EXPLANATORY MEMORANDUM TO THE SOCIAL SECURITY (MAXIMUM ADDITIONAL PENSION) REGULATIONS 2010

2010 No. 426

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. Description

2.1. This instrument prescribes the cap on the total amount of Additional State pension which a pensioner can receive when they are entitled to both their own Additional State Pension and an inherited Additional State Pension following the death of their late spouse or civil partner.

2.2 The Upper Accrual Point is used in the calculation of the cap for tax years from 2009/10 onwards. (Further information is given in section 7.)

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

None.

4. Legislative Context

4.1 When a pensioner inherits the Additional State Pension of their late spouse or civil partner in addition to their own, the total entitlement is capped at a maximum amount (section 52(3) of the Social Security Contributions and Benefits Act 1992).

4.2 This instrument prescribes the value of that cap.

4.3 The cap is designed to approximate the entitlement which a person could have built up on their own account during their working life. Its value is different for each cohort of pensioners and has to be calculated.

4.4 Currently, the calculation is based on the year the pensioner retired and the earnings limit which applied in each relevant year of working life.

4.5 This instrument does not alter this formula, as set out in the Social Security (Maximum Additional Pension) Regulations 1978 (SI 1978/949), however it does change the value which is used as the earnings limit. Currently, the Upper Earnings Limit is used as the earnings limit in every relevant year.

4.5 However, from April 2009, a new earnings limit called the Upper Accrual Point has been defined as part of wider reforms to gradually amend the Additional State Pension into a flat-rate top-up to the basic state pension. As a consequence we need to we need to change references contained in SI 1978/949.

4.6 In line with these reforms, this instrument uses the Upper Accrual Point as the earnings limit (for the calculation of the cap) for tax years from 2009/10 onwards. It continues to use the Upper Earnings Limit for relevant years of working life which were prior to 2009/10.

4.7. This is a technical change designed to keep the maximum additional State Pension calculation in line with the simplification changes to State Second Pension.

4.8 The opportunity has also been taken to tidy-up the provisions, modernising references to outdated primary legislation and following gender neutral drafting style.

5. Territorial Extent and Application

This instrument applies to Great Britain. Equivalent provision in relation to Northern Ireland will be made by statutory rule.

6. European Convention on Human Rights

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

7. Policy background

7.1 Where a pensioner is entitled to combine his or her own Additional State Pension with that inherited from their late spouse or civil partner the total amount payable is capped. The cap is equivalent to the amount of Additional State Pension which a person reaching State Pension age in the year in which entitlement to the inherited Additional State Pension arises would have accrued if they had earnings at 53 times the Upper Earnings Limit throughout their working life.

7.2 This rule has been applied to Additional State Pension since 1979 when the first Additional State Pensions became payable. It was put in place to ensure security following bereavement, but without exceeding the pension a person could realistically build up on their own contribution record. In this respect it mirrors the cap applied to basic pension which restricts the total amount payable by way of own and inherited pension to the full rate of basic pension.

7.3 The Pensions Act 2007 simplifies State Second Pension accrual rates so that in the future it will become a simple flat-rate weekly top-up to the basic State Pension. Accruals at the low earnings threshold will be replaced with a flat rate cash amount of around £1.60 a week for each qualifying year, from a date yet to be set but likely to be 2012. Earning-related accruals will be gradually removed from the system by around 2030 through a combination of earnings revaluation of the flat rate amount and freezing of the Upper Accrual Point. The Upper Accrual Point was introduced as the ceiling on State Second Pension accruals from April 2009.

7.4 Additional State Pension is calculated up to the last complete tax year before the tax year in which a person attains pensionable age (the Final Relevant Year). Therefore, the first Additional State Pension accruals subject to the Upper Accrual Point will apply to people reaching State Pension age[1] in the 2010/11 tax year.

7.5 In order to put beyond doubt the application of the Upper Accrual Point in the calculation of the maximum Additional State Pension we intend to change references to the Upper Earnings Limit to the Upper Accrual Point from 6 April 2010.

7.6 The provisions provide that "the applicable limit", which is defined as the Upper Earnings Limit for tax years before 2009/10 and Upper Accrual Point from 2009/10 onwards will be used in the calculation.

7.7 There are around 12 million people in receipt of a UK State Pension of whom around 1.8 million have some inheritance of Additional State Pension (SERPS and/or State Second Pension) following the death of their spouse or civil partner. Our estimates suggest that since 2000 between 600 and 900 people a year have had their Additional State Pension capped at the maximum.

Consolidation

7.8 These are stand-alone regulations which do not amend primary legislation. They revoke the Social Security (Maximum Additional Pension) Regulations 1978 (SI 1978/949) in its entirety and replace it with Social Security (Maximum Additional Pension) Regulations 2010.

8. Consultation outcome

8.1 These regulations enable the maximum Additional State Pension rule to be kept in line with the simplification changes to State Second Pension. The simplification of State Second Pension was introduced following the full Government consultation on pension reform in 2007. The 2007 Act contains, at sections 10, 11 and 12, a number of provisions to gradually amend the State Second Pension into a flat-rate top-up to the basic state pension, including the introduction of the Upper Accrual Point. As there is no new policy shift, no further consultation is necessary.

8.2 In addition, when the Pensions Act 2007 was introduced in Parliament as the Pensions Bill 2006 a full Gender Impact Assessment[2] was published on the

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[1] Currently, the State Pension age is 65 for men and 60 for women born before 6 April 1950. For women born after 5 April 1950 and before 6 April 1955, the State Pension age will increase gradually to 65 between 2010 and 2020. From 6 April 2020 the State Pension age will be 65 for both men and women but will then increase to 68 between 2024 and 2046.

[2] http://www.dwp.gov.uk/docs/genderimpactassessment.pdf

DWP website, and when introduction of the Upper Accrual Point was brought forward in the National Insurance Contributions Act 2008 an accompanying Impact Assessment was also published on the HMRC website[3].

9. Guidance

Leaflets and guidance, as part of the yearly review of information products, have already been changed to show that the Upper Accrual Point is now the ceiling on State Second Pension accruals from April 2009. The maximum Additional State Pension rule is mentioned in our guides, specifically the SERPSL1: *Important information for married people - Inheritance of SERPS* and the NP46: *a detailed guide to State Pensions for advisers and others*.

10. Impact

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

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

The legislation does not apply to small business.

12. Monitoring and review

12.1 This instrument does not alter the formula for calculating the amount of the maximum Additional State Pension but simply replaces the Upper Earnings Limit with the Upper Accrual Point.

12.2 The amount of the maximum Additional State Pension changes each year to keep pace with average earnings growth. This amount is only applicable in the year in which entitlement to the inherited Additional State Pension arises. The revised rate is published in leaflets and guidance.

13. Contact

Dave Annison at the Department for Work and Pensions Tel: 020 4497145 or e-mail: dave.annison@dwp.gsi.gov.uk can answer any queries regarding the instrument.

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[3] http://www.hmrc.gov.uk/legislation/nics-bill.htm