

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY BENEFITS UP-RATING REGULATIONS 2021
2021 No. 312

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

2. Purpose of the instrument

- 2.1 The Social Security Benefits Up-rating Regulations 2021 (“the Regulations”) make provisions in consequence of the Social Security Benefits Up-rating Order 2021 (“the Up-rating Order”) (S.I. 2021/162) which provides for the annual up-rating of social security benefits.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument relies on section 105 of the Deregulation Act 2015¹ in relation to the power in section 53 of the Pensions Act 2014². Regulation 3 is made in part under the power to make an order in section 53 of the Pensions Act 2014 and section 105 of the Deregulation Act 2015 allows the provision to be included in this instrument, rather than requiring a separate instrument.

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 With the exception of regulation 2, insofar as it applies to a benefit which is devolved to Scotland, regulation 4 and paragraphs (a) to (c) of regulation 6, the territorial application of this instrument includes Scotland.

4. Extent and Territorial Application

- 4.1 The extent and application of this instrument is Great Britain save for regulation 2, insofar as it applies to a benefit which is devolved under Part 3 of the Scotland Act 2016³, regulation 4, and paragraphs (a) to (c) of regulation 6, which extend and apply 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 making corresponding provision for Northern Ireland.
- 4.3 Regulation 4 relates to increases of Carer’s Allowance for child dependants. The Scottish Government will bring forward provisions equivalent to regulation 4 in the Scottish Parliament to make corresponding changes there. Regulation 6(b) and (c)

¹ <http://www.legislation.gov.uk/ukpga/2015/20/contents>

² <http://www.legislation.gov.uk/ukpga/2014/19/contents>

³ <https://www.legislation.gov.uk/ukpga/2016/11/part/3>

maintains in force regulations 4 and 5 of the Social Security Benefits Up-rating Regulations 2020 (S.I. 2020/266)⁴, which again relate to Carer’s Allowance.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Regulations are consequential on the Up-rating Order which is made under sections 150, 150A, and 151A of the Social Security Administration Act 1992 (“the 1992 Act”)⁵. Under those sections the Secretary of State must review the rates of certain social security benefits. The Up-rating Order provides for the annual up-rating of those benefits.
- 6.2 The provisions in the Regulations cannot be included in the Up-rating Order because there is no power in section 150, 150A or 151A of the 1992 Act to make such provisions.

Carer’s Allowance and Scotland

- 6.3 The Scotland Act 2016 amended the Scotland Act 1998⁶ 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 carer 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.
- 6.4 Following the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018⁷, the Secretary of State has entered into an agency agreement⁸ 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 Scottish Ministers will be making provision with regard to the up-rating of Carer’s Allowance in Scotland.

7. Policy background

What is being done and why?

- 7.1 Regulation 2 (Exceptions relating to payment of additional benefit by virtue of the Up-rating Order) provides that where a question has arisen about the effect of the Up-rating Order on a benefit already in payment, the altered rates will not apply until that question is determined by the Secretary of State, the First-tier Tribunal or the Upper Tribunal. This provision is intended to avoid incorrect payments of benefit where the increase or decrease is not payable, either in part or in full. This may take place, for example, where an adjustment of a benefit is required because another benefit is also in payment and the two benefits are subject to overlapping benefit provisions.

⁴ <https://www.legislation.gov.uk/ukxi/2020/266/contents/made>

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

⁶ <https://www.legislation.gov.uk/ukpga/1998/46/contents>

⁷ <http://www.legislation.gov.uk/ukxi/2018/626/contents/made>

⁸ <https://www.gov.uk/government/publications/carers-allowance-in-scotland-agency-agreement-and-service-level-agreement>

- 7.2 Regulation 3 (Persons not ordinarily resident in Great Britain) applies the provisions of regulation 5 of the Social Security Benefit (Persons Abroad) Regulations 1975 (S.I. 1975/563)⁹ and regulation 21 of the State Pension Regulations 2015 (S.I. 2015/173)¹⁰ so as to restrict the application of the increases specified in the Up-rating Order in cases where the beneficiary is not ordinarily resident in Great Britain.
- 7.3 Regulation 4 (Amendment of the Social Security Benefit (Dependency) Regulations 1977) amends the Social Security Benefit (Dependency) Regulations 1977 (S.I. 1977/343)¹¹ to put beyond doubt the fact that a child dependency increase paid with Carer's Allowance in transitionally protected cases can include an increase for a qualifying young person. These increases were abolished by section 1(3)(e) of, and Schedule 6 to, the Tax Credits Act 2002¹² but are saved for transitional cases by virtue of article 3 of the Tax Credits Act 2002 (Commencement No.3 and Transitional Provisions and Savings) Order 2003¹³ (S.I. 2003/938).
- 7.4 Regulation 5 (Amendment of the Social Security (Claims and Payments) Regulations 1987) amends the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968)¹⁴ to increase the amount allowed for personal expenses for a person in certain accommodation, where that person's benefit is paid to the accommodation provider by 0.5 per cent, from £26.05 to £26.20.
- 7.5 Regulation 6 revokes the Social Security Benefits Up-rating Regulations 2020 (S.I. 2020/266) save for:
- regulation 4 which increased the amount a person eligible for payment of Carer's Allowance can earn in the immediately preceding week without being deemed to be gainfully employed and, therefore, losing their entitlement to Carer's Allowance to £128, and
 - regulation 5 which increased the earnings limit for child dependency increases payable with Carer's Allowance so that where the claimant's partner has earnings of £245 or more, no increase is paid for the first child or qualifying young person. After that the rule operates in steps of £33. For each multiple of £33 by which the earnings exceed £245, the increase for a further child or qualifying young person is not payable.

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) Act¹⁵.

9. Consolidation

- 9.1 Informal consolidated text of instruments is available to the public free of charge via The National Archives website – www.legislation.gov.uk.

⁹ <https://www.legislation.gov.uk/ukxi/1975/563/contents/made>

¹⁰ <https://www.legislation.gov.uk/ukxi/2015/173/contents>

¹¹ <https://www.legislation.gov.uk/ukxi/1977/343/contents>

¹² <http://www.legislation.gov.uk/ukpga/2002/21/contents>

¹³ <http://www.legislation.gov.uk/ukxi/2003/938/contents/made>

¹⁴ <https://www.legislation.gov.uk/ukxi/1987/1968/contents/made>

¹⁵ <https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

10. Consultation outcome

- 10.1 The Regulations form part of the regular annual up-rating requirements and consultation is therefore usually not necessary.
- 10.2 The Regulations were considered by the Social Security Advisory Committee which agreed that proposals in respect of the Regulations should not be referred to it.

11. Guidance

- 11.1 Leaflets will be updated to reflect the new rates. 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.
- 12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

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.
- 14.2 Average earnings in the year to May-July 2020 showed no growth, and accordingly the earnings limit in Carer's Allowance remains unchanged by these Regulations. The Government will keep the earnings limit in Carer's Allowance under review.

15. Contact

- 15.1 Meghan Delaney at the Department for Work and Pensions (Email: meghan.delaney@dwp.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Andrew Latto, Deputy Director for Devolution, Pensioner Benefits and 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 for Welfare Delivery, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.