

## EXPLANATORY MEMORANDUM TO

### THE SOCIAL SECURITY BENEFITS UP-RATING ORDER 2021

2021 No. 162

#### 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 2021 (“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 Attendance Allowance, Carer’s Allowance, Disability Living Allowance, Industrial Injuries Benefits, Personal Independence Payment and Severe Disablement Allowance (“the devolved benefits”) payable to recipient’s resident in Scotland (see paragraphs. 6.14 and 6.15). Provision for the up-rating of those benefits in England and Wales is made through this Order.
- 3.3 Except insofar as any of the articles relate to the devolved benefits, and disregarding any minor and consequential changes, the territorial application of this instrument is Great Britain.

#### 4. Extent and Territorial Application

- 4.1 The extent and territorial application of this instrument is Great Britain, save for articles 1, 3, 7, 8, 15 and 16 in so far as they relate to the devolved benefits.
- 4.2 The Scottish Government will be responsible, in respect of the devolved benefits only, for bringing forward corresponding provision for Scotland.
- 4.3 The Department for Communities in Northern Ireland will be responsible for bringing forward corresponding provision for Northern Ireland.

#### 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 2021 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”).<sup>1</sup> The Social Security (Up-rating of Benefits) Act 2020<sup>2</sup> (“the Up-rating of Benefits Act”) modifies section 150A to allow the Secretary of State to up-rate the basic State Pension and certain other benefits in the tax year 2021-22 despite there being no growth in earnings in the period May-July 2020 (see paragraphs 6.6-6.9).

### *Benefits linked to the general level of prices*

- 6.2 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.
- 6.3 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.
- 6.4 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”).
- 6.5 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 2019 to September 2020 and has decided to up-rate them in line with CPI.<sup>3</sup>

### *Benefits linked to earnings*

- 6.6 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. The benefits affected are: the basic State Pension, the full rate of the new State Pension, the standard minimum guarantee in Pension Credit, and widows’<sup>4</sup> and widowers’ benefits in Industrial Death Benefit.
- 6.7 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 2020.<sup>5</sup>
- 6.8 The 1992 Act does not allow the Secretary of State to bring forward an annual up-rating order if earnings show no growth. AWE for the quarter ending July 2020

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

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2020/23/contents>

<sup>3</sup> The Consumer Price Index (CPI) (all items) for the 12-month period to end September 2020 showed growth of 0.5 per cent.

<sup>4</sup> Apart from the initial rate.

<sup>5</sup> The Average Weekly Earnings (AWE) revised statistic, whole economy, including bonuses, seasonally adjusted showed a fall of 1.0 per cent for the quarter ending July 2020.

showed a decline of 1.0% and would have precluded the Secretary of State from up-rating earnings-linked benefits. The Up-rating of Benefits Act provides a power for the up-rating of these benefits, for one year only, regardless of trends in earnings. Up-rating under the new power in section 150A(2A) will apply only for the tax year 2021-22.

- 6.9 Following her review, the Secretary of State has decided to up-rate the basic State Pension and the full rate of the new State Pension by 2.5%. This is in accordance with the Government's commitment to a 'triple lock' for these rates (see paragraphs 7.2 - 7.4). Widows' and widowers' benefits in Industrial Death Benefit will also be increased by 2.5%, in line with the policy of maintaining parity with the basic State Pension. The standard minimum guarantee in Pension Credit for single people will be increased by 1.9% to match the cash increase in the basic State Pension. The rate for couples will be increased by the same percentage.

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

- 6.10 If the general level of prices has increased, 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. This includes the standard allowances in Universal Credit. It should be noted that, in response to the coronavirus pandemic, these allowances were increased by £20 per week as a temporary measure for the 2020-21 tax year. Under section 77(3) of the Coronavirus Act 2020<sup>6</sup>, the Secretary of State is required to consider the Universal Credit rate without the temporary uplift when conducting her up-rating review.
- 6.11 The Secretary of State has decided to up-rate the personal or standard allowances of Universal Credit, Income Support, Housing Benefit, Jobseeker's Allowance, and Employment and Support Allowance in line with 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 for both single claimants and couples in line with CPI.
- 6.13 She has also decided to up-rate disability, carer, pensioner and family/lone parent premiums in benefits for people below State Pension age, the additional amount for severe disability and carer responsibilities in Pension Credit and the Work Allowances in Universal Credit, in line with CPI.

***Benefits devolved to Scotland***

- 6.14 The Scotland Act 2016<sup>7</sup> amended the Scotland Act 1998<sup>8</sup> by inserting exceptions to reserved matters under Schedule 5, Part 2, section F1 (social security schemes). This devolved legislative competence for certain areas of social security to the Scottish Parliament. The executive 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

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<sup>6</sup> <https://www.legislation.gov.uk/ukpga/2020/7/section/77/enacted>

<sup>7</sup> <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

<sup>8</sup> <https://www.legislation.gov.uk/ukpga/1998/46/contents>

Ministers with effect from 3 September 2018. The executive functions of the Secretary of State in relation to Attendance Allowance, Disability Living Allowance, Industrial Injuries Benefits, Personal Independence Payment and Severe Disablement Allowance, in so far as they relate to residents in Scotland, transferred to the Scottish Ministers with effect from 1 April 2020.

- 6.15 Following the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018<sup>9</sup>, the Secretary of State has entered into agency agreements with the Scottish Ministers to deliver the devolved benefits in Scotland for a temporary period. This will include the whole of the tax year 2021-22. Functions exercisable under an agency agreement cannot include the making of subordinate legislation and consequently, the Scottish Ministers will be making provision with regard to the up-rating of these benefits 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 2021-22 to Parliament in a Written Statement on 25 November 2020.<sup>10</sup> The table setting out the new rates was placed in the Libraries of the House of Commons and the House of Lords on 4 December 2020:  
<https://depositedpapers.parliament.uk/depositedpaper/2282755/files>
- 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.

### *Basic State Pension*

- 7.2 The statutory minimum increase to the basic State Pension is the rise in earnings (see paragraph 6.6). The Government has given a commitment to increase the basic State Pension in line with the triple lock, that is, the highest of the growth in earnings, the growth in prices, or 2.5 per cent. As 2.5 per cent is higher than the growth in prices over the relevant period (0.5 per cent) and earnings fell by 1.0 per cent, the basic State Pension will increase by 2.5 per cent from April 2021.
- 7.3 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 £134.25 a week to £137.60 a week from April 2021.
- 7.4 The lower rate of Category B basic pension (payable to a married person or civil partner in certain circumstances) will be increased from £80.45 to £82.45 a week from April 2021.

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<sup>9</sup> <http://www.legislation.gov.uk/ukxi/2018/626/contents/made>

<sup>10</sup> <https://questions-statements.parliament.uk/written-statements/detail/2020-11-25/hcws600>

### New State Pension

- 7.5 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 2.5 per cent is higher than the growth in prices over the relevant period (0.5 per cent) and earnings fell by 1.0 per cent, the full rate of the new State Pension will increase by 2.5% per cent in April 2021 (from £175.20 to £179.60 a week).
- 7.6 Existing awards of the new State Pension as at April 2021 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.
- 7.7 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.<sup>11</sup> These amounts will, therefore, be increased by 2.5114 per cent.<sup>12</sup> Where the transitional rate exceeds the full rate, the excess amount<sup>13</sup> will be increased in line with the increase in prices (see paragraph 7.11 below).
- 7.8 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.<sup>14</sup> 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.<sup>15</sup> 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.

### Other benefits that are up-rated under the new temporary power in the Up-rating of Benefits Act

- 7.9 The standard minimum guarantee in Pension Credit for single people will be increased from £173.75 to £177.10 a week, an increase of 1.9% to match the cash increase in the basic State Pension. The rate for couples will be increased by the same percentage from £265.20 to £270.30 a week.
- 7.10 The higher rate of widows’ and the rate of widowers’ benefits in Industrial Death Benefit will be increased from £134.25 to £137.60 a week.

### Benefits that must increase by at least the increase in prices (0.5 per cent)

- 7.11 Additional State Pension, Attendance Allowance, Carer’s Allowance, Disability Living Allowance, Graduated Retirement Benefit, Incapacity Benefit, increments to

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<sup>11</sup> Schedule 2 to the Pensions Act 2014

<sup>12</sup> 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).

<sup>13</sup> Also known as the ‘protected payment’.

<sup>14</sup> 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.

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

State Pension, Industrial Injuries Disablement Benefit, Personal Independence Payment, Severe Disablement Allowance, Widowed Mother's Allowance, Widowed Parent's Allowance and Widow's Pension will be increased by 0.5 per cent. This also applies to transitional amounts of the 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.

*Benefits over which the Secretary of State has discretion*

- 7.12 Employment and Support Allowance, Housing Benefit, Income Support, Jobseeker's Allowance and Universal Credit personal or standard allowances will increase in line with prices (0.5 per cent). As noted above, in response to the coronavirus pandemic, the Universal Credit standard allowances were increased by £20 per week as a temporary measure for the 2020-21 tax year. Under section 77(3) of the Coronavirus Act 2020, the Secretary of State is required to consider the Universal Credit rate without the temporary uplift when conducting her up-rating review. The Government will continue to assess how best to support low-income families, looking at the economic and health context.
- 7.13 The savings credit threshold in Pension Credit, and the additional amount paid to severely disabled people receiving Pension Credit, will be increased by 0.5 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 Carer premiums, disability premiums, Statutory Adoption Pay, Statutory Maternity Pay, Statutory Parental Bereavement Pay, Statutory Paternity Pay, Statutory Shared Parental Pay, and Statutory Sick Pay will also be increased by 0.5 per cent.
- 7.15 Bereavement Support Payment will remain at the same rate as in 2020-21. 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.

*Rounding conventions*

- 7.16 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.

**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 The impact on business, charities or voluntary bodies is negligible.
- 12.2 The impact on the public sector is negligible. There will be an estimated £2 billion of extra payments in 2021-22 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 An Impact Assessment has not been prepared for this instrument because 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, Statutory Maternity Pay, Statutory Parental Bereavement Pay and Shared Parental 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 Laura Atkins, Policy Adviser, at the Department for Work and Pensions (telephone: 07785904987 or email: [laura.atkins@dwp.gov.uk](mailto:laura.atkins@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.