EXPLANATORY MEMORANDUM TO

THE AGE-RELATED PAYMENTS REGULATIONS 2013

SI No. DRAFT

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

2.1 This instrument makes provision for HM Treasury to make payments to persons who bought a with-profits annuity from the Equitable Life Assurance Society (Equitable Life) on or before 31 August 1992, and were alive and aged over 60 on 20 March 2013. These persons have not received the income they hoped for in their retirement, and are excluded from the main Equitable Life Payments Scheme (provided for in the Equitable Life (Payments) Act 2010) on the grounds that they did not suffer a loss as a result of government maladministration.

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

3.1 None.

4. Legislative Context

4.1 The Regulations are made under section 7(1), (2) and (3) of the Age-Related Payments Act 2004. This section provides for payments to be made to persons aged over 60. A transfer of functions order (the Transfer of Functions (Age-Related Payments) Order 2013 (S.I. 2013/ 1442)) has been made to enable regulations to be made under that Act by Her Majesty's Treasury (concurrently with the Secretary of State) for payments in a case where a with-profits annuity has been purchased (whether or not by the recipient of the payment) from the Equitable Life Assurance Society on or before 31st August 1992.

4.2 The Regulations make provision for HM Treasury to make payments to persons aged over 60 who bought a with-profits annuity from Equitable Life on or before 31 August 1992 (qualifying Equitable Life annuitants). Article 2 provides for a qualifying Equitable Life annuitant to be entitled to a payment of £5000 in respect of each relevant with-profits annuity policy (as defined in the regulations) under which he is eligible to receive an annuity payment. If a qualifying Equitable Life annuitant is entitled to a payment of £5000 in respect of an individual with-profits annuity policy, and dies before a payment can be made, the payment will be made to his estate (subject to an application being made for the payment). If a qualifying Equitable Life annuitant is entitled to a payment of £5000 in respect of a joint with-profits annuity policy, and he dies before a payment can be made, the payment will be made to his estate if all the other persons eligible to receive a financial benefit under the contract have died (again, subject to an application being made for the payment).

4.3 Article 3 provides for a qualifying Equitable Life annuitant to be entitled to a further payment of £5000 if he is in receipt of state pension credit (as defined in the regulations) on 1st November 2013. In certain cases, entitlement is subject to the requirement to make an application for the payment.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.[1]

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights: “In my view the provisions of the Age-Related Payments Regulations 2013 are compatible with the Convention Rights”.

7. Policy background

7.1 The Equitable Life is a mutual insurance company owned by its policyholder members. From the 1950s until 1988 Equitable Life sold significant volumes of policies that included a guaranteed annuity rate. In the 1990s interest rates and inflation made it more expensive for Equitable Life to pay out on guaranteed annuity rate policies. In order to try and manage these costs, it implemented a policy of offering differential terminal bonus rates. However, in July 2000 the House of Lords determined that this policy was unlawful. Equitable Life ran into financial difficulties when it was unable to meet £1.5 billion in liabilities which the court’s decision established that it owed. Unable to find a buyer to secure a fresh injection of capital, Equitable Life announced its closure to new business on 8 December 2000.

7.2 In July 2008, the Parliamentary Ombudsman published a report, “Equitable Life: a decade of regulatory failure”. The report said that there was evidence of “serial regulatory failure” on the part of the Government in relation to its regulation of Equitable Life in the period before 31 December 2001 and recommended the Government set up a compensation scheme.

7.3 On 11 May 2010 the Coalition Government published its Coalition Agreement which contained a pledge to “implement the Parliamentary and Health Ombudsman’s recommendation to make fair and transparent payments to Equitable Life policy holders, through an independent payment scheme, for their relative loss as a consequence of regulatory failure.”

7.4 The Government concluded that the relative losses suffered by policyholders who invested from September 1992 onwards and who should receive payments, amounted to £4.3 billion. However, in light of the Parliamentary Ombudsman’s recommendation that it “is appropriate to consider the potential impact on the public purse of any payment of compensation”, the Government decided that £1.5 billion should be made available for the payments scheme. The Government subsequently passed the Equitable Life (Payments) Act 2010 to establish the Equitable Life Payments Scheme.

7.5 A number of with-profits annuitants who bought their policies before 1 September 1992 were excluded from the Scheme. The Government remains of the view that there is

[1] Under the regulations payments can be made to eligible recipients in Northern Ireland and elsewhere overseas.

no basis for their inclusion in the Scheme on the grounds that they did not suffer loss as a result of government maladministration in the regulation of Equitable Life. However, in the Budget 2013, the Chancellor recognised the particular financial pressures this particular group are under, and announced a package of payments to be made to such policyholders.

7.6 The Government will make payments to persons who bought a with-profits annuity from the Equitable Life Assurance Society (Equitable Life) on or before 31 August 1992, and were alive and aged over 60 on 20 March 2013. An additional £5000 will be available to policyholders who meet the above criteria and are also in receipt of state pension credit or an equivalent benefit. The payments will be made in the financial year 2014-15, or earlier if possible, and will be separate from the main Equitable Life Payment Scheme.

Consolidation

7.7 None.

8. Consultation outcome

8.1 The Budget 2013 announcement was made in response to ongoing representations the Government has received arguing that a specific group of approximately 10,000 elderly policyholders who bought their with-profits annuity policies from Equitable Life on or before 31 August 1992 should be included within the wider Equitable Life Payment Scheme (See point 7.5).

9. Guidance

9.1 The Treasury does not propose to issue guidance on the Regulations. Those appointed by the Government to make these payments will use policyholder information supplied by the Prudential (which currently makes annuity payments to Equitable Life with-profits annuitants) to contact those eligible for a payment. This is to provide these individuals with information about the payments in advance of them being made. In addition, periodic updates will be provided on the Treasury website.

10. Impact

10.1 There is no impact on business or civil society organisations.

10.2 There are no significant costs to the public sector.

10.3 An Impact Assessment has not been prepared. This is because this policy decision only concerns making one off payments to a small and specific group of individuals as soon as possible. Furthermore these payments are to be made free from any effect upon tax and social security benefits. Therefore the only definitive impact of this policy is a positive financial one for those targeted by it.

11. Regulating small business

11.1 This instrument does not apply to small business, or impose any additional regulatory requirements on them.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

13.1 Paul Marsh at the HM Treasury can answer any queries regarding the instrument. Tel: 020 7270 5809 or email: paul.marsh@hmtreasury.gsi.gov.uk