

**EXPLANATORY MEMORANDUM TO THE  
SOCIAL SECURITY (INHERITED SERPS) (AMENDMENT) REGULATIONS  
2005**

**2005 No. 811**

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. **Description**
  - 2.1 Schedule 11 to the Pensions Act 2004 (c. 35) introduces provisions allowing lump sum payments to be paid both to people who have deferred claiming their State Pension and to the surviving spouses of such people.
  - 2.2 Under these provisions, the lump sum for a surviving spouse is to be calculated by reference to 100% of the basic State Pension deferred by the deceased spouse and 50% of his or her deferred additional (earnings-related) State Pension.
  - 2.3 This instrument amends the Social Security (Inherited SERPS) Regulations 2001 (S.I.2001/1085) (the “Inherited SERPS Regulations”). These Regulations allow for the inheritable proportion of a deceased person’s SERPS to be gradually reduced from 100% to 50% between October 2002 and October 2010. The amendments made by this instrument will modify the calculation of the proportion of a lump sum payment which is accrued in respect of a deceased deferrer’s additional pension in the same way.
  - 2.4 The Inherited SERPS Regulations are made under section 52(2) of the Welfare Reform and Pensions Act 1999 (c. 30). Section 52(8) requires that regulations under that section must be made under the affirmative procedure.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Background**
  - 4.1 Section 297 of, and Schedule 11 to, the Pensions Act 2004 amend Schedule 5 to the Social Security Contributions Act 1992 (c.4) by introducing the option of a lump sum payment as an alternative to an increased weekly state pension (“increments”) for those who defer claiming their State Pension for at least 12 months. The lump sum payment will comprise the state pension given up during deferment

plus interest. Where a deferrer dies before claiming his state pension, his surviving spouse may be entitled to a lump sum payment in respect of his period of deferment. As provided by the amendments to Schedule 5 made by the 2004 Act, the inheritable lump sum payment is to be calculated by reference to 100% of the deferred basic pension component and one-half of the additional pension component.

- 4.2 The Inherited SERPS Regulations allow for the inheritable proportion of additional pension by way of the State Earnings-Related Pension Scheme (SERPS) to be gradually reduced from 100% to 50% between October 2002 and October 2010. Where increments in respect of SERPS are inheritable, the same adjustment is made to the inheritable amount. Paragraph 25 of Schedule 11 to the Pensions Act 2004 amends section 52(2) to allow regulations under that section to modify the additional pension component in the calculation of lump sum payments in the same way.
- 4.3 The instrument therefore amends the Social Security (Inherited SERPS) Regulations 2001. This is the first use of this extended regulation-making power.

## **5. Extent**

- 5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

- 6.1 The Minister of State for Pensions, Mr Malcolm Wicks, has made the following statement regarding Human Rights:

In my view, the provisions of the Social Security (Inherited SERPS) (Amendment) Regulations 2005 are compatible with the Convention rights.

## **7. Policy background**

- 7.1 People who defer their State Pension currently, whether by not claiming it on reaching State Pension age or by electing to stop claiming it, receive an increased pension when they finally claim (or re-claim) it. This increase is paid for life and may be inherited – subject to the modifications explained in paragraph 4.2 above – by a surviving spouse.
- 7.2 The Pensions Act 2004 introduced measures to make State Pension deferment more attractive by bringing forward changes to the accrual rate for increments that were due to take effect in April 2010, removing the current limits on accrual and by offering the alternative of a one-off lump sum payment instead of the increased weekly pension. These changes take effect from April 2005.

- 7.3 The choice of a lump sum will be available to those who have deferred their pension for at least 12 months. Apart from this extra condition, the lump sum option has otherwise been structured to mirror the provisions relating to increments, in particular with respect to what is included in the calculation of deferred pension and what may be inheritable. This is intended to provide a “level playing field” between the two options.
- 7.4 If the deferrer should die before claiming but after having deferred for at least 12 months, his or her surviving spouse will be able to choose to inherit either increments or a lump sum payment in respect of their deferment period. The intention is that the provisions relating to the calculation of the lump sum for surviving spouses should mirror as far as possible those that currently apply to the calculation of increments for surviving spouses. This would allow the same proportion of lump sum accrued on each component of the deferred pension to be inherited as may currently be inherited by way of increments. Accordingly, this instrument amends the Inherited SERPS regulations to allow for the proportion of lump sum calculated by reference to the deceased’s deferred SERPS to be gradually reduced to 50% by October 2010.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

Helen Gadd at the Department for Work and Pensions can answer any queries regarding the instrument. Tel: 020 7712 2569 or e-mail: [Helen.Gadd@dwp.gsi.gov.uk](mailto:Helen.Gadd@dwp.gsi.gov.uk).