EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (DEFERRAL OF RETIREMENT PENSIONS ETC.) REGULATIONS 2006

2006 No. 516

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 This Instrument amends existing regulations by
a) providing an easement to the rules relating to the accrual of a weekly pension increase ("increments") when retirement pension is deferred;
b) correcting or clarifying a number of miscellaneous provisions which apply in relation to increments and lump sums; and
c) removing a reference which is now obsolete.

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

3.1 None.

4. Legislative Background

4.1 The Pensions Act 2004 introduced changes to the arrangements for deferral of the state retirement pension, shared additional pension and Graduated Retirement Benefit. As a consequence, several sets of regulations have been made which set out the detailed rules underpinning the primary legislation.

4.2 This Instrument is required primarily to align corresponding provisions relating to the accrual of increments and lump sums (the two forms of "reward" that a person must now choose between if they have deferred for at least 12 months from April 2005) and thereby remove a complexity in the current deferral arrangements which impacts unfairly on married women. It is also required to correct or clarify certain of the provisions in the existing secondary legislation which were originally overlooked, to ensure that they reflect the intended policy.

5. Extent

5.1 This Instrument extends only to Great Britain. Equivalent provision will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

The Minister of State for Pensions Reform, Mr Stephen Timms, has made the following statement regarding Human Rights:

In my view, the provisions of the Social Security (Deferral of Retirement Pensions etc.) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 Following the changes introduced by the Pensions Act 2004, people who defer their state pension for at least 12 months from April 2005 will have the choice of either a lump sum based on pension foregone plus interest, or increments calculated at a rate equivalent to 1% for every five weeks (10.4% for each year) a person defers.

7.2 A person who is in receipt of certain other benefits while deferring their retirement pension will not accrue increments or a lump sum. This is principally to prevent a person gaining the benefit of deferment in circumstances where the other benefit would have been abated, under rules which deem certain benefits to “overlap”, had they been claiming their retirement pension instead of deferring it. This rule also extends to Graduated Retirement Benefit (GRB)[1] (but only for the purposes of accruing increments: it does not affect accrual of lump sums) and to any other category of State Pension. However, in this case the underlying intention is to ensure that a person either claims or defers their total State Pension entitlement including their GRB, which is normally paid as an increase to the main State Pension.

7.3 The present increments rule[2] in relation to GRB would typically affect a married woman who is entitled to GRB but has insufficient contributions in her own right to qualify for a retirement pension based on her own National Insurance contributions (a “Category A” retirement pension) and who is therefore reliant on her husband’s contributions for a Category B pension (the so-called “married woman’s” pension). However, if her husband defers his retirement pension on reaching State Pension age, the Category B pension is also deferred and she cannot claim it until he finally claims himself. If she has already started receiving her GRB this will disqualify her from any increments on the Category B that would otherwise accrue. In an extreme case, this could mean that by continuing to receive as little as 10 pence per week GRB she loses out on a pension increase for life worth £5 per week for each year of deferment. She can only avoid this “trap” (assuming she is aware of it) by surrendering payment of her GRB. However, this will not attract deferral benefits as the rules relating to giving up retirement pension once it is in payment in order to earn increments or a lump sum only apply to Category A and B pensions and to GRB only when it is being paid in addition to one of these.

---

[1] GRB was a precursor to the additional (earnings-related) State Pension, and ran from 1961 to 1975. Rights to the benefits accrued under the GRB scheme were preserved when it was wound up.

[2] Regulation 4 of the Social Security (Widow’s Benefit and Retirement Pensions) Regulations 1979 (SI 1979/642)

7.4 To this already complex situation is added the fact that this rule does not apply in the calculation of lump sum. This was an oversight when the lump sum regulations were drafted as the intention is that the same rules should apply in defining what counts as a period of deferred entitlement for the purposes of calculating increments and lump sums. The preferred solution is to align the corresponding provisions by ceasing to treat GRB as a benefit that excludes accrual of increments. This will ensure that married women with poor contribution records of their own are no longer disadvantaged if they claim their GRB while their Category B pension is deferred. This rule change will apply to any period of deferment that ends on or after 6th April 2006, the date on which the regulations come into force (regulation 2).

7.5 The remaining amendments included in this Instrument do not introduce changes to existing policy but are required for the purposes of tidying-up, clarification or correction.

7.6 Regulation 2 (in addition to the change described in paragraphs 7.2 to 7.4) removes a redundant reference to "injury benefit" from the list of benefits that preclude accrual of increments. The reference has had no practical effect since 1983 when injury benefit was abolished; the amendment is therefore purely a tidying-up measure.

7.7 Regulation 3 amends the transitional regulations[3], which modify the calculation of increments or lump sums where a person's period of deferment includes a period preceding 6th April 2005 when the new rules took effect. The amendment relates to the "alternative" lump sum calculation. This will allow a lump sum to be calculated like a payment of normal arrears in a case where a person claims on or after 6th April 2006 and chooses a lump sum, but would have been entitled to a larger cash sum had they asked for the date of their claim to be backdated for 12 months instead. This could occur because a) only increments may accrue for deferment prior to 6th April 2005 and b) a backdated payment would include arrears of the increments accrued up to 6th April 2005, whereas the lump sum under the normal rules would not. The intention underlying this provision is to ensure that a person whose deferment period spans the date of transition to the new rules and who opts for a lump sum is not disadvantaged purely as a result of the way in which the pre-April 2005 increments are treated.

7.8 The amendment made by regulation 3 expressly excludes increases for a dependant adult (ADIs) from the "alternative" lump sum calculation. ADIs may be paid with a Category A retirement pension (subject to earnings and other rules). However, they do not count as part of deferred pension for the purposes of calculating lump sums or increments. It was never the intention that they should be included in the "alternative" lump sum calculation either. If they were, this would create additional anomalies, as well as difficulties in administration due to the complexity entailed in establishing entitlement to ADIs for a past period. This amendment is required to clarify the current provision, which could be interpreted in a way that conflicts with the policy intention.

[3] The Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations 2005 (SI 2005/469)

7.9 Regulations 4 and 5 are purely technical amendments to substitute cross-references which are necessitated by changes made in subsequent regulations.

7.10 Regulation 6 brings lump sums within the scope of the existing provision[4] that enables a payment of social security benefit to be offset against a payment that then becomes due if the original award is changed. Without this provision both payments would be properly payable and it is therefore required to prevent duplication of payment. It was originally thought that the current regulation would cover lump sums, however we now believe that there is scope to interpret it as not being applicable. The amendment made by regulation 6 is therefore required to ensure that lump sums are subject to the normal offsetting procedure that applies to other benefits.

Consultation

7.11 The proposals contained in regulations 2 and 4 to 6 of this Instrument were considered by the Social Security Advisory Committee on 1st February 2006. 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. Costs will arise in relation to the policy change made by regulation 2. Although it is difficult to quantify these precisely because of difficulties in ascertaining the exact numbers involved, it is thought that these costs will be low. It is estimated that something in the order of about 150 cases per year could benefit from the change, with numbers decreasing over time as the numbers of married women whose only entitlement in their own right is to GRB falls Based on the average amount of Category B pension, the additional programme cost per case would be in the region of £460 per year in current prices. The administrative cost of implementing the change is around £5,000 initially, to change the computer system. Ongoing costs are estimated to be marginal and will be contained within the overall costs of implementing the deferral changes (estimated at less than £1m per annum).

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.

[4] Regulation 5 of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 (SI 1998/664)