. There is no basis for calculating a lump-sum payment for this group of people. Under the proposed change these people will have a legislative basis for their lump-sum calculation and their accrual period will be calculated in line with their payments. Their accrual period will start with the first day in their benefit week rather than their payday – their payday is at the end of the benefit week not the beginning.

7.5 These regulations amend the provisions in regulation 2 to include payments made where state pension is paid in arrears. This will ensure that there is a legislative framework for calculating a lump-sum payment where state pension is payable in arrears. They will come into force from 5 April 2011 and will ensure that where state pension is payable in arrears a lump sum payment will be calculated on a similar basis to cases where state pension is payable in advance.

Consolidation

7.6 There are no immediate plans to consolidate the regulations as amended by this instrument. Informal consolidation will be provided by way of "The Law Relating to Social Security" (Blue Volumes), available on line 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 There has been no formal consultation undertaken on this measure because there is no change to the policy intent. The amendment is designed to fill a gap in the regulations and protect the position of people where their state pension is payable in arrears and they have deferred taking their state pension.

8.2 The existing scheme for the deferral of claims for state pensions introduced by the Pensions Act 2004 was originally consulted upon and established through the formal consultation on the 2002 Green Paper: *Simplicity, security and choice: Working and saving for retirement (Cm 5677/ 2002).*
http://www.dwp.gov.uk/publications/publications-archive/consultations-papers/#s
This included proposals for amending the arrangements for those who defer their state pension, by bringing forward the changes due to be introduced in 2010 (increasing the incremental rate, and abolishing the time limits); and introducing the choice of a taxable lump sum payment as an alternative to weekly increments for life.

8.3 The consultation drew in over 50 responses on the deferral proposals. The majority of respondents welcomed the proposals. On increments 79% (46) of respondents broadly supported the proposal. All of those who objected to the proposals for increments did so on the grounds that the incentive offered was too poor to be of any benefit. On the lump-sum, 64% of the 47 respondents were in broad agreement with proposals, but the main concern of those that objected was that the scheme was not generous enough to represent a viable option. No changes were made to the proposed incentives, but detailed proposals for the inheritance of lump-sum payments were developed as a result of the consultation. The Government's response to the consultation was published in *'Simplicity, security and choice: Working and saving for retirement action on occupational pensions' (Cm 5835/2003*).
http://www.dwp.gov.uk/docs/simplicity-security-and-choice.pdf
The Department has reviewed the individual responses received to the consultation to identify any issues that may affect this amendment. None was identified.

8.4 The regulations have been introduced urgently following the identification of a gap in the existing provisions. It was not possible to refer them to the Social Security Advisory Committee for consideration in advance. The Department wrote to the Social Security Advisory Committee explaining the reasons for the need to move quickly - in order to provide a legislative framework for the calculation of lump-sum payments before the first payments were due to mature in April 2011 and to provide consistent treatment to customers.

8.5 Having established the current scheme for deferral from April 2005 the Department recently identified a gap in the legislation following changes to the state pension payment rules made in 2010. This amendment is intended to plug that gap as quickly as possible and enable the delivery of the policy intention established by the Pensions Act 2004.

9. Guidance

9.1 This proposal makes no change to the existing policy for the deferral of state pension. The Department has reviewed existing paper and web-based products for customers, advisers and staff to ensure that where appropriate changes will be introduced.

10. Impact

10.1 The impact on business and civil society organisations is nil.

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 effect of these changes, which will form part of the existing state pension arrangements, will be monitored through analysis of administrative data, surveys and other sources.

13. Contact

13.1 Teresa Cox at the Department for Work and Pensions Tel: 0207 449 7146 or email: Teresa.Cox@dwp.gsi.gov.uk can answer any queries regarding the instrument.