EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (EXEMPTION FROM CLAIMING RETIREMENT PENSION) REGULATIONS 2011

2011 No. 1554

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

Existing regulations allow State Pension to be awarded automatically, to certain people in receipt of DWP working age social security benefits, without them having to make a claim for State Pension. This instrument will extend this facility to a small additional group, namely those who would be in receipt of DWP working age benefits but for a fraud-related sanction.

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

None.

4. Legislative Context

4.1 These Regulations are being made in order to extend to a small additional group of people the facility to have a Category A or B retirement pension (referred to in this document as “State Pension”) awarded automatically, without them having to make a claim for it. The group in question is people who, eight weeks before reaching state pension age, would have been receiving certain working-age benefits but for the fact that their benefit has been sanctioned following a benefit fraud offence.

4.2 This group was not included in earlier regulations (S.I. 2010/1794, referred to in this document as “the 2010 Regulations”) because at that stage it was intended to change the Department’s computer systems to prevent this group receiving State Pension automatically. However, these changes were part of a wider set of computer changes which have now been cancelled. The Department considers that making the necessary changes to the Department’s computer systems as a separate project would cost more than is justified, bearing in mind the very small number of people in the affected group (see further section 7 below).

4.3 The 2010 Regulations already provide that a person can be awarded State Pension without having to make a claim provided they are actually receiving certain working age benefits eight weeks before reaching state pension age, or would have been receiving those benefits but for certain other types of sanction (for example where jobseeker’s allowance is stopped because the claimant is not available for work). The Department plans to start making awards of State Pension without requiring a claim from October 2011.

4.4 The benefit fraud sanctions covered by these Regulations are those provided for in, or imposed by virtue of, the Social Security Fraud Act 2001 (“the 2001 Act”). In particular, sections 6B and 7 of that Act deal with loss of benefit following a benefit offence and section 8 deals with the effect of a benefit offence on joint-claim jobseeker's allowance. The Welfare Reform Bill currently before Parliament proposes to amend sections 6B and 7 of the 2001 Act so as to extend the disqualification periods. Once those amendments come into force, the present regulations will apply to people sanctioned under the 2001 Act as amended.

5. Territorial Extent and Application

This instrument applies to Great Britain.

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

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

7.1 This instrument ensures that customers who would be in receipt of certain working age benefits but for a fraud-related sanction can be awarded State Pension without having to make a claim.

7.2 In developing the 2010 Regulations, consideration was given to what should happen where a customer would be in receipt of a working age benefit but for the imposition of a sanction. Sanctions can be applied where, for example a person has not satisfied a Jobseeker's Allowance labour market condition or where there has been one or more benefit fraud offences. It is possible that in such cases, payment of benefit could be reduced to nil.

7.3 It was determined that the existence of a labour-market sanction should have no impact on a person's entitlement to State Pension. Therefore, the 2010 Regulations were drafted so that if an exempt benefit *would* have been in payment at the relevant time, but for the application of a sanction of this kind, customers should be treated as though they were receiving that benefit, and would be able to receive their State Pension without having had to make a claim.

7.4 The one area however where it was decided that the imposition of such a sanction should prevent an automatic award of State Pension was where the sanction was fraud-related. This was because it was not felt to be appropriate that a person known to have committed an act of fraud against the Department, leading to the withdrawal of benefit, should be freed of the need to make a claim for a further benefit.

7.5 To enable these fraud-related cases to be identified and excluded from the process for automating an award of State Pension, changes were necessary to the Department's computer systems. It was intended that these changes would be made as part of a planned second phase of IT changes. Whereas the initial phase was focussed on smoothing the transition of DWP customers onto State Pension, this later phase was to be aimed at re-using the data held on customers when they move on to claim Pension Credit. At the same time, the changes put in would have enabled the identification of customers subject to a fraud-related sanction.

7.6 When the value-for-money case for delivering this second phase was reviewed, it was determined that the relatively high investment costs, set against the financial benefits did not present a good business case – especially as a clerical alternative that could improve the Pension Credit claims process without capital investment was identified. Because of this, it was agreed that the second phase should not go ahead. Consideration was then given to the option of making a separate change to the Department's computer systems to identify these cases – however the cost of making such changes was estimated to be in the region of £600,000.

7.7 Set against this high cost, the number of cases impacted is estimated to be very low. The reason for the low volumes is that out of the many benefits which are sanctionable, only a small subset of these are relevant to the criteria for exempting a customer from claiming. Fewer still will have had their payment stopped, rather than reduced. The group is further narrowed as the criteria for being made exempt from claiming State Pension also require certain other benefits ***not*** to be in payment. Lastly, while a greater number may be under such a sanction at some point in a year, we only look at their circumstances at one specific point – eight weeks before their state pension age.

7.8 Given the small scale of the impacted cases, set against the high cost, it was decided that there was not sufficient justification for proceeding with the IT changes. Rather, it was agreed to amend the regulations to permit customers who are subject to these fraud-related sanctions at the relevant time to be awarded State Pension without making a claim.

7.9When developing the 2010 Regulations, careful consideration was given to the potential impact on fraud. No evidence was found that fraud levels on State Pension awards would be impacted by the changes. This is due to the fact that entitlement to State Pension is based on a customer's National Insurance contribution record which is held and maintained by the Department over many years. As such, even where a customer is subject to a fraud-related sanction, we would not be extending the scope for fraud at the point of making an award. That said, plans have been put in place to monitor carefully the impact of the changes on both fraud and error to ensure that no unexpected consequences emerge.

7.10 In the longer term it is hoped that, when further systems changes are made to implement Universal Credit, there can be a return to the preferred option of requiring customers who are not receiving benefit due to the imposition of fraud-related sanctions to make a claim for State Pension.

- **Consolidation**

This legislation will be included in the 'Law Relating to Social Security' (referred to as 'The Blue Books') which are regularly updated and are available to the public at no cost via the internet.[1]

8. Consultation outcome

8.1 A formal public consultation exercise took place in relation to the 2010 Regulations. As this is only a very minor change that will not disadvantage customers, there are no plans for further consultation.

---

1 http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/c_0031.pdf.

8.2 This instrument was considered by the Social Security Advisory Committee (SSAC) on 1st June 2011. The Committee decided not to ask for the proposed regulations to be formally referred.

9. Guidance

9.1 The prime source of information for customers will be the letter and accompanying booklet which will be tailored to their needs and issued between three and four months ahead of state pension age. Issue of the new letters is planned to start from 8th August 2011.

9.2 Departmental leaflets and internet information will also be updated. The revised leaflets and information will be available from the beginning of August 2011 via the following link:

http://www.direct.gov.uk/en/Pensionsandretirementplanning/StatePension/index.htm

9.3 Guidance has been developed for staff in Pensions, Disability and Carers Service who will be administering State Pension and for Jobcentre Plus staff who advise citizens on working age benefits about their transition to State Pension. Once the new IT is available, this guidance will be tested in conjunction with the new IT processes. It is expected that this will be carried out between 11th and 14th July.

9.4 Initially, the guidance will support staff in answering customer queries following the introduction of the new letters referenced above and will be in place from the beginning of August, with training of all relevant staff taking place between the 27th June and 5th August.

9.5 Further guidance to support the new processes for making awards of State Pension without a claim will be in place shortly before the start of the new process. Full training to relevant staff is planned to take place between the 24th of August and the 6th October.

9.6 Guidance for decision makers to support the new service will be made available publicly via the internet. This is due to be published at the beginning of August 2011 and will be available via the following link:

http://www.dwp.gov.uk/publications/specialist%2Dguides/decision%2Dmakers%2Dguide/#memos

Further detailed procedural guidance around State Pensions is not currently available publicly. However, copies of all the current, draft guidance to staff is being deposited in the Library in an electronic format, at the time of laying these regulations. Copies of the final guidance will be deposited on completion. Customers can also obtain copies of guidance material upon request.

9.7 Various volumes of detailed technical guidance for professional and voluntary advisors and others is available publicly and can be accessed via the following link:

http://www.dwp.gov.uk/publications/specialist-guides/technical-guidance/

Volume NP46 of these provides a ‘Detailed Guide to State Pensions’. This is currently being updated and when re-published will incorporate these changes. A date for republishing the guide has not yet been confirmed.

10. Impact

10.1 This instrument has no impact on the private sector or civil society organisations.

10.2 This instrument has a negligible impact on the public sector.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

This instrument does not impact on small business.

12. Monitoring & review

Plans are already in place to monitor any impact of the 2010 Regulations on fraud, error and accuracy and on the Department's ability to recover overpayments, whether due to customer error or fraud. The Department also has plans in place to monitor any impact on our ability to pursue prosecutions, cautions and penalties.

13. Contact

Lucinda Baldwin at the Department for Work and Pensions, Tel: 01253 689091, or email: lucinda.baldwin@dwp.gsi.gov.uk can answer any queries regarding the instrument.