

## EXPLANATORY MEMORANDUM TO

### THE STATE PENSION DEBITS AND CREDITS (REVALUATION) ORDER 2017

2017 No. 375

#### 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<sup>1</sup> (“the 2014 Act”) introduces a new State Pension for people reaching State Pension age from 6 April 2016. The 2014 Act also introduced changes to Pension Sharing on Divorce. This instrument allows for the revaluation by prices of the new state scheme pension credits and debits that arise when a pension share order is made by the courts where divorce proceedings commence from 6 April 2016 and the person subject to the debit reached State Pension age on or after that date.

#### 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 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 Pension Sharing on Divorce was introduced in the Welfare Reform and Pensions Act 1999<sup>2</sup>. Section 4 of the 2014 Act (Entitlement to State Pension at transitional rate) introduces a transitional rate of State Pension where a person has built up qualifying years prior to 6 April 2016, referred to as ‘pre commencement qualifying years’. Transitional rates which are in excess of the full rate of the new State Pension (“protected payments”) can be subject to pension sharing orders.
- 4.2 Schedule 11(13) of the 2014 Act amends the 1999 Act by inserting new section 49A which allows for pension credits and debits to be created in respect of the new State Pension as a result of a pension sharing order. Sections 13 and 14 of, and Schedules 8 and 10 to, the 2014 Act (Transition: pension sharing on divorce etc) provide that the person subject to a debit (“the transferor”) has their protected payment reduced by an amount that will exactly equal the amount paid to the person benefiting from the corresponding credit (“the transferee”).
- 4.3 Schedule 11 (8) of the 2014 Act inserted new section 148AD in the Social Security Administration Act 1992 (c.5).

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2014/19/contents/enacted>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/1999/30/contents>

- 4.4 Section 148AD requires the Secretary of State to review the general level of prices in each tax year and, if they have increased, to make an order specifying the percentage of the increase to be applied to the new state scheme pension credit and the new state scheme pension debit for that tax year. This annual revaluation exercise will allow for cumulative increases to be recorded in future instruments.
- 4.5 This instrument is required to fulfil the duty on the Secretary of State and implement the increase. This is the first order to be made under new section 148AD of the 1992 Act and will apply for the purposes of calculating the new state scheme pension credit and the new state scheme pension debit for people reaching State Pension age on or after 11 April 2017. It will therefore come into force on 10 April 2017. The instrument operates in a similar way to revaluation of protected payments, under section 148AC, that have not been subject to a share order<sup>3</sup>.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 Corresponding provision will be made for Northern Ireland.

## **6. European Convention on Human Rights**

- 6.1 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 Welfare Reform and Pensions Act 1999 introduced provisions to make additional State Pension shareable in divorce proceedings. Under the 2014 Act additional State Pension is withdrawn. However, transitional arrangements have been made so that people with pre-commencement qualifying years who have an amount in excess of the full new State Pension at 6 April 2016 receive that amount at State Pension age. The amount, the protected payment, is shareable in divorce proceeding where those proceedings start from 6 April 2016 and the transferor reached State Pension age on or after that date.
- 7.2 If a pension sharing order is made by the courts it will provide for a percentage split of the protected payment to be shared between the two parties. The transferor's National Insurance record will be noted with a debit and the transferee's record will be noted with a credit. The credit and debit will be revalued by prices, until the transferor and transferee reach their State Pension ages. At State Pension age the transferor's protected payment will be reduced by the debit and the transferees new State Pension and/or their protected payment will be increased by the credit. Under the pre 2016 arrangements the Department received around 150 share orders a year. Due to the transitional nature of the protected payment the number of share orders is likely to reduce over time.
- 7.3 The Order increases the credit and debit by 1.0%.

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<sup>3</sup> <http://www.legislation.gov.uk/ukxi/2016/1141/contents/made>

### ***Consolidation***

7.4 As this instrument does not amend other legislation, consolidation is not applicable.

### **8. Consultation outcome**

8.1 There is no statutory duty on the Secretary of State to consult on this instrument, and the Department does not consider informal consultation is appropriate in this case as this is a technical order which gives effect to a statutory requirement, the terms of which are defined in the primary legislation. The discretion exercised in making the order is in the choice of the Consumer Price Index (all items) as the prices measure, which has been used for up-rating under section 150 of the 1992 Act since April 2011, and in the choice of September-September review periods which is the period normally used to determine the level of prices.

### **9. Guidance**

9.1 Guidance on the measure implemented by the order will be issued to operational staff. Computer systems will also be updated to enable revaluation to be taken into account in the preparation of State Pension statements.

### **10. Impact**

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

10.2 The Order imposes no new costs on the public sector. These marginal costs are already provided for in the Government's expenditure plans for new State Pension alongside the costs of up-rating.

10.3 An 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 The legislation requires a review to be undertaken in each tax year (see paragraph 4.4).

### **13. Contact**

13.1 Cliff Newman at the Department for Work and Pensions Telephone: 020 7449 7140 or email: cliff.newman@dwp.gsi.gov.uk can answer any queries regarding the instrument.