

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY BENEFITS UP-RATING ORDER 2020

2020 No. [XXXX]

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 The Social Security Benefits Up-rating Order 2020 (“the Order”) fulfils the statutory duty on the Secretary of State to review the rates of social security benefits and provides for the up-rating of certain benefits.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The Scottish Government is responsible for making provision for the up-rating of Carer’s Allowance payable to carers resident in Scotland (Please see paragraphs. 6.14 and 6.15). Provision for the up-rating of that benefit in England and Wales is made through this Order.
- 3.3 With the exception of Carer’s Allowance, and disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Extent and Territorial Application

- 4.1 The extent and territorial application of this instrument is England and Wales and Scotland, save for article 3, which, in so far as it increases the sums specified for Carer’s Allowance in part III of Schedule 4 to the Social Security Contributions and Benefits Act 1992, and states the sum specified for the increase for a qualifying child payable with Carer’s Allowance in Part IV of Schedule 4 to that Act, extends and applies to England and Wales only.
- 4.2 Subject to the agreement of the Northern Ireland Assembly, the Department for Communities in Northern Ireland will be responsible for making corresponding provision for Northern Ireland.
- 4.3 The Scottish Government will be responsible, in respect of Carer’s Allowance only, for making corresponding provision for Scotland.

5. European Convention on Human Rights

- 5.1 The Minister for Welfare Delivery (Parliamentary Under Secretary of State), Will Quince MP, has made the following statement regarding human rights:

“In my view the provisions of the Social Security Benefits Up-rating Order 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Order provides for the annual up-rating of social security benefits specified in sections 150, 150A and 151A of the Social Security Administration Act 1992 (“the 1992 Act”).¹
- 6.2 The Welfare Reform and Work Act 2016 froze the main rates of most benefits for people below state pension age at their 2015-16 levels.² The rates that were affected included: the personal allowance elements of Income Support and Jobseeker’s Allowance; the personal allowances and work-related activity components of Employment and Support Allowance and Housing Benefit; and the standard allowance, limited capability for work element and the lower disabled child addition under Universal Credit. The relevant provisions of the Welfare Reform and Work Act 2016 will expire in April 2020, and the Secretary of State has considered the rates of the previously frozen benefits as part of her statutory review. These benefits are now up-rated at the Secretary of State’s discretion.

Benefits linked to the general level of prices

- 6.3 Section 150 of the 1992 Act requires the Secretary of State to review certain benefits, to determine whether they have retained their value in relation to the general level of prices. If the benefits have not retained their value, section 150 of the 1992 Act requires the Secretary of State to up-rate them by at least as much as the increase in the general level of prices. The main benefits affected are Attendance Allowance, Carer’s Allowance, Disability Living Allowance, Personal Independence Payment and the Additional State Pension.
- 6.4 Section 151A of the 1992 Act requires the inherited increments of the old State Pension and certain amounts exceeding the full rate of the new State Pension (payable under transitional arrangements) to be increased in line with prices.
- 6.5 The Secretary of State has discretion over how to measure changes in the general level of prices and has decided to measure the increase over the appropriate period using the Consumer Price Index (“CPI”).
- 6.6 Following her review, the Secretary of State has determined that benefits linked to the general level of prices have not maintained their value in relation to prices over the period October 2018 to September 2019 and has decided to up-rate them in line with CPI.³

Benefits linked to earnings

- 6.7 Section 150A of the 1992 Act requires the Secretary of State to review certain benefits, to determine whether they have retained their value in relation to the general level of earnings. If the benefits have not retained their value, section 150A of the 1992 Act requires the Secretary of State to up-rate them by at least as much as the increase in the level of earnings. Benefits affected include: the basic State Pension, the full rate of the

¹ <http://www.legislation.gov.uk/ukpga/1992/5>

² <http://www.legislation.gov.uk/ukpga/2016/7/contents>

³ The Consumer Price Index (CPI) (all items) for the 12-month period to end September 2019 showed growth of 1.7 per cent.

new State Pension, the standard minimum guarantee element of Pension Credit, and the widow's⁴ and widower's pension in Industrial Death Benefit.

- 6.8 The Secretary of State has discretion over how to measure changes in the general level of earnings and has decided to measure the increase over the appropriate period using the Average Weekly Earnings ("AWE") index for the quarter ending July 2019.⁵
- 6.9 Following her review, the Secretary of State has determined that benefits linked to the general level of earnings have not maintained their value in relation to earnings and has decided to up-rate them in line with AWE. This is in accordance with the Government's commitment to a 'triple lock' of the basic State Pension and the full rate of the new State Pension (see paragraph 7.3).

Benefits up-rated at the Secretary of State's discretion

- 6.10 The Secretary of State may also, if she considers it appropriate, having regard to the national economic situation and any other matters which she considers relevant, increase other benefits by such a percentage as she thinks fit.
- 6.11 She has decided to up-rate Universal Credit, Income Support, Housing Benefit, Jobseeker's Allowance, and the Employment and Support Allowance by CPI. A number of child or family elements in benefits for people below state pension age, and in Pension Credit, are linked to child tax and working tax credits. These will be up-rated in line with those benefits.
- 6.12 She has decided to increase the Savings Credit Threshold in Pension Credit to deliver an increase in the Savings Credit maximum in line with inflation.
- 6.13 She has also decided to up-rate disability premiums in benefits for people below state pension age, the additional amount for severe disability in Pension Credit and the Work Allowances in Universal Credit, in line with CPI.

Carer's Allowance and Scotland

- 6.14 The Scotland Act 2016⁶ amended the Scotland Act 1998⁷ by inserting exceptions to reserved matters under Schedule 5, Part 2, section F1 (social security schemes). This devolved competence for certain areas of social security (including carers' benefits) to the Scottish Parliament. The functions of the Secretary of State in relation to Carer's Allowance, in so far as they relate to residents in Scotland, transferred to the Scottish Ministers with effect from 3 September 2018.
- 6.15 Following the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018⁸, the Secretary of State has entered into an agency agreement⁹ with the Scottish Ministers to deliver Carer's Allowance in Scotland. Functions exercisable under an agency agreement cannot include the making of subordinate legislation and consequently, the

⁴ Apart from the initial rate.

⁵ The Average Weekly Earnings (AWE) revised statistic, whole economy, including bonuses, seasonally adjusted showed annual growth of 3.9 per cent for the quarter ending July 2019.

⁶ <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

⁷ <https://www.legislation.gov.uk/ukpga/1998/46/contents>

⁸ <http://www.legislation.gov.uk/uksi/2018/626/contents/made>

⁹ <https://www.gov.uk/government/publications/carers-allowance-in-scotland-agency-agreement-and-service-level-agreement>

Scottish Ministers will be making provision with regard to the up-rating of Carer's Allowance in Scotland.

Additional Information

- 6.16 The Secretary of State for Work and Pensions announced the proposed rates of social security benefits and pensions for 2020-21 to Parliament in a Written Statement on 4 November 2019.¹⁰ The table setting out the new rates was placed in the Libraries of the House of Commons and the House of Lords on the 29th November.
- 6.17 In accordance with the 1992 Act, a draft of this Order is laid before Parliament for approval by resolution of each House together with a copy of the report by the Government Actuary giving his opinion on the likely effect on the National Insurance Fund of the making of this Order.

7. Policy background

What is being done and why?

- 7.1 The Secretary of State's annual review of social security benefit rates is required by sections 150, 150A and 151A of the 1992 Act.
- 7.2 A list of the proposed social security benefit rates for 2020-21 can be found on the website for the libraries of the House of Commons and the House of Lords at: http://data.parliament.uk/DepositedPapers/Files/DEP2019-1077/Proposed_benefit_and_pension_rates_28_Nov_2019.pdf.

Basic State Pension

- 7.3 The statutory minimum increase to the basic State Pension is the rise in earnings (see paragraph 6.7). The Government has given a commitment to increase the basic State Pension in line with the triple lock, that is, the highest out of the growth in earnings, the growth in prices, or 2.5 per cent. As the increase in earnings over the relevant period (3.9 per cent) is higher than both the growth in prices (1.7 per cent) and 2.5 per cent, the basic State Pension will increase by 3.9 per cent from April 2020.
- 7.4 The rate of the full basic pension in a Category A and Category B State Pension (based respectively on a person's own National Insurance contributions and those of a late spouse or civil partner) will be increased from £129.20 a week to £134.25 a week from April 2020.
- 7.5 The lower rate of Category B basic pension (payable to a married person or civil partner in certain circumstances) will be increased from £77.45 a week to £80.45 a week from April 2020.

New State Pension

- 7.6 The statutory minimum increase to the full rate of new State Pension is the rise in earnings. The Government has also committed to increase the full rate of the new State Pension in line with the triple lock. As the increase in earnings over the relevant period (3.9 per cent) is higher than both the growth in prices and 2.5 per cent, the full rate of

¹⁰ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-11-04/HCWS74/>

the new State Pension will increase by 3.9% per cent in April 2020 (from £168.60 to £175.20 a week).

- 7.7 Existing awards of the new State Pension as at April 2020 will be at the transitional rate. The transitional rate incorporates a ‘starting amount’ which is based on a person’s National Insurance contributions to 5 April 2016. Where the ‘starting amount’ is less than the full rate, it is increased by 1/35th of the full rate for each qualifying year gained between April 2016 and State Pension age. As such, the transitional rate is not a fixed rate and may, in individual cases, be more than, less than, or equal to the full rate of the new State Pension.
- 7.8 Transitional rates of the new State Pension that are equal to or less than the full rate are to be increased by the same percentage as the full rate.¹¹ These amounts will, therefore, be increased by 3.9146 per cent.¹² Where the transitional rate exceeds the full rate, the excess amount¹³ will be increased in line with the increase in prices (see paragraph 7.12 below).
- 7.9 Payments of inherited amounts or shared State Pension may be payable under transitional arrangements to widowed or divorced individuals who reach State Pension age under the new system.¹⁴ These amounts are up-rated by: either the percentage increase in the full rate of the new State Pension, or the increase in prices, or a combination of the two depending on the total amount of the individual’s award.¹⁵ The total amount of the award excludes any incremental payments arising because the individual has deferred taking their pension for a period after they reached State Pension age.

Benefits that must increase by at least the increase in earnings (3.9 per cent)

- 7.10 The standard minimum guarantee element of Pension Credit for single people will be increased from £167.25 a week to £173.75 a week. The rate for couples will be increased from £255.25 a week to £265.20 a week.
- 7.11 The higher rate of widow’s pension and the widower’s pension in Industrial Death Benefit will be increased from £129.20 a week to £134.25 a week.

Benefits that must increase by at least the increase in prices (1.7 per cent)

- 7.12 Additional State Pension, Graduated Retirement Benefit, increments to State Pension, Attendance Allowance, Carer’s Allowance, Disability Living Allowance, Personal Independence Payment, Industrial Injuries Disablement Benefit, Widowed Mother’s Allowance, Widow’s Pension, Widowed Parent’s Allowance, Incapacity Benefit and Severe Disablement Allowance will be increased by 1.7 per cent. This also applies to transitional amounts of new State Pension above the level of the full rate, and to inherited increments of old State Pension payable to a surviving spouse or civil partner in the new State Pension.

¹¹ Schedule 2 to the Pensions Act 2014

¹² The difference between £168.60 and £175.20 as a percentage of £168.60 (accounting for the rounding of the full rate to the nearest five pence).

¹³ Also known as the ‘protected payment’.

¹⁴ These components are derived from the additional State Pension in the old State Pension. The inheritable amount may also be derived from Graduated Retirement Benefit in the old State Pension.

¹⁵ Schedules 4 and 9 to the Pensions Act 2014 provide, respectively, for the up-rating of inherited amounts and the shared State Pension.

Benefits over which the Secretary of State has discretion

- 7.13 Jobseeker's Allowance (JSA), Employment and Support Allowance (ESA), Income Support, Housing Benefit and Universal Credit elements will increase in line with prices (1.7 per cent). The savings credit element of Pension Credit, and the additional amount paid to severely disabled people receiving Pension Credit, will also be increased by 1.7 per cent. A number of child or family elements in benefits for people below state pension age, and in Pension Credit, are linked to child tax and working tax credits. These will be up-rated in line with those benefits.
- 7.14 Statutory Sick Pay, Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay, Statutory Shared Parental Pay, disability premiums and carer premiums will also be increased by 1.7 per cent.
- 7.15 Bereavement Support Payment will remain at the same rate as in 2019/20. Claimants with dependent children receive a first payment of £3,500 and up to 18 monthly payments of £350. Claimants who do not have dependent children receive a first payment of £2,500 and up to 18 monthly payments of £100.
- 7.16 Increments to new State Pension are up-rated in the same manner as old State Pension increments and will be increased by 1.7 per cent.

Rounding conventions

- 7.17 Each benefit has an individual rounding convention for how new rates are calculated. The majority of new rates are rounded to the nearest five pence. This includes, for example, the standard (full) rates of Category A and Category B basic State Pension and the full rate of new State Pension.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

9. Consolidation

- 9.1 Informal consolidated text of instruments is available to the public free of charge via The National Archives website – [Legislation.gov.uk](https://www.legislation.gov.uk).

10. Consultation outcome

- 10.1 The Order is part of the annual up-rating requirements and is, therefore, not subject to consultation requirements.

11. Guidance

- 11.1 Public information products will be updated to reflect the new rates where applicable, and guidance bulletins have been issued to operational staff to advise them of the new rates.

12. Impact

- 12.1 There will be negligible impact on business, charities or voluntary bodies.

- 12.2 The impact on the public sector is negligible. There will be an estimated £3.4 billion of extra payments in 2020-21 from the National Insurance Fund as a result of the Order, as estimated by the Government Actuary in the report laid before Parliament.
- 12.3 No Impact Assessment has been prepared for this instrument as it has negligible impact on business or civil society organisations.

13. Regulating small business

- 13.1 For small businesses whose annual gross National Insurance payments are £45,000 or less, this Order does not impose any new costs in respect of Statutory Adoption Pay, Statutory Paternity Pay and Statutory Maternity Pay, since such employers are reimbursed 100 per cent of the amount paid out plus an additional percentage as prescribed in regulations in compensation for the employers' national insurance costs on these payments. Larger employers are reimbursed 92 per cent. All employers meet the costs of Statutory Sick Pay without reimbursement.

14. Monitoring & review

- 14.1 The rates of social security benefits covered by sections 150, 150A and 151A of the 1992 Act are subject to review each tax year.

15. Contact

- 15.1 Tom Holker, Policy Adviser, at the Department for Work and Pensions (telephone: 020 7449 5723 or email: thomas.holker@dwp.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Andrew Latto, Deputy Director, Devolution, Pensioner Benefits & Carer's Allowance, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Will Quince, Parliamentary Under Secretary of State for Welfare Delivery, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.