EXPLANATORY MEMORANDUM TO

THE STATE PENSION DEBITS AND CREDITS (REVALUATION) ORDER 2021

2021 No. 1319

AND

THE STATE PENSION REVALUATION FOR TRANSITIONAL PENSIONS ORDER 2021

2021 No. 1320

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 instrument

2.1 These instruments revalue certain components that may form part of an award of new State Pension, which was introduced on 6 April 2016, and apply to persons reaching State Pension age on or after 12 April 2022.

2.2 The State Pension Revaluation for Transitional Pensions Order 2021 re-values "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, creating a debit and credit to share the Protected Payment between the two parties. The State Pension Debits and Credits (Revaluation) Order 2021 re-values 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.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

Revaluation of Protected Payments

6.1 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 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.

6.2 Paragraph 6(5) of Schedule 1 of The Pensions Act 2014 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.

6.3 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.

6.4 The Secretary of State has carried out her review and has determined that the general level of prices has increased. Accordingly, she makes the State Pension Revaluation for Transitional Pensions Order 2021.

Revaluation of new State Scheme Debits and Credits

6.5 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].

6.6 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.

6.7 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 her that relevant debits or credits have not maintained their value relative to the general level of prices during the review period, she 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.

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

6.8 The Secretary of State has carried out her review and has determined that there has been an increase in the general level of prices. Accordingly, she makes the State Pension Debits and Credits (Revaluation) Order 2021.

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.[5] Protected Payments are reviewed and up-rated at least in line with increases in the general level of prices.[6]

7.2 Where a person reaches State Pension age in the subsequent years 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.[7] 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 the general level of prices for the purpose of determining the revaluing percentage. She has chosen to measure the increase in the general level of prices by reference to the Consumer Prices Index (CPI), taking September 2021 as the end date of the review period. She has estimated the increase in the period April 2016 to September 2021 to be 12.2%.[8]

Revaluation of new State Scheme Debits and Credits

7.5 Under the new State Pension, a person's Protected Payment may be shareable where divorce proceedings started on or after 6 April 2016.[9]

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.

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

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

[7] 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.

[8] https://www.ons.gov.uk/economy/inflationandpriceindices/datasets/consumerpriceinflation Estimate based on the increase in the CPI all items indices for April 2016 and September 2021.

[9] 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. See the Pensions Act 2014 (Pension Sharing on Divorce etc.) (Transitional Provision) Order 2016 (S.I. 2016/39).

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 general level of prices in such manner as she thinks fit. The review period is not defined in the legislation. She has chosen to increase new state scheme debits and credits by reference to the increase in the CPI for the 12 months ending September 2021. This Order accordingly increases debits and credits created in 2021-22 by 3.1%.[10] Her estimate of the cumulative percentage required to make up the fall in value of new state scheme debits and credits created in 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 is also set out in the Schedule to the Order.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

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

10. Consultation outcome

10.1 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.

11. Guidance

11.1 Guidance on the measures implemented by these orders will be issued to operational staff before these orders take effect.

12. Impact

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

12.2 The benefit expenditure associated with revaluation has not been separately identified but is included within the Government's expenditure plans along with the costs of up-rating new State Pension.[11] There is no other impact on the public sector.

12.3 The Department estimates that around 123,800 people who will be reaching State Pension age in 2022-23 will be entitled to a Protected Payment.[12] The number of individuals subject to a new state scheme debit or entitled to a credit is estimated at around 40.

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[10] https://www.ons.gov.uk/economy/inflationandpriceindices/datasets/consumerpriceinflation. Estimate based on the increase in the CPI all items indices for September 2020 and September 2021.

[11] https://www.gov.uk/government/publications/benefit-expenditure-and-caseload-tables-2021

[12] https://www.gov.uk/government/publications/benefit-expenditure-and-caseload-tables-2021

12.4 An Impact Assessment has not been prepared because these are routine instruments which maintain the value of new State Pension Protected Payments and relevant debits and credits against price inflation. New State Pension was introduced on 6 April 2016 by the Pensions Act 2014. An Impact Assessment was prepared for that Act.[13]

13. Regulating small business

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

14. Monitoring & review

14.1 These instruments give effect to a statutory duty to undertake a review in each tax year (see paragraphs 6.3 and 6.7).

15. Contact

15.1 Emily Popple, Policy Advisor for State Pensions at the Department for Work and Pensions Telephone: 0113 237913 or email: Emily.Popple@dwp.gov.uk can be contacted with any queries regarding these instruments.

15.2 Cathy Payne, Deputy Director for the State Pensions and Service Excellence Division, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Guy Opperman, Parliamentary Under Secretary of State at the Department for Work and Pensions at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

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[13] https://www.gov.uk/government/publications/pensions-act-2014-impact-assessments-may-2014