EXPLANATORY MEMORANDUM TO

THE PENSIONS INCREASE (REVIEW) (NO. 2) ORDER 2024

2024 No. 372

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Laura Trott MBE MP, Chief Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Nick Donlevy, Director for Public Spending, at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Liam Claughton at HM Treasury Telephone: 07977 487800 or email: Liam.Claughton@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

<u>Part One: Explanation, and context, of the Instrument</u>

4. Overview of the Instrument

What does the legislation do?

4.1 This Order makes provision for the annual increase of official pensions (as defined in the Pensions (Increase) Act 1971.) This Order provides for an increase of 6.7 per cent from 8 April 2024 for all official pensions, except for those which have been in payment for less than a year, which will receive a pro-rata increase.

4.2 This Order also amends the Pensions Increase (Review) Order 2024 (S.I. 2024/331), to insert a note indicating there was an error in the making of that order. The amendment directs readers of S.I. 2024/331 to this instrument.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 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. This is done either under statutory provisions, including the annual order, or under separate analogous arrangements.

5.2 The level of increase is equal to the percentage specified by the Secretary of State for Work and Pensions for the increase of additional pensions in long-term benefits (including the State Second Pensions) in the annual direction made under section 151 of the Social Security Administration Act 1992 ("the 1992 Act"). This increase is equal to the percentage rise in the Consumer Prices Index (CPI) in the twelve months to the preceding September. CPI in the twelve months to September 2023 was 6.7 per cent.

5.3 Since 1987 the increase of official pensions has taken effect from the first Monday of the tax year.

Relationship with S.I. 2024/331

5.4 S.I. 2024/331 was incorrectly made one day before the Social Security Benefits Up-rating Order 2024 (S.I. 2024/242). This Order therefore restates the contents of S.I. 2024/331, to fulfil the legal requirements to index official pensions correctly in consequence of the figure specified for indexing additional pensions in long-term benefits, in S.I. 2024/242.

5.5 This Order also amends S.I. 2024/331 to insert a note indicating there was an error in the making of that order, directing readers of S.I. 2024/331 to this instrument.

5.6 HM Treasury cannot revoke S.I. 2024/331, so considers that this is the best action available to it to assist readers of S.I. 2024/331 in identifying that there was an error in the making of S.I. 2024/331.

What was the previous policy, how is this different?

5.7 This Order does not change the policy towards pension increases, but merely implements the annual increase of official pensions for the tax year 2024/2025.

6. Legislative and Legal Context

How has the law changed?

6.1 Sections 59 and 59A of the Social Security Pensions Act 1975 ("the 1975 Act") 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 1992 Act. The Minister's 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).

6.2 The increase is the percentage (or fraction of the percentage) by which the Secretary of State for Work and Pensions has, by direction under the provisions of section 151(1) of the 1992 Act, increased the sums referred to in section 150(1)(c) of that Act. These are the additional pension entitlements accruing to employees in respect of earnings after 5 April 1978.

6.3 Under section 59(7) of the 1975 Act, sections 59 and 59A of that Act have effects as if they were contained in the Pensions (Increase) Act ("the 1971 Act"). The 1971 Act defined certain terms: section 8(2), read with sections 8(2A) and 8A, provide for when a pension "begins" for the purposes of the Act, and section 9 makes provision as to lump sums.

Amendment to S.I. 2024/331

6.4 This Order also amends S.I. 2024/331, to insert a note indicating there was an error in the making of that order. The amendment directs readers of S.I. 2024/331 to this instrument.

Why was this approach taken to change the law?

6.5 This approach operates within existing enabling powers in primary legislation and follows precedent for the implementation of pension increases.

6.6 As there was an error in the making of S.I. 2024/331 that requires its contents to be restated, HM Treasury would have preferred to revoke S.I. 2024/331 to remove S.I. 2024/331 from the statute book. However, HM Treasury cannot revoke S.I. 2024/331, as HM Treasury originally sought to make S.I. 2024/331 under section 59 of the 1975 Act. There are no express powers to revoke an S.I. made under section 59 of the 1975 Act. As the 1975 Act pre-dates the Interpretation Act 1978, section 14 of the Interpretation Act 1978 does not imply a power that can be used to revoke S.I. 2024/331.

6.7 In the absence of being able to revoke S.I. 2024/331, HM Treasury has used powers contained in section 61B(3) of the 1975 Act to amend S.I. 2024/331, by inserting a note in S.I. 2024/331 indicating there was an error in the making of that order. The amendment also directs readers of S.I. 2024/331 to this instrument.

6.8 HM Treasury has inserted the note in italics, to make clear the amendment is not an operative provision of S.I. 2024/331.

6.9 Whilst this is an unusual use of the powers contained in section 61B(3), HM Treasury considers this is the only power that can viably be used to assist readers of S.I. 2024/331 in identifying that there was an error in the making of S.I. 2024/331.

7. Consultation

Summary of consultation outcome and methodology

7.1 This annual instrument is made following a process prescribed in primary legislation. It does not require a consultation exercise.

8. Applicable Guidance

8.1 Guidance documents on the HM Treasury public website have been updated to reflect the new rates: https://www.gov.uk/government/collections/public-service-pensions-increases.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of the lack of impact on business.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this legislation does not apply to activities that are undertaken by business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is an increase in cash payments to pensioners across public service pension schemes. Public service pension schemes use forecast September CPI assumptions to factor in the uprating of public service pensions provided by the Pensions Increase (Review) Order and the cost impact of price increases is taken into account in forecasts of departmental spending used for the Budget, and in Central Government Supply Estimates.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is the introduction of a new order for each tax year (see paragraph 6.1 above).

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This Order is made in consequence of the Secretary of State's direction set out in S.I. 2024/242, as referred to at paragraph 6.1.

11.2 This Order is made using the free issue procedure, to address the error in the making of S.I. 2024/331.

11.3 This Order also makes unusual use of amendment powers contained in section 61B(3) of the 1975 Act, to amend S.I. 2024/331. The reasoning for this is explained at paragraphs 6.6, 6.7, 6.8 and 6.9.

12. European Convention on Human Rights

12.1 The Chief Secretary to the Treasury, Laura Trott MP has made the following statement regarding Human Rights:

"In my view the provisions of the Pensions Increase (Review) (No. 2) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").