EXPLANATORY MEMORANDUM TO

THE STATE PENSION (AMENDMENT) REGULATIONS 2016

2016 No. 227

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 the instrument

2.1 The Pensions Act 2014 ("the 2014 Act") introduces a new state pension for people reaching state pension age from 6 April 2016. This instrument sets the weekly amount of the full rate of the new State Pension at £155.65.

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 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 The main features of the new state pension are set out in Part 1 of the 2014 Act.[1] However, section 3(1) of that Act provides for the full rate of the new state pension to be specified in regulations.

4.2 Specifying the full rate in secondary legislation rather than in the 2014 Act itself enables it to be set much closer to the date of implementation of the new state pension on 6 April 2016, and accordingly to be based on the most up to date economic data and forecasts available at the time.

4.3 This affirmative instrument amends the State Pension Regulations 2015[2] (the principal regulations that contain the detailed provisions about the new state pension) to specify the full rate that will apply from 6 April 2016. It implements the Government's decision on the full rate announced in the Autumn Statement by the Chancellor of the Exchequer on 25 November 2015.[3]

4.4 From April 2017, the full rate will be increased through the annual up-rating process. Orders made under section 150A of the Social Security Administration Act 1992[4] provide for the basic state pension in the old state pension scheme and the standard minimum guarantee in Pension Credit (the main income-related benefit for people over state pension age) to be up-rated at least in line with the growth in average

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[1] http://www.legislation.gov.uk/ukpga/2014/19/contents/enacted
[2] http://www.legislation.gov.uk/uksi/2015/173/contents/made
[3] http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm151125/debtext/151125-0001.htm#15112551000003
[4] http://www.legislation.gov.uk/ukpga/1992/5

earnings. Paragraph 19 of Schedule 12 to the 2014 Act extends section 150A so that up-rating Orders made under it will also apply to the full rate set by these Regulations.

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

- 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).

4.6 A further set of regulations (the State Pension (Amendment) (Credits) Regulations 2016) will provide for National Insurance credits for new state pension purposes. The intention is to lay these regulations in January 2016.

5. Extent and Territorial Application

5.1 This instrument extends to Great Britain.

5.2 The territorial application is Great Britain.

5.3 Subject to the agreement of the Northern Ireland Assembly, the Department of Social Development in Northern Ireland will be making corresponding provision for Northern Ireland.

6. European Convention on Human Rights

6.1 The Minister of State for Pensions, the Baroness Altmann, has made the following statement regarding Human Rights:

In my view the provisions of the State Pension (Amendment) Regulations 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The 2014 Act introduces reforms of the state pension designed to restructure spending in such a way as to deliver a flat rate state pension set above the level of the standard minimum guarantee in Pension Credit, which is the basic weekly means test. A key objective is to provide a simpler state pension as an underpin so that people saving for retirement have clarity and confidence about what they can expect from the state in retirement, while ensuring that the state pension remains affordable and sustainable for the long term. (The full policy background to the new state pension is set out in the White Paper *The single-tier pension: a simple foundation for saving* (Cm 8528)[5] and summarised in the Explanatory Memorandum to the State Pension Regulations 2015.[6])

7.2 The rate of £155.65 set out in this instrument compared to the proposed amount of the Pension Credit standard minimum guarantee of £155.60 delivers an amount of new state pension higher than the basic weekly means test amount for the 2016/17 tax year.

[5] https://www.gov.uk/government/publications/the-single-tier-pension-a-simple-foundation-for-saving--2
[6] http://www.legislation.gov.uk/uksi/2015/173/memorandum/contents

7.3 As noted in paragraph 4.4 above, in subsequent years, legislation provides that both these amounts are uprated by at least earnings growth. Setting the rate above the rate of the Pension Credit standard minimum guarantee and uprating the amounts by the same factor ensures the new state pension cannot fall below the value of the Pension Credit standard guarantee. Further details of the impact the rate will have on pensioner benefit expenditure is at paragraph 10.2.

7.4 The full rate of the new state pension is payable to a person who has at least 35 qualifying years of National Insurance contributions or credits, none of which are before 6 April 2016. Such a person with fewer than 35 qualifying years, but a minimum of 10, will get a reduced rate of the new state pension, calculated at 1/35th of the full rate for each year. A person with qualifying years before 6 April 2016 gets the transitional rate of the new state pension. This is calculated by comparing a person's state pension based on their own National Insurance contribution record as at 6 April 2016 under the old and new rules on the assumption that the new rules had been in force before that date, and awarding the higher of the two. This forms the "starting amount". If the starting amount is below the full rate of £155.65, it may be increased up to a maximum of the full rate by gaining further qualifying years before state pension age. Additional amounts can be payable, for example where a person defers the new state pension to qualify for an increase, or where they are entitled to a survivor's pension based on a deceased spouse or civil partner's old state pension.

Consolidation

7.5 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 The proposals for reforming the state pension were subject to extensive consultation. Two options for reform were set out in the Green Paper *A state pension for the 21st century* (Cm. 8053) published in April 2011. The option of what was then referred to as a "single-tier pension" (now known as new state pension) set above the level of the means-test, as opposed to a modified form of the existing system, was supported by around three quarters of the 102 organisations that responded.[7]

8.2 During pre-legislative scrutiny of the Bill which became the 2014 Act, the Work and Pensions Select Committee received representations from a number of quarters concerning the rate of the single-tier pension, or STP, and the need to maintain a clear gap between the full rate and the standard minimum guarantee. In its Report, the Committee stated that: "… we believe that it is important that there is as much clear water as possible between the rate of the single-tier pension and that of Pension Credit. There appears to be scope for a bigger differential (either at the outset or over time) given the increased National Insurance ("NI") revenue that the Government will derive from the ending of contracting-out and the overall long-term savings which

[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/190100/state-pension-21st-century-response.pdf.pdf

will be made on State Pension expenditure as a result of the introduction of the STP. We therefore recommend that, when the Bill is before Parliament in the summer, the Government publishes an analysis of (a) the cost of setting the STP rate at a range of higher levels; and (b) the level at which the STP could be funded if the additional NI revenue was used for this purpose."[8]

8.3 In the response[9] to the Committee's recommendation, the Government published the *Government Response to the Fifth Report of the Commons Select Committee, Session 2012-13, into Part 1 of the draft Pensions Bill*[10] in May 2013. The Government agreed that a central principle of the new state pension is that it will be set above the basic level of means-tested support in order to provide a firm foundation for retirement saving. The response also stated the Government's view that in order to achieve a sustainable state pension, the reforms would need to cost no more overall and could not be more generous to future pensioners. The Government reported that the additional National Insurance revenue from the ending of contracting-out would not be recycled within the state pension.

9. Guidance

9.1 The Government has published extensive guidance and information about the new state pension on gov.uk. Where applicable, illustrative rates have been used for the purposes of providing examples of how particular aspects of the transition will work. These will be updated in due course to refer to the actual rates.

9.2 The Department issues State Pension Statements on request, providing individual estimates of the new state pension. These statements have similarly been based on the illustrative rate of the new state pension for 2015/16 (£151.25) in conjunction with 2015/16 rates of other state pension benefits and pension credit, and will be updated to include the new rates in due course.

9.3 Guidance has been issued to all Pension Service staff following the announcement on 25 November advising them of the new benefit rates and the full rate of the new state pension that will apply from 6 April 2016.

10. Impact

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

10.2 The impact on the public sector is through benefit expenditure as set out in the Impact Assessment for the new state pension published when the 2014 Act gained Royal Assent in May 2014 and updated in July 2014.[11] The Assessment presented the total impact of the reforms on expenditure which shows that projected expenditure is broadly the same as under the current system until the 2040s. From that point on the reformed system is projected to spend less so that by the early 2060s projected growth in pension spending is reduced by around 0.5% of GDP.

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[8] http://www.publications.parliament.uk/pa/cm201213/cmselect/cmworpen/1000/1000.pdf paragraph 134
[9] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197849/government-response-fifth-report-house-of-commons-work-pensions-select-committee-part1-draft-pensions-bill.pdf pages 18 and 19
[10] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197849/government-response-fifth-report-house-of-commons-work-pensions-select-committee-part1-draft-pensions-bill.pdf
[11] 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

10.3 The Department has since published updated analysis in *Impact of New State Pension (nSP) on an Individual's Pension Entitlement – Longer term effects of nSP*.[12] This provides a detailed impact of the reforms, including estimates of the proportions of pensioners who have a higher or lower state pension outcome under the reforms compared to the old rules carried forward. The analysis also shows that eligibility for Pension Credit is reduced by a third by 2020 compared to the pre-2016 system, with eligibility falling by a half by 2030. A separate Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 As noted at paragraph 4.4 above, the rate will be reviewed each year as part of the up-rating process which imposes a statutory duty on the Secretary of State to increase the basic state pension, Pension Credit guarantee credit and full rate of new state pension when the general level of earnings has increased since the previous review.

12.2 The Department regularly publishes information on pensioner incomes and on benefit expenditure which are used to monitor trends and inform policy development. Administrative data on new state pension awards will be published on the Department for Work and Pensions' tabulation tool and be used to monitor the impact of the reforms in conjunction with survey data.

13. Contact

13.1 Cliff Newman at the Department for Work and Pensions (Telephone number 0207 449 7140 or email: cliff.newman@dwp.gsi.gov.uk) can answer any queries regarding the instrument.

[12] Available on gov.uk at https://www.gov.uk/government/publications?keywords=&publication_filter_option=research-and-analysis&topics%5B%5D=all&departments%5B%5D=department-for-work-pensions