EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY BENEFITS UP-RATING ORDER 2011

2011 No. 821

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

The Social Security Benefits Up-rating Order 2011 ("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 the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Order provides for the annual up-rating of social security benefits under sections 150 and 150A of the Social Security Administration Act 1992 ("the Act").

4.2 The Secretary of State is required to review the levels of benefits annually with a further requirement to increase certain contributory[1], non-contributory[2] and extra-costs benefits[3] at least in line with prices. The Secretary of State has discretion over how to measure changes in the general level of prices. The Secretary of State has measured the increase in the general level of prices in the appropriate period using the Consumer Prices Index.

4.3 The Secretary of State has determined that those benefits have not maintained their value in relation to prices as measured by the Consumer Prices Index (all items) over the period October 2009 to September 2010.[4]

4.4 Section 150A(1) and (2) of the Act requires the Secretary of State to review and up-rate the standard minimum guarantee element of State Pension Credit, the basic State Pension[5] and widow's (apart from the initial rate) and widower's pension in Industrial Death Benefit at least in line with the increase in earnings.[6]

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[1] Contributory benefits = additional elements of the State Pension.
[2] Non-contributory benefits = Carer's Allowance, Industrial Injuries Benefit.
[3] Extra-costs benefits = Attendance Allowance and Disability Living Allowance.
[4] The Consumer Prices Index (all items) for the 12 month period to end September 2010 showed growth of 3.1%
[5] Category A, B, C and D retirement pension.
[6] The duty to review the rates of the basic State Pension and Industrial Death Benefit by reference to earnings was commenced by SI 2010/2650, with the effect that 2010/11 is the first tax year in which such a review should be carried out. SI 2010/2818 specifies the rate of Bereavement and Widow's Benefits separately to accommodate a divergence of those rates from that of the basic State Pension, to which they were previously tied in law. Those benefits will continue to be increased in line with the growth in prices.

4.5 The Secretary of State has determined that those benefits have not maintained their value in relation to earnings as measured by annual growth in the Average Weekly Earnings statistic, whole economy, seasonally adjusted for the quarter ending July 2010.[7]

4.6 The Secretary of State may also, if he considers it appropriate, having regard to the economic situation and any other matters which he considers relevant, increase other benefits by a percentage as he thinks fit. These other benefits include the income-related benefits[8] and contribution-based Jobseeker's Allowance and contribution-based Employment and Support Allowance.

4.7 The Order reduces certain rates of invalidity allowance, age addition and age related addition payable with incapacity benefits (Incapacity Benefit and Severe Disablement Allowance). The reduction in these allowances and additions is designed to provide further alignment between the rates of incapacity benefits and those of Employment and Support Allowance, prior to completion of the incapacity benefit reassessment process[9]. This does not apply to customers over State Pension age, for whom the rate of these allowances and additions is provided separately and increased in line with the growth in prices.

4.8 In accordance with the Act a draft of this Order is laid before Parliament for approval by resolution of each House together with a copy of the report of the Government Actuary giving his opinion on the likely effect on the National Insurance Fund of the making of this Order.

5. Territorial Extent and Application

The Order applies to Great Britain. Separate but corresponding provision will be made for Northern Ireland.

6. European Convention on Human Rights

Steve Webb MP, Minister for Pensions, has made the following statement regarding Human Rights:

"In my view the provisions of The Social Security Benefits Up-rating Order 2011 are compatible with the Convention Rights".

7. Policy background

<u>What is being done and why</u>

7.1 The annual review has been performed on the social security benefit rates. The Up-rating Order provides for certain benefits to be increased by the amounts set out in the

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[7] The Average Weekly Earnings statistic, whole economy, including bonuses, seasonally adjusted showed annual growth of 1.3% for the quarter ending July 2010.

[8] Income related benefits = Income Support, income based Jobseeker's Allowance, income-related Employment and Support Allowance Housing Benefit and Council Tax Benefit.

[9] The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010

following paragraphs. A full list of the proposed social security benefit rates for 2011/2012 can be found on the DWP website at: http://www.dwp.gov.uk/docs/benefitrates2011.pdf

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7.2 The Secretary of State has decided to use the Consumer Prices Index (CPI) to measure the change in the general level of prices in Great Britain, because he believes that it is the most appropriate index for that purpose (reasons for this included that it is the headline measure of inflation in Great Britain, with a coverage of goods and methodology most appropriate to be used across uprating). The Retail Prices Index (RPI) was used previously. The growth in the CPI will also be used to increase those benefits over which the Secretary of State has discretion. Previously, the "Rossi" index (the RPI minus housing costs) was used for that purpose.

7.3 The Average Weekly Earnings statistic (AWE) is now being used to measure earnings growth. It replaced the Average Earnings Index (AEI) as the lead measure of short-term changes in earnings in January 2010. Historically there was no trend towards one index growing at a faster rate than the other. The AEI is no longer being produced by the Office for National Statistics.

Basic State Pension and Industrial Death Benefit

7.4 The basic State Pension is increased in line with the growth in the RPI for the 12 months to September 2010, which was 4.6%, increasing the rate of Category A State Pension from £97.65 to £102.15 a week. This is above the statutory minimum increase, which is now based on the growth in average earnings, sometimes referred to as "restoring the earnings link" (see 4.4). The Government made a commitment to increase the basic State Pension in April 2011 by RPI . In subsequent years the basic State Pension will be increased by the highest in the growth in average earnings, the growth in prices, or 2.5%.

7.5 Industrial Death Benefit is increased by 4.6% to maintain parity with the rate of basic State Pension.

Bereavement and Widow's Benefits

7.6 The rates of Bereavement and Widow's Benefits were previously tied in legislation to the rate of basic State Pension. They are now governed by a different uprating provision (see 4.4), and will be increased in line with the growth in the CPI for the 12 months to September 2010, along with other benefits required to be increased in line with the growth in prices. More details can be found at: http://www.legislation.gov.uk/uksi/2010/2818/pdfs/uksiem_20102818_en.pdf
This means the standard rate is increased by 3.1% from £97.65 to £100.70 a week.

Pension Credit standard minimum guarantee and Savings Credit

7.7 The standard minimum guarantee element of Pension Credit is increased by 3.6%, which is more than the statutory minimum based on growth in average earnings, to ensure that most pensioners retain the full value of the increase in their basic State Pension. The rate for single people is increased from £132.60 a week to £137.35 a week, and for couples from £202.40 to £209.70 a week.

7.8 The Savings Credit thresholds are increased so that the maximum award of Savings Credit does not increase, in line with a Government announcement at the Spending Review that the maximum award would be frozen for 4 years, in order to concentrate spending on pensioners at the lower end of the income scale.

Income-related benefits (and contribution-based Employment and Support Allowance and Jobseeker's Allowance), Additional Pension, Graduated Retirement Benefit, Increments to State Pension, Carer's Allowance, Disability Living Allowance, Industrial Injuries Disablement Benefit, Disability premiums, Carer premiums, Maternity Allowance and Statutory Maternity, Paternity, Adoption and Sick Pay

7.9 These benefits are all increased by 3.1% in line with the growth in the CPI for the 12 months to September 2010.

7.10 The previous administration intended that the 1.5% increase given in April 2010 to Attendance, Carer's and Disability Living Allowance, Industrial Injuries Disablement Benefit, Maternity Allowance, Statutory Maternity, Paternity and Adoption pay and severe disability premia was to be treated as an advance on April 2011's increase. More details can be found at: http://www.legislation.gov.uk/uksi/2010/793/memorandum/contents
The current administration has decided to reverse this policy – as a result the 2010 uprate for the benefits in question will not be recouped.

7.11 Pensioner premiums may be paid with Income Support, Jobseeker's Allowance and Employment and Support Allowance when a claimant or their partner has reached State Pension age for women[10]. These premiums will be increased so that overall the personal allowance for a claimant over that age, or for a couple with a member over that age, will reflect the new standard minimum guarantee in Pension Credit.

7.12 In Housing Benefit and Council Tax Benefit the personal allowance when a claimant or their partner has reached State Pension age for women will be increased so that overall the personal allowance will equal the new standard minimum guarantee in Pension Credit. Where a claimant or their partner is aged over 65 the personal allowance will reflect the new standard minimum guarantee plus the new savings credit maximum.

Non-dependent deductions from income-related benefits

7.13 Deductions may be made from Housing and Council Tax Benefits, as well as from the housing support provided within the income-related benefits such as mortgage interest costs, to reflect the presence of non-dependants (such as adult relatives) living in the household of people claiming those benefits. There is an expectation that these non-dependants should contribute to the household expenses of the accommodation where they live. Non-dependants who are in employment have a deduction applied which reflects their gross weekly income.

[10] On 6 April 2010, the State Pension age for women started to increase gradually from 60 to 65, to match men's. The Government has announced new proposals for increasing State Pension age. For more details please see http://www.direct.gov.uk/en/Pensionsandretirementplanning/StatePension/DG_4017919

7.14 Since 2001/02, the deduction rates have remained unchanged. The income bands used to determine which rate of deduction applies have been uprated annually by increases in average earnings, except in 2010/11 when they were frozen.

7.15 In April 2011 there will be the first staged increase in the rates of non-dependant deductions. By April 2014, these increases will bring the deduction rates to the level they would have been had they been fully uprated each year since 2001 to broadly reflect growth in rents. By April 2014, non-dependant deduction rates for Council Tax Benefit will be broadly uprated by increases in council tax since 2001. After that, the rates will be increased annually broadly in line with yearly growth in rents and council tax. In addition the income bands are increased to reflect the increase in average earnings.

<u>Non income-related incapacity benefits</u>

7.16 Customers in receipt of Incapacity Benefit without an age addition or invalidity allowance will have their benefit increased by 3.1% in line with the growth in the CPI. Those customers who receive an age addition or invalidity allowance will receive a cash increase in their overall benefit amounting to at least half the growth in CPI, i.e. 1.55%.

7.17 This is a part of the measures to align the rates of Incapacity Benefit with Employment and Support Allowance pending conversion to the new benefit and means that all age additions and most invalidity allowance rates paid with Incapacity Benefit and age related additions paid with Severe Disablement Allowance are reduced. The lower rate of invalidity allowance will see a small increase in order to maintain parity with rates of Employment and Support Allowance paid to people in the support group for that benefit.

7.18 Customers in receipt of Severe Disablement Allowance with an age related addition will have the overall level of their benefit up-rated by at least the growth in the CPI in line with the Government's aim of protecting the most severely disabled people.

<u>Commencement</u>

7.19 The Order provides for the increases to take effect, in most cases, in the week commencing 11 April 2011. However for Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay, Housing and Council Tax Benefits and earnings limits in respect of child dependency increases the Order specifies that the rates can take effect from an earlier date in April. Increases take effect on various dates because of differences in the prescribed payday of the benefit and depending on whether the benefit is a weekly or daily benefit.

Consolidation

7.20 Informal consolidation of the instrument will be addressed by up-dating the relevant values in the appropriate statutory instruments in due course in the Department's "the law relating to Social Security" (the Blue Volumes). This publication is available at no cost to the public on the internet at: http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/

8. Consultation outcome

Consultation is not necessary because the Order forms part of the regular annual up-rating requirements.

9. Guidance

Leaflets will be up-dated to reflect the new rates in due course and guidance bulletins have been issued to operational staff to advise them of the new rates.

10. Impact

10.1 This Order imposes no new costs on the private sector or civil society organisations.

10.2 The Order imposes no new costs on the public sector: the annually recurring costs are already provided for in the Government's expenditure plans.

10.3 A full impact assessment has not been published for this instrument.

11. Regulating small business

11.1 Small businesses in the same way as all other employers must pay Statutory Adoption Pay, Statutory Paternity Pay, Statutory Maternity Pay and Statutory Sick Pay to qualifying employees who take time off work. The up-rating order however imposes no new costs on small businesses.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken continues to be that small businesses whose annual gross National Insurance payments are £45,000 or less are reimbursed 100% of the Statutory Adoption Pay, Statutory Paternity Pay and Statutory Maternity Pay paid out plus an additional amount (3% from April 2011) in compensation for employers national insurance costs on these payments. Larger employers are reimbursed 92%. All employers, including small businesses, meet the costs of Statutory Sick Pay. However those with unusually high levels of sickness can recover some or all of the Statutory Sick Pay paid in a tax month under The Percentage Threshold Scheme. This will reduce the impact of increased numbers of payments of Statutory Sick Pay in such circumstances.

12. Monitoring & review

The position is subject to review each tax year (please see paragraphs 4.2 and 4.4).

13. Contact

For any queries regarding this instrument, please contact Ciarán Morinan on telephone number: 020 7449 7772 or e-mail: PENSIONS.STATE@DWP.GSI.GOV.UK