EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (EQUALISATION OF STATE PENSION AGE) REGULATIONS 2009

2009 No. 1488

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 this Instrument

2.1. This instrument amends existing legislation to provide for the qualifying age for a Winter Fuel Payment and various other social security benefit provisions to increase from 60 to 65 between 6 April 2010 and 5 April 2020, in line with the increase in the state pension age for women.

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

3.1 Paragraph 4.3.1 of Statutory Instrument Practice provides that these Regulations 'should be laid as soon as may be after registration'. There has been a delay between these Regulations being made and registered and subsequently laid before Parliament because the instrument has been withdrawn and re-laid. This was due to a fault with the automatic numbering of the regulations within the instrument, which meant the instrument as originally laid did not reflect the version made by the Secretary of State.

4. Legislative Context

4.1. This instrument is needed in order to amend the qualifying age for provisions in secondary legislation which are currently linked to female state pension age by reference to age 60.

4.2. The state pension age for women is set to increase from 60 to 65, starting in April 2010. Under measures introduced by the Pensions Act 1995, women born between 6 April 1950 and 5 April 1955 will have a state pension age of between 60 and 65, depending on their date of birth. Women born before 6 April 1950 will continue to become eligible for their state pension at 60; those born on or after 6 April 1955 will have the same state pension age as men.[1]

4.3. As a consequence, other benefits which are payable up to "pensionable age" (as defined by the 1995 Act) and which therefore currently cease at 65 for men, will, by 2020, also be available to women aged 60 to 64. These benefits include Jobseeker's Allowance and Employment and Support Allowance.[2]

4.4. In October 2003, Pension Credit replaced Income Support as the main income-related benefit for men and women who have reached 60. The qualifying age is defined

[1] The Pensions Act 1995 was amended by the Pensions Act 2007 to provide for the state pension age to increase from 65 to 68 between April 2024 and April 2046, affecting men and women born on or after 6 April 1959.

[2] Jobseeker's allowance replaced Unemployment Benefit and Income Support for people required to be available for work from 1996. Employment and Support Allowance replaced Incapacity Benefit and Income Support for people claiming on grounds of long-term sickness or disability in the case of new claims from October 2008.

in the State Pension Credit Act 2002 as “in the case of a woman, pensionable age; or, in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man.” Under this formula, the qualifying age is set to increase in line with female state pension age.

4.5. Over time, a number of subordinate provisions have been brought into line with the principal changes outlined above, on an ad-hoc basis. This package of amendments is the product of a review of the current benefits legislation to identify provisions that still need to be made 2010 compliant. (A further set of amending regulations, relating to the upper age for mandatory participation in work-focused interviews, is dependent on the Welfare Reform Bill introduced in January 2009 and, at the time these Regulations were published, still before Parliament.)

4.6. The Government announced its intention to increase the qualifying age for the Winter Fuel Payment in a written Parliamentary answer in 1999[3] at the time the qualifying age, which was previously 60 for women and 65 for men, was equalised at 60 for both sexes following a judgement by the European Court of Justice.

5. Territorial Extent and Application

5.1. This instrument applies to Great Britain. Separate but corresponding provision will be made for Northern Ireland.

6. European Convention on Human Rights

6.1. As the instrument is subject to 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 amendments made by this instrument are consequential to the increase in female state pension age and in particular the wider impact of that change on other social security benefits.

7.2. The decision to equalise the state pension age at 65 between 2010 and 2020 was taken in the early 1990s and enacted in the Pensions Act 1995, providing a long lead-in time to allow those affected to adjust their plans. As such, it has been settled policy for the last fifteen years. Subsequent changes have built upon and reinforced that decision. These include the measures introduced in the Pensions Act 2007 that are intended to accelerate the process of bringing about equal state pension outcomes between men and women, and increase the state pension age from 65 to 68 by the middle of the century.

7.3. However, it is the impact on Pension Credit which is of more direct relevance to the majority of these amendments. Pension Credit is an income-related benefit which aims to tackle pensioner poverty by bringing a person’s income up to a specified minimum, called the “guarantee credit”, currently £130 for a single person and £198.45 for a couple (standard rate from April 2009). The guarantee credit is currently payable

[3] House of Commons Hansard vol. 341, col. 325w; 20 December 1999.

to both men and women aged 60 or over.[4] For men aged 60 to 64, it provides an alternative to income-based Jobseeker's Allowance and income-related Employment and Support Allowance which are payable up to pension age. Unlike those benefits, no conditions are attached other than those relating to age, income and residence. This continues a policy dating from 1983, when men aged 60 to 64 became exempt from either having to seek work or prove incapacity for work as a condition for receipt of income-related benefit, enabling them to "retire", at least for income-related benefit purposes, at the same age as women.

7.4. From the outset, it was intended that the qualifying age for Pension Credit should increase in line with female state pension age (see paragraph 4.4, above), to maintain its focus of addressing pensioner poverty. Benefit conditionality, and the full range of programmes designed to help people return to work, will therefore be gradually extended to men and women aged 60 to 64, in line with the Government's objective of encouraging older workers to work for longer as a means of improving their incomes in retirement. By 2020, the minimum age of entitlement to Pension Credit and the state pension, and the upper age of entitlement to the working-age benefits will be fully aligned for both men and women at 65.

7.5. The amendments made by these regulations (discussed in detail at paragraph 7.7 et seq.) replace references to age 60 with references to Pension Credit qualifying age, or, in one case, to "pensionable age" as defined by the 1995 Pensions Act. The provisions will accordingly apply or cease to apply from a later date than they would have done otherwise, in respect of those due to reach 60 on or after 6 April 2010. **Annexe A** sets out the phasing arrangements for the increase in women's state pension age and the qualifying age for Pension Credit and the Winter Fuel Payment.

7.6. The Regulations amended by this instrument are listed below, with, where applicable, the abbreviations used in the following paragraphs:

i) The Income Support (General) Regulations 1987 ("the Income Support Regulations");
ii) The Social Security (Claims and Payments) Regulations 1987 ("the Claims and Payments Regulations");
iii) The Social Security (Incapacity Benefit) (Transitional) Regulations 1995 ("the Transitional Regulations");
iv) The Jobseeker's Allowance Regulations 1996 ("the Jobseeker's Allowance Regulations");
v) The Social Fund Winter Fuel Payment Regulations 2000;
vi) The State Pension Credit Regulations 2002;
vii) The Housing Benefit Regulations 2006 ("the Housing Benefit Regulations");
viii) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006;
ix) The Council Tax Benefit Regulations 2006 ("the Council Tax Benefit Regulations");
x) The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006;

[4] Pension Credit also includes a second component, called the savings credit, which provides a "reward" of up to 60 pence in the pound for people with modest second-tier pension provision. The savings credit only applies from age 65, as this is the earliest age at which both men and women can draw their state pension, including any additional second-tier state pension.

xi) The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 ("the Consequential Provisions Regulations");
xii) The Employment and Support Allowance Regulations 2008 ("the Employment and Support Allowance Regulations").

<u>Qualifying age for a Winter Fuel Payment</u>

7.7. The annual Winter Fuel Payment is non-contributory and non-means-tested and currently payable in respect of virtually all men and women in the UK who have reached 60 by the end of the week beginning with the third Monday in September – the "qualifying week". The basic amount is £200 for a person aged 60 or over, and £300 for someone aged 80 or over but the amount paid depends on the recipient's circumstances, such as whether they live with someone else entitled to a payment. (The basic amounts were increased, for winter 2008/09, by £50 and £100 respectively.) The payment was introduced in the winter of 1997/1998 to give pensioners reassurance that they could afford to heat their homes in winter. As explained in paragraph 4.6 above, it was originally paid to people who had reached state pension age – that is, age 60 for women and 65 for men – by the end of the qualifying week. However, this was successfully challenged as constituting discrimination against men aged 60 to 64 in contravention of European Council Directive 79/7[5]. Accordingly, Winter Fuel Payments have been paid to both men and women from age 60 since winter 1999/2000, but it was made clear at that time that the qualifying age for both men and women would be increased in step with female pension age.

7.8. The amendments made by regulations 18 to 21 provide that eligibility for a payment after April 2010 will be conditional on a person having reached Pension Credit qualifying age by the end of the qualifying week. The minimum age for entitlement for both men and women will therefore rise to 65 by 2020 in line with the Government's objective of targeting this extra help on pensioners.

7.9. In winter 2010/2011, those who will lose out as a result of the change will be those reaching 60 between 6 July and 26 September 2010 (the end of the qualifying week) who will not reach Pension Credit qualifying age until 6 November or later (estimated to be around 150,000 people). In 2020, when the qualifying age will be 65, we estimate that around 3m fewer people will be eligible for a payment compared to if the qualifying age remained at 60, equivalent to a reduction in the caseload of between one-fifth and a quarter.

7.10. The vast majority - around 95% - of payments are made without the need for a claim, based on information the Department already holds. The small minority who do need to claim are mainly men aged 60 to 64 who have not previously received a payment and who are not receiving another social security benefit. As well as providing information on our website and in leaflets, a national advertising campaign is run each year to alert those who do need to claim. Once the transition to a qualifying age of 65 is underway, this will clearly specify the age criterion applicable in that year, to minimise the risk of eligible people failing to claim (or ineligible people making a nugatory claim).

[5] Council of European Communities Directive 79/7 required member states to implement the principle of equal treatment as between men and women in matters of social security by December 1984, except where derogations apply ("pensionable age" itself is a derogated matter, subject to a requirement for it to be kept under review).

7.11. Regulation 6 makes a related change to the provisions in the Claims and Payments Regulations which allow a Winter Fuel Payment to be paid to the partner of the qualifying person. This applies where, although the partner is under the qualifying age for such a payment himself, he is receiving an income-related benefit such as Income Support for both members of the couple. The amendment made by regulation 6 simply replaces the age reference as a consequence of the change to the qualifying age for entitlement to payment.

Upper age of entitlement to transitional Incapacity Benefit

7.12. In April 1995, Invalidity Benefit was replaced by Incapacity Benefit (itself now replaced, for new awards, by Employment and Support Allowance from October 2008). People entitled to Invalidity Benefit immediately before the date of change were awarded transitional long-term Incapacity Benefit, which incorporates the higher rates payable under the previous scheme. The Transitional Regulations provide for such awards to cease at “pensionable age”, defined in those regulations as 60 for women and 65 for men. The amendment made by regulation 8 of this instrument replaces that definition, which pre-dated the changes made by the Pensions Act 1995, with a definition that refers to that Act.

7.13. The amendment is required to ensure that women who are receiving transitional Incapacity Benefit and who will reach 60 after 5 April 2010 can continue to receive the benefit up to state pension age as originally intended. Although we estimate that there are around 87,000 women in this position, we expect that most will have been transferred to Employment and Support Allowance before they reach 60 (under current plans, the transfer of existing Incapacity Benefit recipients will take place between 2010 and 2013). However, depending on the precise details of the migration arrangements, between 13,000 and 25,000 women could benefit from this amendment.

Qualifying age for disability and pensioner premiums

7.14. In the income-related benefits, flat-rate amounts called premiums are payable on top of the basic allowance to meet extra costs associated with specified circumstances. In income-based Jobseeker’s Allowance and income-related Employment and Support Allowance a pensioner premium is payable when the claimant or partner reaches 60 (so it can be paid in respect of a male claimant aged 60 to 64 or a partner aged 60 plus of either sex); in Income Support, which stops at 60 for both men and women, it can only be awarded in respect of a partner. The pensioner premium pre-dates the introduction of Pension Credit and continues a long-standing policy of providing a higher rate of income-related benefit automatically from 60, when people are effectively treated as retired. Since the introduction of Pension Credit, the pensioner premium has been set at the rate required to increase the basic allowance to the level of the guarantee credit (from April 2009, it is £65.70 for a single person and £97.50 for a couple; the respective weekly rates of basic allowance are £64.30 and £100.95). It has been retained in the working-age benefits to avoid creating an incentive to transfer to the “inactive” benefit, although in practice the great majority of those who have the choice do claim Pension Credit.

7.15. Regulations 3 and 13 amend, respectively, the Income Support and Jobseeker’s Allowance Regulations to replace references to age 60 with references to the qualifying age for Pension Credit so that from April 2010 the pensioner premium will continue to be payable only from the point at which a choice between the working-age benefits and

Pension Credit exists. (In the Employment and Support Allowance Regulations, the age condition is already expressed as Pension Credit qualifying age.) Regulations 3 and 13 also make a corresponding change to the conditions for the higher pensioner premium which applies where, in addition to reaching age 60, the claimant or partner satisfies conditions relating to long-term sickness or disability.[6]

7.16. Where those conditions are met by a claimant or partner aged <u>under</u> 60, the disability premium applies, plus the enhanced disability premium if the highest rate of the care component of Disability Living Allowance is payable. Regulations 3 and 13 amend these provisions in the Income Support Regulations and Jobseeker's Allowance Regulations so that entitlement to these premiums will continue up to the point that the pensioner premiums become applicable.[7] Regulations 26 and 34 amend the corresponding provisions in the Housing Benefit Regulations and Council Tax Benefit Regulations so that entitlement to these premiums will continue up to the point that Housing Benefit and Council Tax Benefit for persons who have attained the qualifying age for Pension Credit becomes payable.

7.17. Currently, according to the latest data available, the number of awards of Income Support and Jobseeker's Allowance which include a pensioner premium is less than 15,000.[8] In the great majority of these cases the premium is in respect of the partner of a person claiming Income Support and in most instances the higher pensioner premium is in payment. This indicates that post 2010, in the majority of cases where a couple will not qualify for a pensioner premium until a later date as a result of this change, they will qualify for the disability premium instead (currently £27.50 for a single person or £39.15 for a couple) plus, if applicable, the enhanced disability premium (£13.40 or £19.30 respectively). As existing Income Support claimants who are incapable of work through sickness or disability will be gradually transferred to income-related Employment and Support Allowance starting in 2010, there are likely to be fewer awards of the pensioner premium in Income Support in the future.

7.18. As explained above, the purpose of the pensioner premium is simply to ensure that people who choose to claim a working age benefit when they could claim Pension Credit do not lose out. Leaving the age threshold at 60 after April 2010 would extend the Pension Credit rate of benefit to people on working-age benefits who were below Pension Credit age and who were still regarded as attached to the labour market, and would effectively negate the impact of increasing the qualifying age for Pension Credit By 2020, it is estimated that this would result in around 450,000 additional "benefit units" (ie. either single claimants or couples) either qualifying for benefit, or qualifying for a higher rate, as a result of not increasing the premium age thresholds, at an additional cost of around £1.7bn (in 2008/09 price terms).

<u>Qualifying age for higher earnings disregard</u>

7.19. A person claiming Income Support, income-based Jobseeker's Allowance, Housing Benefit or Council Tax Benefit will normally have £5 of any part-time earnings ignored, or £10, in the case of a couple. If their award includes the disability premium, the amount that can be ignored increases to £20; this is intended to recognise

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[6] From 2001, the rates of the pensioner premiums were aligned at the highest rate. However, the conditions are still distinguished in the IS and JSA legislation for the purposes of eligibility for the higher earnings disregard.

[7] In ESA, there is no separate disability premium and the ESA regulations already reflect the change to the qualifying age for enhanced disability premium.

[8] DWP Information Directorate, Work and Pensions Longitudinal Study, August 2008

the fact that a person with a disability may have higher work-related expenses. The £20 disregard also applies where the conditions for the higher pensioner premium are satisfied (see paragraph 7.15) but only in cases where the part-time work and the benefit award had started before the age of 60 and included the disability premium. The amendments made by regulations 15, 16, 27, and 35 replace the references to age 60 in this provision in Jobseeker's Allowance, Housing Benefit and Council Tax Benefit to mirror the changes being made to the premium age thresholds described above. The equivalent provision in Income Support has already been amended.

7.20. Currently, it appears from the administrative data that only a small number of people are benefiting from the disregard past the age of 60. Although the upper age of entitlement to the disability premium will increase – nominally bringing more people within the scope of the disregard – people claiming Income Support on grounds of ill-health or disability will be gradually transferred to Employment and Support Allowance so overall the numbers may in fact decline.[9]

Disregard of value of property occupied by a relative aged 60 or over

7.21. A person's entitlement to an income-related benefit is affected if their capital exceeds specified limits. If a person has an interest in a property they do not live in themselves, the net value is treated as available capital unless it falls within one of the circumstances that allow it to be ignored. One such instance is where the property is occupied by a relative who is aged 60 or over or incapacitated. This is intended to avoid the risk of a vulnerable person having to move home as a consequence of the owner being refused benefit and therefore needing to sell the property. The provision in its current form dates from the introduction of Income Support in 1988 when the reference to "aged or incapacitated" in the predecessor scheme became "aged 60 or over" or incapacitated. As with other provisions amended by these regulations, while the age condition is aligned to female state pension age, it applies in respect of both men and women who have reached that age in order not to discriminate against men.

7.22. Regulations 4, 17, 23, 28, 31, 36, 39 and 44 amend all the income-related benefits with effect from 6 April 2010 to provide that the disregard will apply only when the relative has reached Pension Credit qualifying age, or is incapacitated. This will have no implications for those who are already 60 at the point of change – since they will already have attained Pension Credit qualifying age – but it means that by 2020 the disregard will apply on age grounds only in respect of a relative aged 65 or over.

7.23. Anecdotally, we believe that only a small proportion of those claiming an income-related benefit are likely to own property they do not live in but no data are collected on this specific provision, so we are not able to quantify either the extent to which the disregard is used now or in what circumstances. The reason for making the change, despite the absence of evidence, is that we consider that it would be inconsistent to continue to treat people in this situation as needing special protection as soon as they reach 60 when they would be treated as capable of work if they were claiming benefit themselves.

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[9] In ESA, different rules apply to the treatment of earnings. Broadly, earnings from work which pays £20 or less are ignored as are earnings from work of less than 16 hours a week, or which is part of a treatment programme, if the earnings are no more than £88.50 a week.

Men within five years of pensionable age and the jobseeking period

7.24. A "jobseeking period" is any period a person is claiming Jobseeker's Allowance and complying with the jobseeking conditions. Jobseeker's Allowance is not payable for the first three days of any new jobseeking period, but two or more separate jobseeking periods can be treated as one continuous period if they are separated by a gap of no more than 12 weeks, or by a period of incapacity, training or providing care of any length, or a combination of these. Men aged between 60 and state pension age are able to have days treated as part of a jobseeking period when they would not be treated as such under the normal rules. This rule is allied to other provisions which were introduced in the early 1980s alongside the removal of the requirement for men aged 60 or over to be available for work as a condition of entitlement to income-based benefits. The effect of this provision is to allow a repeat claim for income-based Jobseeker's Allowance without loss of the first three days' benefit when the claims would not otherwise link under the normal rules, by treating any intervening period of inactivity as part of the jobseeking period.

7.25. This provision now has only very limited effect since very few men in this age group choose to claim income-based Jobseeker's Allowance instead of Pension Credit. Under the amendment made by regulation 11, this easement would apply in relation to days between the point at which a man reached Pension Credit qualifying age (ie. female state pension age) and his own state pension age. It will therefore continue to benefit men only from the point at which they can opt to cease to be subject to benefit conditionality, and it will gradually be phased out as male and female state pension ages converge.

Age at which conditionality ceases for members of joint-claim couples

7.26. Under the joint claim arrangements which apply to most couples without dependent children who are claiming income-based Jobseeker's Allowance, both members are required to be active parties to the claim. This means that instead of one member being a passive dependant, both are normally expected to meet the same jobseeking conditions that would apply to a single person, unless one of the members is exempt for a specified reason. The exemptions include a member of a joint claim couple who has reached age 60. This is because this is the age at which a woman becomes eligible for her state pension and ceases to be eligible for Jobseeker's Allowance in her own right. It is also the entry age for Pension Credit, which is not subject to labour market attachment conditions. The exemption from conditionality in respect of a member of a joint claim who is 60 or over ensures that couples are treated equally irrespective of whether it is a male or a female partner who has reached that age. Overall, joint claimants form a small part of the Jobseeker's Allowance caseload: the administrative data suggests that there are around 20,000 couples claiming Jobseeker's Allowance who do not have children.[10]

7.27. The amendment made by regulation 12 provides that a member of a joint claim couple who is not exempt for other reasons such as disability or caring responsibilities, will be required to satisfy the normal jobseeking conditions until he or she has reached Pension Credit qualifying age. By 2020 therefore, this will apply to anyone aged under 65. This maintains the policy that in order to claim a working-age benefit, all those of working-age who are capable of, and available for, work must participate in activity

[10] DWP Information Directorate, Work and Pensions Longitudinal Study, August 2008

designed to maintain their contact with the labour market in exchange for benefit entitlement, irrespective of their relationship status.

Exemption from waiting period for support for mortgage interest

7.28. Claimants in receipt of Income Support, income-related Employment and Support Allowance, income-based Jobseeker's Allowance or Pension Credit may be entitled to help with meeting the interest payments on a mortgage or home loan. In the working-age benefits, support for mortgage interest is normally payable only after a waiting period has been served. Generally, this does not apply if the claimant or partner is aged 60 or over, to ensure that those who choose not to switch to Pension Credit – where no waiting period applies – are not penalised. As the qualifying age for Pension Credit increases from April 2010, the intention is that the age at which this exemption applies in Income Support, Jobseeker's Allowance and Employment and Support Allowance should also increase so that parity is maintained.

7.29. Regulation 14 amends paragraph 8 of Schedule 2 of the Jobseeker's Allowance Regulations to this effect. The equivalent provisions in Income Support and Employment and Support Allowance already link the qualifying age for exemption to the entry age for Pension Credit. By 2020, people aged 60 to 64 claiming income-based Jobseeker's Allowance will have to serve the waiting period (reduced in January this year to 13 weeks for new claims) unless their partner is 65 or over. Our estimates suggest that in 2020, up to 15,000 people will be subject to the waiting period as a result of this change.

Advance claims for Housing Benefit and Council Tax Benefit

7.30. In common with many other social security benefits, if a person is not entitled to Housing Benefit or Council Tax Benefit on the day they make their claim, provided it appears they will be entitled within a specified period, the claim can be accepted as a claim from that future date. In the case of claims for Housing Benefit and Council Tax Benefit for persons who have reached Pension Credit qualifying age, the "window" for making a claim in advance is aligned with the advance claim period allowed for Pension Credit. The regulations accordingly provide for claims to be accepted when the person or their partner has reached the age of 59 years and 35 weeks and is thus within 17 weeks of the prospective date of entitlement, which is currently the 60th birthday.

7.31. From April 2010, the qualifying age for Housing Benefit and Council Tax Benefit for "pensioners" is set to increase in line with Pension Credit qualifying age. The amendments of the advance claim provisions made by regulations 25, 30, 33 and 38 replace the current formulation with a reference to 17 weeks, to keep the advance claim period in line with the increase in the minimum qualifying age.

Exemption from rent restrictions for certain Housing Benefit recipients

7.32. A new method for deciding a reasonable amount of rent that can be met by Housing Benefit for private sector tenants was introduced from 2nd January 1996. However, the previous rules for determining whether restrictions applied have been retained for customers who have either remained in receipt of Housing Benefit from the same address since then or who live in "exempt accommodation" (this definition covers accommodation provided by, for example, a housing association, where they provide support, care or supervision).[11]

7.33. If a person comes within one of the protected groups covered by these rules, before any rent restriction can be applied under these saved rules the Local Authority must consider whether cheaper, suitable alternative accommodation is available and whether it would be reasonable for the person to move. The three protected groups are persons who i) are aged 60 or over, ii) are incapable of work due to sickness or disability or iii) are responsible for a child.

7.34. Regulation 41 amends the Consequential Provisions Regulations to replace the reference to age 60 with a reference to Pension Credit qualifying age. This means that the onset of the additional protection will potentially be delayed if the claimant or partner is due to reach 60 on or after 6 April 2010. Of those within the scope of these preserved rules – ie. those who have been in continuous receipt of Housing Benefit since January 1996 or who live in supported accommodation – those who are incapable of work or have dependent children when they reach 60 will be unaffected. The numbers who will be affected are therefore likely to be minimal; the change is being made for consistency with other changes linked to the increase in female state pension age.

Meaning of "person in hardship" in Employment and Support Allowance

7.35. Regulation 43 amends regulation 158 of the Employment and Support Allowance Regulations which defines the meaning of a "person in hardship". Such a person is exempt from disqualification for benefit which would otherwise apply where the person is considered to be responsible, without good cause, for the condition which reduces his capability for work or he is, without good cause, absent from his usual address and has failed to inform the Department of his whereabouts. Among other circumstances, a person comes within the definition of a person in hardship if he or his partner is 60 or over, that is, he has reached female state pension age (and the entry age for Pension Credit). The amendment replaces the reference to 60 with reference to the qualifying age for Pension Credit, so that the scope of the disqualification provisions will gradually be extended to include customers and partners up to age 64 by 2020.

7.36. Very few people are currently disqualified under this rule (which is a long-standing provision and has been carried forward from incapacity benefits that pre-date Employment and Support Allowance) so the impact of this change is likely to be small.

- ***Consolidation***

7.37. The Department is intending to consolidate the Claims and Payments Regulations within the next two years, but there are no plans to consolidate the other regulations amended by this instrument (although it should be noted that the Employment and Support Allowance Regulations were only made in 2008, and the Housing Benefit and Council Tax Benefit Regulations were recently consolidated, in 2006). Informal consolidation is provided by way of "The Law Relating to Social

[11] Tenancies entered into before 15 January 1989 (2 January 1989 in Scotland) and exempt accommodation are among the categories exempt from the new method of calculating Housing Benefit by reference to a Local Housing Allowance, which was rolled out nationally for new or repeat claims or changes of address from April 2008.

Security" (Blue Volumes) which are updated regularly and are available on line free of charge to the public at http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/ .

8. Consultation outcome

8.1. No formal consultation on the measures covered by this instrument has been undertaken as they are consequential to wider changes that were first proposed and consulted on in the early 1990s. The Department has however held informal discussions with a number of external stakeholder organisations in recent months to raise awareness of the forthcoming changes and draw attention to the proposed changes made by these regulations. Two specific issues were raised during these discussions: the interaction between the social security benefit changes and schemes administered by other Departments, and the need to ensure that the age threshold changes are communicated effectively. In relation to the first issue, other Departments have been made aware of the changes and are in the process of determining what action to take. In relation to the second issue, paragraph 9 below outlines our plans for communicating the changes.

8.2. These proposed regulations were scrutinised by the Social Security Advisory Committee under the provisions of section 173 of the Social Security Administration Act 1992. The Committee decided that it did not require the regulations to be formally referred to it and, accordingly, it did not conduct a public consultation exercise upon the proposals. As required by section 176 of that Act, the Local Authority Associations were consulted on the proposals relating to Housing Benefit and Council Tax Benefit. They raised no concerns.

9. Guidance

9.1. Leaflets and other information products available to customers and advisers are being updated to reflect the changes associated with state pension age equalisation. A letter is being sent to women who are due to reach state pension age during the transition period (those born between April 1950 and March 1955) which will advise them of when they will become eligible for the state pension and also outline how equalisation will affect the qualifying ages for other benefits. Jobcentre Plus will contact working-age customers to inform them of the changes affecting working-age benefits, programmes and services. As explained in paragraph 7.10, in addition to updating information in leaflets and on line, customers will be informed about the changes to the qualifying age for a Winter Fuel Payment through the annual advertising campaign. Guidance will be provided to Local Authorities, who administer Housing Benefit and Council Tax Benefit and who will be responsible for ensuring that customers of those benefits are aware of the changes.

10. Impact

10.1. The impact on business, charities and voluntary bodies is nil.

10.2. The costs of administering the changes made by this instrument are estimated to be low.

10.3. A full Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1. The legislation does not apply to small business.

12. Monitoring and review

12.1. The impact of the age threshold changes on the numbers and characteristics of those affected will be monitored through the routine collection and publication of administrative data. DWP also commissions and publishes a wide range of qualitative and quantitative survey data.

13. Contact

Helen Gadd at the Department for Work and Pensions Tel.020 7449 7142 or email: Helen.Gadd@dwp.gsi.gov.uk can answer any queries regarding this instrument.

Annexe A

State Pension, Pension Credit and Winter Fuel Payment qualifying age increases

- Women born in the periods shown in column 1 will reach State Pension age on the date shown in column 2.
- Men and women born in the periods shown in column 1 will reach Pension Credit qualifying age on the date shown in column 2.
- Men and women born in the periods shown in column 1 would qualify for a Winter Fuel Payment in the year shown in Column 3 (without the change) and Column 4 (with the change). "QW" refers to the qualifying week in that year. The shaded entries in Column 4 show the customers who will see no difference in their WFP eligibility date following the change.

1. Date of birth	**2. Entitled to State Pension / Pension Credit from:**	**3. WFP payable from September in (current rule):**	**4. WFP payable from September in (change):**
6 April 1950 to 5 May 1950	**6 May 2010**	2010	2010
6 May 1950 to 5 June 1950	6 July 2010	2010	2010
6 June 1950 to 5 July 1950	6 September 2010	2010	2010
6 July 1950 to 5 August 1950	6 November 2010	2010	2011
6 August 1950 to 5 September 1950	6 January 2011	2010	2011
6 September 1950 to 26 September 1950	6 March 2011	2010 [QW 20/9 – 26/9]	2011
27 September 1950 to 5 October 1950	6 March 2011	2011	2011
6 October 1950 to 5 November 1950	6 May 2011	2011	2011
6 November 1950 to 5 December 1950	6 July 2011	2011	2011
6 December 1950 to 5 January 1951	6 September 2011	2011	2011
6 January 1951 to 5 February 1951	6 November 2011	2011	2012
6 February 1951 to 5 March 1951	6 January 2012	2011	2012
6 March 1951 to 5 April 1951	6 March 2012	2011	2012
6 April 1951 to 5 May 1951	**6 May 2012**	2011	2012
6 May 1951 to 5 June 1951	6 July 2012	2011	2012
6 June 1951 to 5 July 1951	6 September 2012	2011	2012
6 July 1951 to 5 August 1951	6 November 2012	2011	2013
6 August 1951 to 5 September 1951	6 January 2013	2011	2013
6 September 1951 to 25 September 1951	6 March 2013	2011 [QW 19/9 – 25/9]	2013
26 September 1951 to 5 October 1951	6 March 2013	2012	2013
6 October 1951 to 5 November 1951	6 May 2013	2012	2013
6 November 1951 to 5 December 1951	6 July 2013	2012	2013
6 December 1951 to 5 January 1952	6 September 2013	2012	2013
6 January 1952 to 5 February 1952	6 November 2013	2012	2014
6 February 1952 to 5 March 1952	6 January 2014	2012	2014
6 March 1952 to 5 April 1952	6 March 2014	2012	2014
6 April 1952 to 5 May 1952	**6 May 2014**	2012	2014
6 May 1952 to 5 June 1952	6 July 2014	2012	2014

1. Date of birth	**2. Entitled to State Pension / Pension Credit from:**	**3. WFP payable from September in (current rule):**	**4. WFP payable from September in (change):**
6 June 1952 to 5 July 1952	6 September 2014	2012	2014
6 July 1952 to 5 August 1952	6 November 2014	2012	2015
6 August 1952 to 5 September 1952	6 January 2015	2012	2015
6 September 1952 to 23 September 1952	6 March 2015	2012 [QW 17/9 – 23/9]	2015
24 September 1952 to 5 October 1952	6 March 2015	2013	2015
6 October 1952 to 5 November 1952	6 May 2015	2013	2015
6 November 1952 to 5 December 1952	6 July 2015	2013	2015
6 December 1952 to 5 January 1953	6 September 2015	2013	2015
6 January 1953 to 5 February 1953	6 November 2015	2013	2016
6 February 1953 to 5 March 1953	6 January 2016	2013	2016
6 March 1953 to 5 April 1953	6 March 2016	2013	2016
6 April 1953 to 5 May 1953	**6 May 2016**	2013	2016
6 May 1953 to 5 June 1953	6 July 2016	2013	2016
6 June 1953 to 5 July 1953	6 September 2016	2013	2016
6 July 1953 to 5 August 1953	6 November 2016	2013	2017
6 August 1953 to 5 September 1953	6 January 2017	2013	2017
6 September 1953 to 22 September 1953	6 March 2017	2013 [QW 16/9 – 22/9]	2017
23 September 1953 to 5 October 1953	6 March 2017	2014	2017
6 October 1953 to 5 November 1953	6 May 2017	2014	2017
6 November 1953 to 5 December 1953	6 July 2017	2014	2017
6 December 1953 to 5 January 1954	6 September 2017	2014	2017
6 January 1954 to 5 February 1954	6 November 2017	2014	2018
6 February 1954 to 5 March 1954	6 January 2018	2014	2018
6 March 1954 to 5 April 1954	6 March 2018	2014	2018
6 April 1954 to 6 May 1954	**6 May 2018**	2014	2018
6 May 1954 to 5 June 1954	6 July 2018	2014	2018
6 June 1954 to 5 July 1954	6 September 2018	2014	2018
6 July 1954 to 5 August 1954	6 November 2018	2014	2019
6 August 1954 to 5 September 1954	6 January 2019	2014	2019
6 September 1954 to 21 September 1954	6 March 2019	2014 [QW 15/9 – 21/9]	2019
22 September 1954 to 5 October 1954	6 March 2019	2015	2019
6 October 1954 to 5 November 1954	6 May 2019	2015	2019
6 November 1954 to 5 December 1954	6 July 20219	2015	2019
6 December 1954 to 5 January 1955	6 September 2019	2015	2019
6 January 1955 to 5 February 1955	6 November 2019	2015	2020

1. Date of birth	2. Entitled to State Pension / Pension Credit from:	3. WFP payable from September in (current rule):	4. WFP payable from September in (change):
6 February 1955 to 5 March 1955	6 January 2020	2015	2020
6 March 1955 to 5 April 1955	6 March 2020	2015	2020
6 April 1955 to 5 April 1959	**65th birthday**	**2015 – 2019**	**2020 - 2024**

Under the Pensions Act 2007, the state pension age for both men and women will increase from 65 to 68 in three stages (between 6 April 2024 and 5 April 2026, 6 April 2034 and 5 April 2036 and 5 April 2044 and 5 April 2046) affecting anyone born after 5 April 1959.