EXPLANATORY MEMORANDUM TO

THE STATE PENSION (AMENDMENT) (No. 2) REGULATIONS 2016

2016 No. 240

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 these instruments

2.1 This instrument supports the introduction of a new State Pension for people reaching State Pension age on or after 6 April 2016. It provides arrangements for crediting National Insurance contributions for the purposes of the new scheme, including new arrangements relating to National Insurance credits for the spouses and civil partners of Armed Services personnel.

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 As a consequence of the Pensions Act 2014[1] ("the 2014 Act"), a new State Pension will be in place from 6 April 2016, and new provision must be made to ensure carers and other specified groups (armed forces personnel) can get credits in the new State Pension scheme.

4.2 The main features of the new State Pension are set out in Part 1 of the 2014 Act. More detailed provisions are contained in the State Pension Regulations 2015 (2015/173) ("the 2015 Regulations").

4.3 These Regulations insert a new Part 8 into the 2015 Regulations. The provisions of this Part specify the circumstances in which a person may qualify for National Insurance credits for the purposes of entitlement to a new State Pension. These include a new credit for a past period since 1975 during which a person was accompanying their HM Forces spouse or civil partner on assignment outside the UK.

4.4 This is the first use of the regulation-making powers at section 22(5ZA) and (5ZB) of the Social Security Contributions and Benefits Act 1992.[2]

4.5 There are a number of other instruments which implement provisions relating to the introduction of the new State Pension. These include:

[1] All the legislation mentioned in this Memorandum is available online at http://www.legislation.gov.uk

[2] Subsections (5ZA) and (5ZB) were inserted by paragraph 6(3) of Schedule 12 to the 2014 Act.

- The Pensions Act 2014 (Consequential, Supplementary and Incidental Amendments) Order 2015 (S.I, 2015/1985)
- The State Pension and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2016 (laid in draft on 30 November 2015)
- The Pensions Act 2014 (Consequential and Supplementary Amendments) Order 2016 (laid in draft on 30 November 2015)
- The State Pension (Amendment) Regulations 2016 (laid in draft on 18 January 2016).

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is Great Britain.

5.3 Subject to the agreement of the Northern Ireland Assembly, the Department for Social Development in Northern Ireland will be producing its own legislation for Northern Ireland.

6. European Convention on Human Rights

6.1 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 National Insurance credits are available in certain circumstances where people are unable to work or where opportunities to work are limited and their earnings are too low for them to pay, or be treated as having paid, National Insurance contributions. These include people who are unemployed and actively seeking employment; those who are unable to, or have limited capacity for, work on health grounds; and those with caring responsibilities. Credits protect a person's National Insurance record so that their future entitlement to certain contributory benefits is maintained.

7.2 There are two main classes of National Insurance credits. Class 1 can help a person satisfy the conditions of entitlement to all contributory benefits while Class 3 count only for the purposes of the basic State Pension and bereavement benefits. Currently "earnings factor" credits can be awarded to carers and the long-term disabled for the purpose of establishing entitlement to State Second Pension. Earnings factors are the currency used to convert National Insurance contributions into benefit entitlement.

7.3 Class 1 and Class 3 National Insurance credits will count in the new State Pension scheme in the same way that they count for the old scheme basic State Pension. Earnings factor credits will not be required from 6 April 2016 as there will be no State Second Pension in the new scheme.

7.4 The main regulations that currently provide for credits to be awarded are the Social Security (Credits) Regulations 1975[3] ("the 1975 Regulations"). These Regulations remain in force and from 6 April 2016 will count for the purposes of establishing entitlement to a working age benefit only. Section 23A of the Social Security

[3] SI 1975/556

Contributions and Benefits Act 1992 (contributions credits for relevant parents and carers) and regulations made under it provide for credits for parents and carers from April 2010; these credits count for the purposes of entitlement to the "old" State Pension for people who reach State Pension age before 6 April 2010.

7.5 The policy intention is to provide for all the rules that underpin the new State Pension, including the crediting arrangements, in a single statutory instrument. The policy on the conditions to be satisfied and the circumstances in which a credit will be awarded remain broadly the same. The new regulations ensure that the existing crediting arrangements are carried forward into the new State Pension scheme.

7.6 The numbering used in the new regulations reflects the fact that, once made, they will be consolidated into the State Pension Regulations 2015 S.I. 2015/173.

7.7 To assist the reader, the contents in the instrument are divided into chapters containing provisions relating to credits that count towards qualifying years in respect of tax years before ('pre-commencement qualifying years') and after ('post commencement qualifying years' and qualifying years) 2016/17.

Chapter 1 general rules

7.8 The general rule is that credits are to be awarded under the provisions of Chapter 3 in respect of events that occur from 6 April 2016 only. Chapter 2 contains provisions to ensure that credits awarded for periods before April 2016 can count for the purpose of establishing entitlement to the new State Pension: this includes credits for past periods for the husbands, wives and civil partners of military personnel.

Chapter 2 pre-commencement qualifying years

7.9 Credits awarded prior to 6 April 2016 under the 1975 Regulations, section 23A of the 1992 Act and regulations made under that section are brought to account for the purposes of calculating entitlement to the new State Pension. Entitlement to a credit for the purposes of the State Pension only becomes effective at State Pension age. Therefore, in order to engage the rules that allow the Department to value the contribution record on 6 April 2016 when working out a person's starting amount, the legislation treats them as having attained State Pension age on that date. As a result, where a person would have been entitled to be credited with contributions or earnings for the purposes of establishing entitlement to a Category A retirement pension had the old State Pension scheme continued to apply they will be so credited for the purposes of entitlement to the new State Pension.

7.10 There is a new retrospective credit designed to assist those who have been unable to build up sufficient qualifying years for the new State Pension because of time spent overseas with a spouse or civil partner who is a member of Her Majesty's Forces. People in this situation will be able to qualify for Class 3 National Insurance credits to cover past periods. This new credit is being introduced because entitlement to the new State Pension will be based on a person's own National Insurance contributions record, unlike the old State Pension scheme where it is possible to 'derive' a State Pension based on a spouse or civil partner's contributions. The credits will be available by application for each week the spouse or civil partner was on the accompanied assignment for periods between the tax years 1975/76 and 2015/2016. The provision will apply equally to those who are now widowed, divorced or who have had their civil partnership dissolved provided they were married or in a civil partnership at the time of the accompanied assignment.

7.11 There is an additional requirement which the member of Her Majesty's forces must satisfy. This is that the member was liable for, or credited with, UK National Insurance contributions for the period in question. This rule has been included to prevent the applicant being treated more advantageously than their service spouse or civil partner. In common with the majority of credits, they will not be available to women who had an election to pay National Insurance contributions at the reduced-rate in force during the period in question. Provisions in the 2014 Act[4] already protect the derived basic pension position of women who had a reduced-rate election in force at any time in the 35 year period prior to the start of the tax year in which they reach State Pension age.

7.12 The instrument implements the policy under the Armed Forces Covenant as set out in the Command Paper *The Nation's Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans*[5]. Under the terms of the covenant, the Government is committed to removing disadvantages that the armed forces community may face in comparison to other citizens, and to recognise sacrifices made.

7.13 Class 1 National Insurance credits for time spent accompanying a service spouse or civil partner on assignments outside the United Kingdom have been available for periods since 2010 and will remain available for periods after 6 April 2016 (see paragraph 7.4).

7.14 During the Parliamentary stages of the 2014 Act, representations were made that service spouses and civil partners who had spent time overseas before 2010 could be disadvantaged by ending access to derived State Pension for people reaching State Pension age on or after 6 April 2016. As a result a measure was included in the Act to impose a duty on the Secretary of State to make regulations which would allow people who reach State Pension age on or after 6 April 2016 to apply for Class 3 National Insurance credits for past periods during which they were married to, or in a civil partnership with, a member of Her Majesty's forces and were accompanying them on overseas assignments. That commitment is now met.

7.15 We estimate that around 20,000 individuals (see paragraph 10.2) who have spent some time overseas accompanying a service spouse or civil partner in this period will gain a higher new State Pension entitlement as a result of these new credits.[6]

Chapter 3 post commencement qualifying years

7.16 Credits awarded under the listed provisions of the 1975 Regulations count for establishing entitlement to the new State Pension for periods from April 2016.

7.17 The provisions in the 1975 Regulations are replicated with some technical changes to take account of the new self-assessment process for self-employed people to determine their liability to pay Class 2 contributions; the new State Pension scheme; and the acceleration of the timetable for the equalisation of women's State Pension age.

7.18 The new Class 3 credits for spouses and civil partners of member of the armed forces will be available also in respect of 2016/17 and subsequent tax years.

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[4] See sections 11 and 12 and Schedules 6 and 7.

[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/238719/7424.pdf

[6] The new credits will not result in a higher state pension where the year is a qualifying year for other reasons or where the person already has 35 or more qualifying years.

7.19 The instrument broadly mirrors the caring credits provided in the 1975 Regulations, section 23A of the 1992 Act and regulations made under that section, with some technical changes to distinguish between the class of case covered. The residence conditions for the credits provided for caring for young children will be subject to European Union rules[7] on the coordination of social security systems. These have the effect of ensuring that, in certain limited circumstances, child-raising periods undertaken following a move from the UK to another EEA State may continue to be credited for State Pension purposes.

7.20 There are time limits for applications for credits in respect of caring.

Consolidation

7.21 Informal consolidated text of instruments which are the responsibility of the Department for Work and Pensions is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department's website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available from http://www.dwp.gov.uk/docs/lawvolnews.pdf .

8. Consultation outcome

8.1 No public consultation has been undertaken on this instrument as the measures it implements either replicate or extend existing arrangements. The proposals for new retrospective credits for service spouses and civil partners were subject to scrutiny during the passage of the 2014 Act (see paragraphs 7.14 and 7.15) and have been developed in conjunction with HM Revenue & Customs, who will be responsible for administering the credit, and the Ministry of Defence, representing the interests of armed forces families

8.2 As the regulations are being made within 6 months of the commencement of the relevant powers in the 2014 Act they are exempt from formal referral to the Social Security Advisory Committee. Nevertheless we informed the Committee of our proposals during its formal scrutiny of SI 2015/1985 and agreed to write to the Committee on an informal basis to notify them of the raft of secondary legislation, including the measures in this instrument, that have since been brought in to underpin the new scheme.

9. Guidance

9.1 In relation to the provision of the new credits for service spouses and civil partners, the Department for Work and Pensions, HM Revenue & Customs and the Ministry of Defence are working together on the communication arrangements. Tailored information on the new credits will be included as part of the wider communications campaign for the new State Pension and detailed information will be made available on GOV.UK. Guidance and learning materials will be provided for staff involved in administering the application process in time for introduction of the measure in April 2016.

[7] These are the provisions in Article 44 of Regulation (EC) No. 987/2009 laying down the procedure for implementing Regulation (EC) No.883/2004

10. Impact

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

10.2 HM Revenue & Customs will administer applications for the new credits for service spouses and civil partners, around 20,000 are expected to benefit. The public sector impact for these credits will be negligible.

10.3 An Impact Assessment has not been prepared for this instrument. The impact of the introduction of the new State Pension, including the new service spouse credits, was considered in the Impact Assessment for the new State Pension, first published when the Act gained Royal Assent in May 2014.[8]

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 a range of statistics on pensioner incomes and pensioner poverty which are used to monitor trends and inform policy development. Administrative data on National Insurance contributions and qualifying years is published on the DWP tabulation tool and will be used to monitor the impact of the changes. We have also put mechanisms in place to monitor the effectiveness of our communications activity on the new retrospective credits for service spouses and civil partners, including tracking levels of understanding, awareness and behavioural response to the reforms within the first six months.

13. Contact

13.1 Michelle Mathieson at the Department for Work and Pensions [Telephone: 0207 449 7144 or email: michelle.mathieson@dwp.gsi.gov.uk] can answer any queries regarding the instrument.

[8]See Annex A, paragraph 100 of the single-tier pension: impact assessment https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311316/pensions-act-ia-annex-a-single-tier-state-pension.pdf . The main findings were updated in July 2014: https://www.gov.uk/government/publications/single-tier-pension-updated-impact-analysis-july-2014