

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (ADDITIONAL CLASS 3 NATIONAL INSURANCE
CONTRIBUTIONS) AMENDMENT REGULATIONS 2009
2009 No. 659

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 The purpose of the instrument is to specify when Class 3 National Insurance contributions (NICs) paid under Section 13A of the Social Security Contributions and Benefits Act 1992 will be treated as paid for State Pension and other purposes. It also provides for the decision on State Pension entitlement to be revised from State Pension age where the contributions are paid after State Pension age but before 6 April 2011.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Section 135 of the Pensions Act 2008 inserts a new section 13A into the Social Security Contributions and Benefits Act 1992. The new section makes provision to enable individuals who reach State Pension age between 6 April 2008 and 5 April 2015 to pay Class 3 NICs for up to an additional 6 tax years from 1975-76, providing:
 - they already have 20 existing qualifying years (including any years of Home Responsibilities Protection); and
 - if they reach State Pension age before 6 April 2010, they have one qualifying year from paid, or treated as paid, NICs.
 - 4.2 The measure comes into force on 6 April 2009. This instrument is consequential upon that measure.
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

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 To qualify for basic State Pension individuals need to have accrued a certain number of “qualifying years”. For those reaching State Pension age before 6 April 2010, to be entitled to the full basic State Pension men normally need 44 qualifying years and women normally need 39. A person will need fewer qualifying years if they are eligible for Home Responsibilities Protection because they looked after a child or a severely disabled person. Men and women reaching State Pension age on or after 6 April 2010 will need 30 qualifying years to receive the full basic State Pension.
- 7.2 Individuals who have gaps in their contributions records, for example because they were not working or not earning enough to pay NICs, may be able to pay Class 3 NICs to fill those gaps in their records in order to enhance their basic State Pension entitlement. Class 3 NICs also count for Bereavement Benefit purposes. However, there are time limits for paying: usually Class 3 NICs can be paid up to 6 years after the end of the year for which payment is being made.
- 7.3 There has been a great deal of interest and media attention surrounding the position of individuals, mainly women and carers, with gaps in their contributions records from earlier in their working lives and who cannot pay Class 3 NICs to fill them because they are outside the time limits. The contrast between the respective positions of those reaching State Pension age in the years immediately before and after the reforms to the State Pension scheme, which take effect in April 2010, was particularly noted. The former group cannot benefit from the reduction in qualifying years needed for a full basic State Pension. (Although, there will also be individuals who reach State Pension age on or after 6 April 2010 who will not meet the 30 qualifying years condition and cannot fill the gaps in their contributions record under the usual time limits.)
- 7.4 To help to address this issue, the Social Security Contributions and Benefits Act 1992 has been amended to allow eligible individuals to pay Class 3 NICs for up to an additional 6 tax years after 1975-76. These additional Class 3 NICs can be paid in addition to any the individual can pay under the usual time limits. Individuals will have 6 years after they reach State Pension age in which to pay under this new measure.
- 7.5 Under current rules if an individual pays Class 3 NICs after they reach State Pension age they normally only count towards their increased basic State Pension from the date they are paid.

- 7.6 These Regulations provide that, for a time limited period of 2 years from the measure coming into force, any additional Class 3 NICs paid by an eligible individual will count as paid from the person's State Pension age or the day they are paid, whichever is the earlier.
- 7.7 Where the Class 3 NICs are treated as paid on an earlier date than the day they are paid, the Regulations also allow for the person's basic State Pension entitlement to be revised from the date they became entitled.
- 7.8 The Regulations will ensure that those people who reach State Pension age before the measure comes into force do not lose any entitlement to increased basic State Pension provided they pay before 6 April 2011. The 2 year period also reflects the fact that a decision about whether to pay additional Class 3 NICs could be complex and it gives individuals over State Pension age and approaching State Pension age a reasonable amount of time to consider the issue fully before making payment or payments.
- 7.9 Additional Class 3 NICs paid on or after 6 April 2011 will be treated as paid on the day they are paid, in accordance with current rules. This ensures parity of treatment whether individuals are paying under the usual time limits or the new scheme. If individuals pay before they reach State Pension age the contributions will count towards their State Pension from when they become entitled to it.
- 7.10 It is estimated that around 110,000 people in the UK and overseas will take up this new measure.

- ***Consolidation***

- 7.11 Informal consolidation of this instrument will be included in due course in the Department's "The law relating to Social Security" (the Blue Volumes) which are available at no cost to the public on the internet at: <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>. A Decision-Makers' Guide Memo will be drafted and will be available on the Department's website.

8. Consultation outcome

- 8.1 No formal consultation has taken place. The regulations are made within six months of section 13A of the Social Security Contributions and Benefits Act 1992 coming into force. Section 173(5)(b) of the Social Security Administration Act 1992 provides that in such circumstances this instrument is not required to be referred to the Social Security Advisory Committee under Part 13 of the Act.

9. Guidance

- 9.1 Communication activity is primarily focusing on providing current and future customers with accurate information through existing communication

channels, so that they will be able to assess the impact that this will have on them personally and make informed choices. This entails reviewing both paper and web-based information products to ensure that key messages to the target audience are included.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector will be minimal.

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

Gill Simpson at the Department for Work and Pensions Tel: 020 7962 8517 or email: gill.simpson@dwp.gsi.gov.uk can answer any queries regarding the instrument.