EXPLANATORY MEMORANDUM TO

THE STATE PENSION REVALUATION FOR TRANSITIONAL PENSIONS ORDER 2022

2022 No. 1251

AND

THE STATE PENSION DEBITS AND CREDITS (REVALUATION) ORDER 2022

2022 No. 1250

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 His Majesty.

2. Purpose of the instrument

2.1 These instruments revalue certain components that may form part of an award of new State Pension, which was introduced on 6 April 2016, and apply to persons reaching State Pension age on or after 11 April 2023.

2.2 The State Pension Revaluation for Transitional Pensions Order 2022 re-values "Protected Payments" to reflect increases in the general level of prices since 6 April 2016. The Protected Payment is the amount, if any, by which the part of a person's new State Pension, based on their pre-6 April 2016 National Insurance contributions, exceeds the full rate of new State Pension.

2.3 A person's Protected Payment may be shared in a divorce settlement, creating a debit and credit to share the Protected Payment between the two parties. The State Pension Debits and Credits (Revaluation) Order 2022 re-values new state scheme pension debits and credits to reflect price increases since the debit or credit was created.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

5. European Convention on Human Rights

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

6. Legislative Context

Revaluation of Protected Payments

6.1 The Pensions Act 2014 ("the 2014 Act"[1]) introduced a new State Pension for people reaching State Pension age on or after 6 April 2016. A transitional rate applies where a person has paid or been credited with National Insurance contributions for the period prior to 6 April 2016. In the calculation of the transitional rate, set out in Schedule 1 to the 2014 Act, an amount for the person's pre-6 April 2016 contributions is calculated based on rates applicable at 6 April 2016. Where this amount exceeds £155.65 (the full rate of new State Pension as at 6 April 2016) the person receives the excess in the form of a Protected Payment.

6.2 Paragraph 6(5) of Schedule 1 to the 2014 Act provides for the Protected Payment to be revalued to reflect price increases since 6 April 2016 by increasing it by the percentage specified in the last order under section 148AC(3) of the Social Security Administration Act 1992 ("the 1992 Act"[2]) to come into force before the person reached State Pension age.

6.3 Section 148AC of the 1992 Act requires the Secretary of State to review the general level of prices in Great Britain in each tax year, and, if the general level has increased in the review period, to make an order specifying the percentage of the increase.

6.4 The Secretary of State has carried out his review and has determined that the general level of prices has increased. Accordingly, he makes the State Pension Revaluation for Transitional Pensions Order 2022.

Revaluation of new State Scheme Debits and Credits

6.5 Under arrangements for pension sharing on divorce, section 49A of the Welfare Reform and Pensions Act 1999[3] provides for a new state scheme debit and corresponding credit to be created where the courts make an order sharing a Protected Payment on or after 6 April 2016.

6.6 Paragraph 3 of each of Schedules 8 and 10 to the 2014 Act provide, respectively, for revaluation of credits and debits created when the parties concerned were still under State Pension age. The credit or debit is increased by the percentage specified, in relation to the tax year in which the person became entitled to the credit or subject to the debit, in the last order under section 148AD of the 1992 Act to come into force before the person reached State Pension age.

6.7 Section 148AD of the 1992 Act requires the Secretary of State to review the general level of prices in Great Britain in each tax year. If it appears to him that relevant debits or credits have not maintained their value relative to the general level of prices during the review period, he is required to make an order specifying the percentage of their amount by which they are to be increased in order to make up the relative fall in their value.

6.8 The Secretary of State has carried out his review and has determined that there has been an increase in the general level of prices. Accordingly, he makes the State Pension Debits and Credits (Revaluation) Order 2022.

[1] https://www.legislation.gov.uk/ukpga/2014/19/contents
[2] https://www.legislation.gov.uk/ukpga/1992/5/contents/enacted
[3] https://www.legislation.gov.uk/ukpga/1999/30/contents

7. Policy background

What is being done and why?

Revaluation of Protected Payments

7.1 Once a person's new State Pension is in payment, it will normally be increased each April as part of the annual review and up-rating of social security benefits.[4] Protected Payments are reviewed and up-rated at least in line with increases in the general level of prices.[5]

7.2 Where a person reaches State Pension age in the subsequent years following the introduction of the new State Pension, the amount based on their pre-6 April 2016 contribution record, calculated at 2016 rates, is revalued. This is to ensure they are not disadvantaged relative to a person who became entitled to their State Pension in the first year of implementation and whose State Pension will have been up-rated in the interim.

7.3 Accordingly, Protected Payments are revalued in line with increases in the general level of prices that have taken place in the review period.[6] Section 148AC(2) defines the review period for these purposes as the period beginning on 6 April 2016.

7.4 The Secretary of State has discretion as to when the review period ends, and as to how to measure the general level of prices for the purpose of determining the revaluing percentage. He has chosen to measure the increase in the general level of prices by reference to the Consumer Prices Index (CPI), taking September 2022 as the end date of the review period. He has estimated the increase in the period April 2016 to September 2022 to be 23.5%.[7]

Revaluation of new State Scheme Debits and Credits

7.5 Under the new State Pension, a person's Protected Payment may be shareable where divorce proceedings started on or after 6 April 2016.[8]

7.6 Where a pension sharing order is made, it will provide for a percentage split of the Protected Payment that is to be shared between the two parties. The National Insurance record of the person whose Protected Payment is to be shared ("the transferor") will be noted with a debit and the record of the person who will benefit from the share ("the transferee") will be noted with a corresponding credit.

7.7 Where the pension sharing order takes effect before either or both parties have reached their respective State Pension ages, the debit and/or credit is revalued according to the percentage increase in the general level of prices. At State Pension age, the transferor's Protected Payment will be reduced by the debit and the transferee's new State Pension will be increased by a credit of the same amount as the debit.

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[4] Increases in the rates of State Pension take effect from the first Monday in the tax year.

[5] See section 151A of the Social Security Administration Act 1992. The full rate of State Pension is up-rated by at least the growth in earnings, under section 150A.

[6] Amounts equal to or less than the 2016 full rate are revalued in line with increases in the full rate under paragraph 6(4) of Schedule 1 to the 2014 Act.

[7] https://www.ons.gov.uk/economy/inflationandpriceindices/datasets/consumerpriceinflation Estimate based on the increase in the CPI all items indices for April 2016 and September 2022.

[8] Where proceedings began before 6 April 2016 and the transferor reached or is due to reach State Pension age under the new State Pension scheme, the shareable state scheme rights are the additional State Pension accrued prior to 6 April 2016. See the Pensions Act 2014 (Pension Sharing on Divorce etc.) (Transitional Provision) Order 2016 (S.I. 2016/39).

7.8 Section 148AD(6) gives the Secretary of State discretion to estimate the general level of prices in such manner as he thinks fit. The review period is not defined in the legislation. He has chosen to increase new state scheme debits and credits by reference to the increase in the CPI for the 12 months ending September 2022. This Order accordingly increases debits and credits created in 2022-23 by 10.1%.[9] His estimate of the cumulative percentage required to make up the fall in value of new state scheme debits and credits created in 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23 is also set out in the Schedule to the Order.

Explanations

What did any law do before the changes to be made by this instrument?

7.9 Part 1 of the Pensions Act 2014 introduced a new State Pension for people reaching State Pension age on or after 6 April 2016. Section 4 provides for an individual's State Pension to be at a transitional rate where they have one or more qualifying years of paid or credited National Insurance contributions ending before 6 April 2016. A minimum of 10 qualifying years is needed for entitlement to any State Pension[10], so in practice, all new State Pension awards for at least the first 10 years will be at the transitional rate. Once in payment, Schedule 2 to the 2014 Act provides for up-rating of the transitional rate.

7.10 Where the transitional rate exceeds the full rate, it is up-rated by raising it by the amount of the increase in the full rate at (£155.65 at 2016 rates) plus a percentage of the amount which exceeds the full rate (informally called the "Protected Payment"). The percentage is specified in the up-rating Order under section 151A of the 1992 Act. Section 151A is modelled on section 150, which provides for price up-rating of the old State Pension components other than the basic State Pension, which is increased under s150A, and other social security benefits. It requires the Secretary of State to review the level of prices in each tax year, and if there has been an increase, to make an order providing for the specified sums (in the case of s151A, the Protected Payment and various other transitional components of new State Pension) to be increased.

Why is it being changed?

7.11 Both the Revaluation of Protected Payments and the Revaluation of new State Pension Scheme Debits and Credits Orders are mandatory annual orders that spring from the founding legislation, like the annual uprating orders also do. Without these orders it would not be possible to process claims for the new State Pension for groups of people affected. They are needed to increase the component parts of their State Pension entitlement before their claim begins.

What will it now do?

7.12 These Orders will allow DWP to ensure the component elements of an individual's State Pension entitlement are increased correctly before their claim begins, and to process claims to the new State Pension.

[9] https://www.ons.gov.uk/economy/inflationandpriceindices/datasets/consumerpriceinflation. Estimate based on the increase in the CPI all items indices for September 2020 and September 2021.
[10] In very limited circumstances, certain married women who had paid reduced rate NICs may, under transitional rules, be able to qualify for new State Pension based on fewer than 10 qualifying years.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 As these instruments do not amend other legislation, consolidation is not applicable.

10. Consultation outcome

10.1 There is no statutory duty on the Secretary of State to consult on these instruments, and the Department does not consider informal consultation is appropriate in this case, as they are technical orders which give effect to statutory requirements, the terms of which are defined in primary legislation.

11. Guidance

11.1 Guidance on the measures implemented by these orders will be issued to operational staff before these orders take effect.

12. Impact

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

12.2 The benefit expenditure associated with revaluation has not been separately identified but is included within the Government's expenditure plans along with the costs of up-rating new State Pension.[11] There is no, or no significant, impact on the public sector.

12.3 The Department estimates that around 122,300 people who will be reaching State Pension age in 2023-24 will be entitled to a Protected Payment.[12] The number of individuals subject to a new state scheme debit or entitled to a credit is expected to be very low.

12.4 An Impact Assessment has not been prepared because these are routine instruments which maintain the value of new State Pension Protected Payments and relevant debits and credits against price inflation. New State Pension was introduced on 6 April 2016 by the 2014 Act. An Impact Assessment was prepared for that Act.[13]

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 These instruments give effect to a statutory duty to undertake a review in each tax year (see paragraphs 6.3 and 6.7).

15. Contact

15.1 Jessica George, Policy Advisor for State Pensions at the Department for Work and Pensions Telephone: 0300 087 1327 or email: Jessica.george@dwp.gov.uk can be contacted with any queries regarding the instrument.

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[11] https://www.gov.uk/government/publications/benefit-expenditure-and-caseload-tables-2022

[12] Protected Payments inflows, 2016/17 to 2024/25 (ODS) - https://www.gov.uk/government/publications/benefit-expenditure-and-caseload-tables-2020

[13] https://www.gov.uk/government/publications/pensions-act-2014-impact-assessments-may-2014

15.2 Cathy Payne, Deputy Director for the State Pensions and Service Excellence Division, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Laura Trott MBE, Minister for Pensions at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.