EXPLANATORY MEMORANDUM TO

THE PENSIONS INCREASE (MODIFICATION) REGULATIONS 2011

2011 No. 826

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 These Regulations come into force on 10 April 2011. They modify the provisions of section 59 Social Security Pensions Act 1975 by re-defining "base period". This will enable all public service pensions beginning before 12 April 2010 to be uprated by the full amount of the increase provided for in the Pensions Increase (Review) Order 2011. Public service pensions beginning on or after 12 April 2010 only will receive a proportionate fraction of this increase.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Sections 59 and 59A of the Social Security Pensions Act 1975 provide that the Minister for the Civil Service shall, by order, provide that the annual rate of an official pension may be increased by the same percentage as that specified in the annual direction given by the Secretary of State for Work and Pensions pursuant to section 151 of the Social Security Administration Act 1992. This enabling power was transferred to HM Treasury by virtue of the Transfer of Functions Minister for the Civil Service and Treasury Order 1981 (S.I. 1981.1670).

4.2 Where the pension began since the last direction given by the Secretary of State for Work and Pensions (the beginning of the "base period" as defined in section 59(7) of the 1975 Act) the increase is a fraction of the percentage provided for in the latest direction.

4.3 Section 59(7) provides that section 59 and section 59A of the 1975 Act and the Pensions (Increase) Act 1971 have effect as if those sections were contained in Part I of the 1971 Act.

4.4 Section 5(3) of the 1971 Act gives the Treasury power, if satisfied in the case of any official pension that it is proper so to do, to direct by regulations that the provisions of the Act shall apply in relation to that pension subject to such modifications, adaptations and exceptions as may be specified in the regulations.

4.5 By virtue of section 9(1) of the 1971 Act, references in the Act apply in relation to any allowance, benefit or compensation whether it takes the form of periodical payments or of a gratuity or other lump sum.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 Public service pensions in payment, preserved pensions and preserved lump sums are increased annually to take account of increases in the cost of living so that they maintain their purchasing power. Where the increases have begun within the last year they are increased by a pro-rata amount.

7.2 The pro-rata calculation applies to pensions which began during the "base-period". This is defined in section 59(7) of the Social Security Pensions Act 1975 as "*the period ending with the coming into force of that direction and beginning with the coming into force of the last previous such direction*". The direction referred to is that made by the Secretary of State for Work and Pensions under section 151 of the Social Security Administration Act 1992.

7.3 In 2010 no such direction was made, so under the definition of the "base period" for pro-rata calculations without modification the pro-rata increase in public service pension payments would be based on a factor of 1/24th not 1/12th and the period would extend back to the direction made in 2009. This would mean all pensions coming into payment during that period would receive a smaller increase than would usually be expected.

7.4 These regulations modify the definition of base period in relation to the direction coming into force on 11 April 2011 only, to specify that it begins on 12 April 2010. The pro-rata increase will therefore only apply to those pensions coming into payment during the year before the 2011 direction, and be based on a factor of 1/12. This accords with the intention of the 1975 Act.

8. Consultation outcome

8.1 These Regulations do not require a consultation exercise.

9. Guidance

9.1 No guidance notes are provided for the public in relation to these Regulations. Related guidance for the Pensions Increase (Review) Order is produced by HM Treasury.

10. Impact

10.1 This instrument creates a one off cost to the Exchequer as pro-rata increases will be larger than if no change was made. However, the increases will now be in line with individuals' expectations and the increase intended by the supporting primary legislation.

10.2 An Impact Assessment has not been produced for this instrument.

11. Regulating small business

11.1 This instrument does not apply to small business.

12. Monitoring and review

12.1 This instrument will not be reviewed or monitored on a regular basis as it provides for a one off modification.

13. Contact

Robert Jenkins at HM Treasury Tel: 020 7270 4466 can direct any queries regarding the instrument.