EXPLANATORY MEMORANDUM TO

THE STATE PENSION REVALUATION FOR TRANSITIONAL PENSIONS ORDER 2017

2017 No. 1151

AND

THE STATE PENSION DEBITS AND CREDITS (REVALUATION) (NO. 2) ORDER 2017

2017 No. 1152

1. Introduction

1.1 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 instruments

2.1 These instruments revalue certain components that may form part of an award of new State Pension for persons reaching State Pension age on or after 10 April 2018. New State Pension was introduced on 6 April 2016.

2.2 The State Pension Revaluation for Transitional Pensions Order 2017 revalues "protected payments" to reflect increases in the general level of prices since 6 April 2016. The protected payment is the amount, if any, by which the part of a person's new State Pension based on their pre-6 April 2016 National Insurance contributions exceeds the full rate of new State Pension.

2.3 A person's protected payment may be shared in a divorce settlement, resulting in the creation of a new state scheme pension debit and credit. The State Pension Debits and Credits (Revaluation) (No.2) Order 2017 revalues new state scheme pension debits and credits to reflect price increases since the debit or credit was created.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As these instruments are subject to the negative resolution procedure and neither has been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Pensions Act 2014[1] ("the 2014 Act") introduced a new State Pension for people reaching State Pension age on or after 6 April 2016. A transitional rate applies where

[1] http://www.legislation.gov.uk/ukpga/2014/19/contents

a person has paid or been credited with National Insurance contributions for the period prior to 6 April 2016. In the calculation of the transitional rate, set out in Schedule 1 to the 2014 Act, an amount for the person's pre-6 April 2016 contributions is calculated based on rates applicable at 6 April 2016. Where this amount exceeds £155.65 (the full rate of new State Pension as at 6 April 2016) the person receives the excess in the form of a protected payment.

4.2 Paragraph 6(5) of Schedule 1 provides for the protected payment to be revalued to reflect price increases since 6 April 2016 by increasing it by the percentage specified in the last order under section 148AC(3) of the Social Security Administration Act 1992[2] ("the 1992 Act") to come into force before the person reached State Pension age.

4.3 Section 148AC of the 1992 Act requires the Secretary of State to review the general level of prices in Great Britain in each tax year, and, if the general level has increased in the review period, to make an order specifying the percentage of the increase.

4.4 The Secretary of State has carried out his review and has determined that the general level of prices has increased. Accordingly, he makes the State Pension Revaluation for Transitional Pensions Order 2017.

4.5 Under arrangements for pension sharing on divorce, section 49A of the Welfare Reform and Pensions Act 1999[3] provides for a new state scheme debit and corresponding credit to be created where the courts make an order sharing a protected payment on or after 6 April 2016.[4]

4.6 Paragraph 3 of each of Schedules 8 and 10 to the 2014 Act provide, respectively, for revaluation of credits and debits created when the parties concerned were still under State Pension age. The credit or debit is increased by the percentage specified, in relation to the tax year in which the person became entitled to the credit or subject to the debit, in the last order under section 148AD of the 1992 Act to come into force before the person reached State Pension age.

4.7 Section 148AD of the 1992 Act requires the Secretary of State to review the general level of prices in Great Britain in each tax year. If it appears to him that relevant debits or credits have not maintained their value relative to the general level of prices during the review period, he is required to make an order specifying the percentage of their amount by which they are to be increased in order to make up the relative fall in their value.

4.8 The Secretary of State has carried out his review and has determined that there has been an increase in the general level of prices. Accordingly he makes the State Pension Debits and Credits (Revaluation) (No.2) Order 2017. This Order is being made in the same year as the first Order under section 148AD[5] to enable advance claims to State Pension from persons reaching State Pension age on or after 10 April 2018 to be decided.

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[2] http://www.legislation.gov.uk/ukpga/1992/5
[3] http://www.legislation.gov.uk/ukpga/1999/30/contents
[4] This also applies where the parties have entered a qualifying agreement in Scotland that makes provision corresponding to that which could be made by a pension sharing order: see section 48 of the Welfare Reform and Pensions Act 1999.
[5] http://www.legislation.gov.uk/uksi/2017/375/contents/made

5. Extent and Territorial Application

5.1 The extent of these instruments is Great Britain.

5.2 The territorial application of these instruments is Great Britain.

5.3 It is anticipated that corresponding provision will be made for Northern Ireland.

6. European Convention on Human Rights

6.1 As these instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

Revaluation of protected payments

7.1 Once a person's new State Pension is in payment, it will normally be increased each April as part of the annual review and up-rating of social security benefits.[6] Protected payments are up-rated in line with increases in the general level of prices.[7]

7.2 Where a person reaches State Pension age in the second or subsequent year following the introduction of the new State Pension, the amount based on their pre-6 April 2016 contribution record, calculated at 2016 rates, is revalued. This is to ensure they are not disadvantaged relative to a person who became entitled to their State Pension in the first year of implementation and whose State Pension will have been up-rated in the interim.

7.3 Accordingly, protected payments are revalued in line with increases in the general level of prices that have taken place in the review period.[8] Section 148AC(2) defines the review period for these purposes as the period beginning on 6 April 2016.

7.4 The Secretary of State has discretion as to when the review period ends, and as to how to measure changes in the general level of prices for the purpose of determining the revaluing percentage. For consistency with the measure of prices used for up-rating purposes, the Secretary of State has chosen to measure the increase in the general level of prices by reference to the Consumer Prices Index (CPI), taking September 2017 as the end date of the review period. He has estimated the increase in the period April 2016 to September 2017 to be 4%.[9]

Revaluation of new State Scheme Debits and Credits

7.5 The Welfare Reform and Pensions Act 1999 introduced provisions to make additional State Pension – the second-tier component of the old State Pension system known as SERPS or State Second Pension – shareable in divorce proceedings. Accruals of additional State Pension ceased on 6 April 2016 with the introduction of the new State

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[6] Increases in the rates of State Pension take effect from the first Monday in the tax year.

[7] See section 151A of the Social Security Administration Act 1992. The full rate is up-rated by at least the growth in earnings, under section 150A.

[8] Amounts equal to or less than the 2016 full rate are revalued in line with increases in the full rate under paragraph 6(4) of Schedule 1 to the 2014 Act.

[9] https://www.ons.gov.uk/economy/inflationandpriceindices/datasets/consumerpriceinflation release date 17 October 2017. Estimate based on the increase in the CPI all items indices for April 2016 and September 2017.

Pension. However, under the new State Pension, a person's protected payment may be shareable where divorce proceedings started on or after 6 April 2016.[10]

7.6 Where a pension sharing order is made, it will provide for a percentage split of the protected payment that is to be shared between the two parties. The National Insurance record of the person whose protected payment is to be shared ("the transferor") will be noted with a debit and the record of the person who will benefit from the share ("the transferee") will be noted with a corresponding credit.

7.7 Where the pension sharing order takes effect before either or both parties have reached their respective State Pension ages, the debit and/ or credit is revalued according to the percentage increase in the general level of prices. At State Pension age, the transferor's protected payment will be reduced by the debit and the transferee's new State Pension will be increased by a credit of the same amount as the debit.

7.8 Section 148AD(6) gives the Secretary of State discretion to estimate the change in prices in such manner as he thinks fit. This includes the choice of review period, which is not defined in the legislation. For consistency with the measure of prices used for up-rating purposes, he has chosen to increase new state scheme debits and credits by reference to the increase in the CPI for the 12 months ending September 2017. This Order accordingly increases debits and credits created in 2017-18 by 3.0%. His estimate of the cumulative percentage required to make up the fall in value of new state scheme debits and credits created in 2016-17 is also set out in the Schedule to the Order.

Consolidation

7.9 As these instruments do not amend other legislation, consolidation is not applicable.

8. Consultation outcome

8.1 There is no statutory duty on the Secretary of State to consult on these instruments, and the Department does not consider informal consultation is appropriate in this case, as they are technical orders which give effect to statutory requirements, the terms of which are defined in primary legislation.

9. Guidance

9.1 Guidance on the measures implemented by these orders will be issued to operational staff before these orders take effect. Computer systems will also be updated to enable revaluation of the respective components to be taken into account in the preparation of State Pension statements.

10. Impact

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

10.2 The Department estimates that around 94,000 people reaching State Pension age in 2018-19 will be entitled to a protected payment.[11] The number of individuals subject

[10] Where proceedings began before 6 April 2016 and the transferor reached or is due to reach State Pension age under the new State Pension scheme, the shareable state scheme rights are the additional State Pension accrued prior to 6 April 2016.

[11] https://www.gov.uk/government/publications/new-state-pension-impact-on-an-individuals-pension-entitlement-longer-term-effects

to a new state scheme debit or entitled to a credit is estimated at fewer than 10. The benefit expenditure associated with revaluation has not been separately identified but is included within the Government's expenditure plans alongside the costs of up-rating new State Pension.[12]

10.3 An Impact Assessment has therefore not been prepared for these instruments.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The legislation requires a review to be undertaken in each tax year (see paragraphs 4.3 and 4.7).

13. Contact

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

[12] https://www.gov.uk/government/publications/benefit-expenditure-and-caseload-tables-2017 . Updated tables are due to be published in December 2017.