

EXPLANATORY MEMORANDUM TO
THE PENSIONS ACT 2007 (SUPPLEMENTARY PROVISION) ORDER 2009
2009 No. 2715

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 This instrument provides for a new decision to be added to the list of ‘decisions against which an appeal lies’ contained in Regulation 26 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999.
 - 2.2 The decision relates to entitlement to a contribution credit on the ground of being a parent or carer.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The Pensions Act 2007 introduce a scheme to credit parents and certain other types of carers with National Insurance contributions. These credits will count towards future State Pension, Bereavement Allowance and Widowed Parent’s Allowance and replace Home Responsibilities Protection for contributors who reach pension age on or after 6 April 2010 or who die on or after 6 April 2010 without reaching pension age before that date.
 - 4.2 The legislation provides for credits to be given to people awarded Child Benefit for a child under 12, approved foster parents and people who are ‘engaged in caring’ – mainly people caring for a sick or disabled person. Regulations have also been laid which set out who is to be treated as ‘engaged in caring’ [The Social Security (Contribution Credits for Parents and Carers) Regulations 2009].
 - 4.3 It is the policy intention that decisions relating to this credit entitlement should carry a right of appeal. This means that, if the applicant is dissatisfied with a decision not to award him credits, or, for example, he considers that an award should cover a longer period, he has the right to ask for the decision to be considered by an independent tribunal.

5. Territorial Extent and Application

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

6. European Convention on Human Rights

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 Section 23A of the Social Security Contributions and Benefits Act 1992 provides for weekly National Insurance credits for parents and carers in respect of their caring activities. These credits replace Home Responsibilities Protection.

7.2 Prior to this, all provisions for National Insurance credits were made in secondary legislation under the power contained in section 22(5) of the Social Security Contributions and Benefits Act 1992.

7.3 Since 1999, all decisions on credits have carried a right of appeal. Decisions on Home Responsibilities Protection, which the credits for parents and carers replace, also carry a right of appeal. Decisions which carry a right of appeal are set out in the Social Security Act 1998 or prescribed in regulations made under that Act. Express provision was not made in the Pensions Act 2007 to include decisions under section 23A with those which attract a right of appeal.

7.4 Decisions carrying a right of appeal which have been introduced after 1998 are prescribed in the Social Security and Child Support (Decisions and Appeals) Regulations 1999. Adding decisions made ‘under, or by virtue of regulations made under, section 23A’ to this list will ensure that they carry the same appeal rights as other National Insurance credits and Home Responsibilities Protection currently do.

8. Consultation outcome

8.1 There has been extensive consultation with interest groups on the development of the new system of credits following on from the public consultation on the White Paper – *Security in Retirement: Towards a new Pensions System*. <http://www.dwp.gov.uk/policy/pensions-reform/security-in-retirement/index.shtml> We have not consulted specifically on this Supplementary Provisions Order because it is simply an instrument which ensures that the new system of credits carries a right of appeal as is the intention for all credits. It does not change any of the original policy intent as set out in the Pensions Act 2007.

9. Guidance

9.1 The Department will need to raise awareness of the new credits among those whose State Pension entitlement might benefit from their introduction. A term communication campaign will begin later in 2009 to support the State Pension and workplace pension reform packages, and to encourage individuals to consider working beyond State Pension age. This builds on a number of communication initiatives during 2007 and 2008, intended to address short term communication requirements while the long term campaign was being developed. The new credit was one of a number of state reforms communicated as part of that activity, through paid-for articles in targeted consumer magazines, direct mail, and via intermediaries.

9.2 The first phase of the long term campaign focuses on ensuring that those affected by the April 2010 State Pension reforms are given enough information (via the web, the Department's contact centres, or informed intermediaries). Although this activity will begin in September 2009, messages on the new credit will only be prominent as the period during which applications can first be made (April 2010) approaches.

9.3 The Department is currently considering how best to target and frame communication activity on the new credit to ensure that this audience is reached as efficiently as possible, with messages clearly relevant to those affected. Expertise of key intermediaries such as Carers UK will also be drawn on.

9.4 Communicating the new credit, along with the wider state reforms, seeks to ensure not only that individuals take any necessary immediate action to protect or enhance their state entitlement, but to encourage individuals to consider the State Pension generally as a starting point for wider retirement planning.

9.5 Guidance has been drafted for the certification of care requirements.

10. Impact

10.1 This instrument does not impact upon business, charities or voluntary bodies.

10.2 The impact of this order on the public sector is negligible.

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 & review

12.1 The Department for Work and Pensions will continue to monitor State Pension awards and accrual, the level and distribution of pensioners' total incomes and levels of understanding of the State Pension system through analysis of administrative data, surveys and other sources. It will continue to report on progress against its Public Service agreements in its annual and departmental reports.

13. Contact

Caroline Wilson at the Department for Work and Pensions Tel: 0207 449 7151 or email: Caroline.wilson@dwp.gsi.gov.uk can answer any queries regarding the instrument.