EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (DEFERRAL OF RETIREMENT PENSIONS) REGULATIONS 2011

2011 No. 634

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 stop unintended expenditure in cases where a person in receipt of a specified income-related benefit may also qualify for an improvement to his or her state pension for the same period.

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 and the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 provide for an increase in state pension where someone has deferred taking their state pension. They also provide for circumstances which will exclude someone from being treated as having deferred. An amendment is needed to extend the list of exclusions to include income-related benefits in order to support the policy intention that people should not qualify for a deferral reward for a period when they have relied upon another social security benefit instead of claiming their state pension.

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 The intention is to extend the circumstances in which certain days will not be included in the calculation of a period of deferral for state pension. The period will cover those days, where a person, or partner (if a member of a couple), has received

State Pension Credit, income-related Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance.

7.2 People may improve their state pension entitlement if they defer claiming their state pension – either by not claiming their state pension when they reach state pension age or, if they have already been awarded their state pension, by deciding to give it up for a period of time. When they do claim (or re-claim) their state pension they may be entitled to either a weekly increase in their state pension for the rest of their life or a one-off lump sum payment.

7.3 Currently people are treated as deferring their state pension provided they do not claim, or they give up, their state pension for at least five weeks. If they receive certain social security benefits for the same period that they defer claiming their state pension those days will be excluded from the calculation of the period of deferral. This means that when they claim their state pension they do not qualify for either a weekly increase or a lump sum payment for those days.

7.4 State Pension Credit is a non-contributory and income-related benefit, available to top up a person's income to a level appropriate to their circumstances. For State Pension Credit, as with all income-related benefits, couples are treated as a single unit – they have a joint minimum guarantee amount and their income and capital are added together when calculating their entitlement. The award of State Pension Credit should take account of the state pension entitlement even if it has not been claimed (for example if it has been deferred) and assume a notional income in respect of it.

7.5 However it has come to light that in some cases this notional income rule has not been applied consistently when assessing a claim for State Pension Credit. This means that in some cases when people claim their state pension they are entitled to a deferral reward that had been built up during a period for which they had received State Pension Credit. However no deduction will have been made from their State Pension Credit in respect of the state pension they would have received had it been claimed. This means some people are being paid twice for the same period. This does not fit with the policy intention that people should not be rewarded for a period when they have relied upon another social security benefit instead of claiming their state pension.

7.6 The Pension, Disability and Carers Service have taken steps to improve the guidance and technical training for State Pension Credit staff to check for state pension entitlement either at state pension age or when State Pension Credit is claimed.

7.7 In other areas of the benefit system there is a legislative solution to avoid duplication of, or erroneous, payments. There is presently no similar mechanism available to abate or to offset the payments of State Pension Credit already made against the deferral reward for the same period.

7.8 The Department has considered whether it could change primary legislation to allow the deferral lump sum to be abated by the relevant income-related benefit paid in error. Such a change was considered disproportionate when notional income rules are already in place to prevent the duplication of the payment of public funds.

7.9 Instead, to prevent new cases arising in the future the proposed amending regulations will list specified income-related benefits as excluded benefits for deferral purposes, which will avoid any overprovision in the future. This will mean the days someone receives a specified benefit will not count towards the deferral reward and this will stop the double payments for the same period.

7.10 In most cases customers who rely on an income-related benefit for their day-to-day costs are not in a position to live without the state pension entitlement. Consequently, they are likely to have no effective choice in any event about whether to defer or not. For many people on a low income, deferral would be the wrong choice.

7.11 Without the amending provisions, there is a danger that a deferral reward may encourage people to choose to live on a reduced income or to make a choice that may disadvantage them both now and in the future. There is no incentive for people at this level of income to try to earn a higher rate of state pension in the longer term as the increase reduces their future entitlement to income–related benefits and the range of help associated with receipt of these benefits. In addition the lump sum payment is an inflexible vehicle for saving for the future, particularly so for the most vulnerable in our society, as it requires a minimum 12 months commitment for people who would be required to live below State Pension Credit level in order to take advantage of it.

7.12 This approach is consistent with Carer’s Allowance. Days where someone receives Carer’s Allowance do not count towards a deferral reward.

7.13 The proposed change will mean that from 6 April 2011 if someone receives State Pension Credit and at the same time they defer claiming their state pension the days for which they receive State Pension Credit will be excluded from the calculation of their deferral reward. In effect, for that period they will not be treated as having deferred their state pension. Similar excluding rules will apply where the person who has deferred taking his or her state pension is part of a couple and the other member of the couple has received State Pension Credit, income-based Jobseeker’s Allowance, Income Support or income-related Employment and Support Allowance in respect of them.

7.14 The proposal will affect those who are deferring their state pension at the point the regulations change (but only for the period from 6 April 2011) **and** those who begin to defer taking their state pension on or after 6 April 2011. This will mean, for example, that a State Pension Credit customer whose period of deferral spans both the period before **and** after 6 April 2011 will find that their period of qualification for a deferral reward will cease from 6 April 2011. The proposed change will mean that a few people will no longer have the option to defer their state pension but the proposed change will put them on the same footing as someone who opts not to take their state pension when they rely on Carer’s Allowance.

Consolidation

7.15 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 informal consultation but no formal consultation has been undertaken on this measure because there is no change to the policy intent. The amendment is designed to amend an unintended consequence of existing regulations, whereby some customers may receive two payments for the same period – State Pension Credit (without a deduction being applied), for example, and a deferral reward. This contravenes the underlying policy intention that people should only be able to qualify for an improvement to their state pension from deferring it when they have foregone income that would otherwise be due to them.

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 that had been 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 respondents were in broad agreement with proposals, but the main concern of those who objected was that the scheme was not generous enough to represent a viable option. Others felt that they could not endorse the scheme while there was still uncertainty over inheritance. No changes were made to the proposed incentives, but detailed proposals for the inheritance of lump-sum payments were developed following 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 reviewed the individual responses received to the consultation to identify any issues that may have affected this amendment. None was identified.

8.4 An informal consultation was held in November 2010 on the specific changes in these regulations with members of the Department for Work and Pensions Policy & Strategy Forum. These included: Age UK, Shelter, Advice UK, Citizen's Advice, Citizen's Advice Scotland, Carers UK, Disability Alliance, Local Government Association, Association of Directors of Adult Social Services, the Advice Services

Alliance, London Welfare Rights Offices Group, Mencap, Royal National Institute of Blind People, and Royal National Institute for Deaf People. No responses were received to this informal consultation.

8.5 The regulations were referred to the Social Security Advisory Committee for consideration at their meeting held on 2 December 2010. The Committee decided not to refer formally the regulations for public consultation. However the Committee wrote to the Minister of State for Pensions outlining their concern that a legislative solution had had to be used to close an administrative loophole and that under the proposals some customers on low incomes would no longer have the option to benefit from the deferral of their state pension.

8.6 The Minister of State for Pensions carefully considered the matters raised by the Committee and responded in January 2011 giving reasons for his decision to proceed with the regulations. There is presently no mechanism available to abate or to offset the payments of State Pension Credit already made against the deferral reward for the same period and a change to primary legislation to allow abatement was considered a disproportionate response. Most customers who rely on an income-related benefit for their day-to-day costs are not in a position to live without the state pension entitlement and are therefore unlikely to have a choice about whether to defer or not. In addition it may be the wrong choice for them as there is no incentive for people at this level of income to try to earn a higher rate of state pension in the longer term as the increase reduces their future entitlement to income–related benefits. The lump sum payment is an inappropriate vehicle for saving for the most vulnerable in our society, as it would require them to live below State Pension Credit level for 12 months or more to qualify for it. The proposed approach will put income–related customers on the same footing as someone who opts not to take their state pension when they rely on Carer's Allowance.

8.7 Having established the current scheme for deferral from April 2005 the Department identified a gap in the legislation. This amendment is intended to plug that gap and enable the delivery of the policy intention established by the Pensions Act 2004.

9. Guidance

9.1 This proposal forms an extension 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 to advise people of the proposed change.

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 and State Pension Credit 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.