EXPLANATORY MEMORANDUM TO THE

SOCIAL SECURITY (CLAIMS AND PAYMENTS) AMENDMENT REGULATIONS 2005

2005 No. 455

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. Description

2.1 The Pensions Act 2004 introduces a new option of a lump sum payment for people who defer their entitlement to their State Pension for at least 12 months from 6 April 2005 as an alternative to an increased weekly pension ("increments"). The Act also provides for the surviving spouse of a person who dies while deferring to choose between a lump sum and increments in respect of his or her deceased spouse's deferment.

2.2 This Instrument amends the regulations which make provision for the administrative arrangements relating to claims for State Pension. These Regulations will:

(i) allow people who are deferring their State Pension to submit a claim up to four months before they intend to start drawing their pension;
(ii) extend the current time limit for claiming State Pension from 3 to 12 months over the 12 month period starting on 6 April 2005; and
(iii) limit the scope of what may be claimed on behalf of a person who has died, in order to avoid a potential conflict with the provisions of the 2004 Act.

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

3.1 None

4. Legislative Background

4.1 This Instrument amends the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968) (the "Claims and Payments" Regulations) using powers contained in the Social Security Administration Act 1992.

4.2 These amendments are being made to support the changes to the deferral arrangements made by the Pensions Act 2004. The legislation which provides for deferral of the State Pension and the calculation of increments is found in section 55 of, and Schedule 5 to, the Contributions and Benefits Act 1992 (c.4) ("the Contributions and Benefits Act"). Section 297 of, and Schedule 11 to, the Pensions Act 2004 (c.35) amends these provisions to give effect to the changes summarised in paragraph 2.1 above.

4.4 The Social Security (Graduated Retirement Benefit) Regulations 2005 (see next paragraph) make new deferral arrangements for graduated retirement benefit which reflect those made by the Pensions Act 2004 for State Pensions. To support these new arrangements, these Regulations make amendments in respect of graduated retirement benefit similar to those made for State Pension. Graduated retirement benefit is paid as an increase to the State Pension under sections 36 and 37of the National Insurance Act 1965 (c.51), continued in force by the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978.

4.5 This Instrument is one of four sets of negative regulations that are required to underpin the new deferral arrangements with effect from April 2005. The other Instruments are:

(i) The Social Security (Deferral of Retirement Pensions) Regulations 2005;
(ii) The Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations 2005; and
(iii) The Social Security (Graduated Retirement Benefit) Regulations 2005.

5. Extent

5.1 This instrument applies to Great Britain. Equivalent provision will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 People who currently defer their entitlement to State Pension, either by not claiming it on reaching State Pension age or by electing to stop claiming it, receive an increased pension when they do finally claim. This increase works out at about 7.5% of the weekly pension for each full year of deferral. Increments are earned on all components of the contributory State Pension (ie a Category A pension based on the contributor's own contributions, and a Category B pension based on the spouse's contributions) apart from increases payable for a dependent adult.[1]

7.2 Following the changes made by the Pensions Act 2004, from April 2005, people who defer claiming their State Pension for at least 12 months will have the choice of either a lump sum based on pension foregone plus interest or increments calculated at a rate equivalent to 10.4% for each year of deferment.

[1] A person can claim an increase to his or her Category A pension for a dependant adult (either a spouse, or a person with care of the claimant's child). No increase is payable if the dependant has earnings above a set amount, or receives a benefit that exceeds the amount of the increase.

7.3 If a married person dies after having deferred his pension, under current legislation the surviving spouse is entitled to “inherit” increments when he or she claims her pension.[2] The amount payable to the surviving spouse is in line with the inheritance arrangements for the normal weekly pension, and comprises 100 per cent. of the increments earned on the basic State Pension and 50 per cent. of the increments earned on the additional (earnings-related) component. Where the additional pension is derived from the State Earnings-Related Pension Scheme (“SERPS”), regulations allow the inheritable proportion to be reduced gradually from 100 per cent. to 50 per cent. between October 2002 and October 2010[3].

7.4 The lump sum for a surviving spouse will be inheritable in the same proportions as increments. Affirmative regulations, laid in draft on 31 January, would allow the same adjustment to the lump sum calculation for the SERPS component as applies to increments.[4]

Advance claims (regulation 2)

7.5 Entitlement to the State Pension, as with most Social Security benefits, is subject to the condition that a person makes a claim for it. Regulations currently allow a person to submit a claim before the date on which they want to start claiming from (cf regulation 15 of the Claims and Payments Regulations). Claims can be accepted up to four months in advance of the date on which a person would first be entitled to his State Pension (normally 60 for a woman and 65 for a man). This helps to ensure that, in most cases, the pension is put into payment on the due date without delay, by allowing time for enquiries and other matters to be resolved. This provision does not currently apply to people who apply for their State Pension after a period of deferment although current operational practice treats such claims as validly made.

7.6 This Instrument amends these regulations to allow deferrers to make claims up to 4 months in advance of their date they wish to start drawing their State Pension to support current operational practice and to facilitate the smooth administration of the claims process in these cases.

Time limits for claiming State Pension (regulations 3, 5 and 6)

7.7 Currently, the time limit for claiming State Pension is three months. In effect, this means that a person will (subject to satisfying the age and contribution conditions) be entitled to their State Pension from a date up to 3 months earlier than the date their claim is received by the Department. Should they have delayed claiming for longer than three months after the date on which they could first have become entitled, the period between the date of first possible entitlement and the date the claim is accepted from is treated as a period of deferred entitlement for which increments are

[2] Until April 2010, a man may only inherit increments if he is over State Pension age himself when his wife dies.
[3] The Social Security (Inherited SERPS) Regulations 2001 (S.I. 2001/1085)
[4] The Social Security (Inherited SERPS) (Amendment) Regulations 2005.

payable.

7.8 As explained above, the new option of a lump sum will be available to people who have deferred claiming their State Pension for at least 12 months following the commencement of the new provisions on 6 April 2005.

7.9 However, the 12 month qualifying period may act as a deterrent to defer. The proposal to extend the period for which arrears of State Pension may be paid to 12 months is intended to mitigate this. The changes will mean that a person who sets out with the intention of deferring to earn a lump sum will still have the option of drawing down a form of one-off payment (albeit without interest) should he have to claim his pension earlier than he expected. The change from 3 to 12 months is phased in gradually over the year starting 6 April 2005 in tandem with the first year for which a lump sum may be accrued. Claims made on or after 6 July 2005 may be backdated to 6 April 2005 (subject to the other conditions of entitlement being satisfied); claims made on or after 6 April 2006 may be backdated for up to 12 months.

7.10 These changes apply to graduated retirement benefit but not to increases to the State Pension that may be claimed for a dependent adult. This is because dependency increases do not count as deferred pension when increments or a lump sum payment are calculated, so a person could be worse off by opting for a lump sum if a payment of backdated pension could include such an increase for a full 12 months. The maximum period for which arrears of such increases may be payable will therefore remain at 3 months.

Posthumous claims

7.11 Regulation 30(5) of the Claims and Payments Regulations makes provision for a person to make a claim for benefit on behalf of a person who has died, subject to certain conditions relating to the suitability of the applicant and time limits for applying. In effect, it allows a posthumous claim for whatever the deceased could have claimed himself up to the date of his death, so for the State Pension a claim could currently be made for up to three months' arrears. If the death had occurred more than three months after the person had reached State Pension age, the calculation of arrears would include weekly increments earned on the period preceding the start of the three month arrears period (cf paragraph 7.7, above).

7.12 The amendments proposed to regulation 30 of the Claims and Payments Regulations are being made to ensure that regulation 30(5) does not operate in away that is incompatible with the inheritance arrangements in the Act. Firstly, the amendments would preclude a claim being made under regulation 30(5) where the deceased was married at the date of death. Without this amendment, a claim could be made by a person other than the surviving spouse for a lump sum payment, which would conflict with the spouse's right to choose a lump sum or increments under the Act.

Secondly, where a claim is allowed (ie the deceased was unmarried at the date of death) the amendments limit what may be awarded to up to 3 months' arrears which may include increments accrued for any period falling prior to the 3 month period. This maintains the current position as regards arrears claimed on behalf of the deceased and limits the period for which increments are payable. The lump sum option will not be available. This maintains the policy intention that only a spouse may inherit the lump sum.

7.13 The proposals contained in these regulations were considered by the Social Security Advisory Committee on 12th January 2005. The Committee was content with the proposals and agreed not to consult on them.

8. Impact

8.1 A Regulatory Impact assessment has not been prepared for this Instrument as it has no impact on business, charities or voluntary bodies.

8.2 The public sector impact comprises administration and programme costs. It is not possible to disaggregate the cost of the proposals contained in these Regulations from the overall costs of the new deferral arrangements introduced by the Pensions Act 2004. The set-up costs are estimated at around £7 million, and include the cost of new technology to support the calculation of the lump sum option. It is anticipated that the changes will not result in the need for additional staff. The overall programme costs in the first three years ending March 2008 are estimated at £10m/£25m/£60, peaking at £115m in 2010/11 and declining in the long term.

9. Contact

Helen Gadd at the Department for Work and Pensions can answer any queries regarding the instrument. Tel: 020 7712 2569 or e-mail: Helen.Gadd@dwp.gsi.gov.uk.