EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY BENEFITS UP-RATING ORDER 2023

2023 No. 316

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 His Majesty.

2. Purpose of the instrument

2.1 Social Security Benefits Up-rating Order 2023 ("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.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) 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 territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain, save for articles 1, 3, 7, 8, 15 and 16 in so far as they relate to the devolved benefits.

4.3 The Scottish Government will be responsible in respect of the devolved benefits only, for bringing forward corresponding provision for Scotland.

4.4 Social Security is a transferred matter in Northern Ireland. 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 Employment, Guy Opperman MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Social Security Benefits Up-rating Order 2023 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]

[1] http://www.legislation.gov.uk/ukpga/1992/5

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 percentage 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 Prices Index ("CPI").[2]

6.5 Following his 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 year to September 2022 and has decided to up-rate them in line with the increase in CPI. [3]

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 percentage 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 element of Pension Credit, and the widow's and widower's pension 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 use growth in Average Weekly Earnings in the year to May-July 2022 (5.5%).[4]

6.8 Following his review, the Secretary of State has determined that benefits linked to the general level of earnings have not maintained their value. Therefore, in accordance with the government's commitment to the triple lock (see paragraph 7.2 and 7.5), he has decided to up-rate the basic state pension and full rate of the new State Pension in line with CPI (10.1%). He has also decided to up-rate the other benefits to which section 150A applies by 10.1%.

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

6.9 The Secretary of State may also, if he considers it appropriate, having regard to the national economic situation and any other matters which he considers relevant, increase other benefits by such a percentage as he thinks fit.

6.10 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. Certain child and family

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[2] https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/september2022
[3] https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/september2022
[4]https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/averageweeklyearningsingreatbritain/september2022

elements in benefits for people below State Pension age and in Pension Credit are linked to His Majesty's Revenue & Customs (HMRC) tax credit and Child Benefit rates. These elements will be up-rated in line with the increase in the relevant HMRC rates. Those child elements not linked to HMRC rates will increase by 10.1 per cent.

6.11 The Secretary of State has decided to up-rate disability, carer, pensioner, and family/lone parent premiums in benefits for people below State Pension age, and the additional amount for severe disability and carer responsibilities in Pension Credit, in line with CPI.

6.12 He has also decided to increase the Savings Credit Threshold in Pension Credit to deliver an increase in the Savings Credit maximum in line with CPI.

Benefits devolved to the Scottish Parliament

6.13 The Scotland Act 2016[5] amended the Scotland Act 1998[6] 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 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.

6.14 Following the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018[7], whilst the Scottish Government establishes the infrastructure necessary to deliver replacement benefits, 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 is on the basis that Scottish Ministers bring forward provision which has the identical effect to that being delivered in England and Wales for as long as the Agency Agreements are in place. Functions exercisable under an Agency Agreement cannot include the making of subordinate legislation in Scotland, and consequently the Scottish Ministers will be making provision with regard to the up-rating of these benefits in Scotland.

Additional Information

6.15 The Secretary of State announced his up-rating decisions to Parliament in a Written Ministerial Statement on 17 November 2022[8]. The table setting out the new rates has been placed in the Libraries of the House of Commons and the House of Lords[9] and published on gov.uk.[10]

6.16 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.

[5] http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted
[6] https://www.legislation.gov.uk/ukpga/1998/46/contents
[7] http://www.legislation.gov.uk/uksi/2018/626/contents/made
[8] https://questions-statements.parliament.uk/written-statements/detail/2022-11-17/hcws374
[9] https://depositedpapers.parliament.uk/depositedpaper/2284766/details
[10] https://www.gov.uk/government/publications/benefit-and-pension-rates-2023-to-2024

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 The statutory minimum increase to the basic State Pension is the rise in earnings (see paragraph 6.1). 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 the increase in prices over the relevant period (10.1 per cent) is higher than both the growth in earnings (5.5 per cent) and 2.5 per cent, the basic State Pension will increase by 10.1 per cent from £141.85 to £156.20 a week from April 2023.

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 £141.85 to £156.20 a week from April 2023.

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 £85.00 to £93.60 a week from April 2023.

<u>*New State Pension*</u>

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. The full rate of the new State Pension will therefore increase by 10.1 per cent in April 2023 from £185.15 to £203.85.

7.6 Existing awards of the new State Pension as of April 2023 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.[11] These amounts will, therefore, be increased by 10.1 per cent. Where the transitional rate exceeds the full rate, the excess amount[12] will be increased in line with the increase in prices (see paragraph 7.9 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.[13] 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

[11] Schedule 2 to the Pensions Act 2014
[12] Also known as the 'protected payment'.
[13] 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.

combination of the two depending on the total amount of the individual's award.[14] 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

- The following rates will also increase by 10.1 per cent from April 2023:
- Attendance Allowance
- Carer's Allowance
- Disability Living Allowance
- Graduated Retirement Benefit
- Incapacity Benefit
- increments to State Pension
- Industrial Injuries Disablement Benefit
- Pension Credit Standard Minimum Guarantee
- Personal Independence Payment
- Severe Disablement Allowance
- Widowed Mother's Allowance
- Widowed Parent's Allowance
- The higher rate of widow's pension and the widower's pension in Industrial Death Benefit
- Employment and Support Allowance, Housing Benefit, Income Support, Jobseeker's Allowance and Universal Credit personal or standard allowances
- Additional amounts in Pension Credit payable on grounds of disability and caring responsibilities
- Carer and disability premiums in Income support, Jobseekers allowance and Employment and support allowance and Housing Benefit.
- Statutory Adoption Pay, Statutory Maternity Pay, Statutory Parental Bereavement Pay, Statutory Paternity Pay, Statutory Shared Parental Pay and Statutory Sick Pay.

7.9 Bereavement Support Payment will remain at the same rate as in 2022//23. 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.[15] Bereavement Support Payment is intended to provide working people with short-term financial support following the death of a spouse or civil partner, to help towards the additional costs associated with a death. It is not means-tested unlike income replacement benefits such as Universal Credit, which we are increasing in line with inflation to protect the least well-off. Families needing extra financial support are protected by this welfare safety net.

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

[15] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1119548/benefit-and-pensions-rates-2023-2024.pdf

Rounding Conventions

7.10 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 and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / 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.

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 not significant beyond their existing obligations with respect to making, and in some cases funding, certain Statutory Payments (see below).

12.2 The impact on the public sector is that overall Exchequer expenditure will increase by £22 billion in 2023/24.

12.3 An Impact Assessment has not been prepared for this instrument because there is not a significant new impact on business, charities or voluntary bodies (see paragraph 13.1).

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 Statutory 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 for 92 per cent of the costs. Employers meet the full costs of Statutory Sick Pay.

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 Kennedy Meredith, Policy Adviser, at the Department for Work and Pensions (email: kennedy.meredith@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 Guy Opperman, Minister for Employment, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.