EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY BENEFITS UP-RATING ORDER 2022

2022 No. [XXXX]

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 2022 ("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 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 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 Welfare Delivery (Parliamentary Under Secretary of State), David Rutley MP, has made the following statement regarding human rights:

"In my view the provisions of the Social Security Benefits Up-rating Order 2022 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] The Social Security (Up-rating of Benefits) Act 2021[2] ("the Up-rating of Benefits Act") modifies section 150A for the tax year 2022-23 so as to provide for the up-rating of the basic State Pension and certain other benefits by at least inflation or 2.5 per cent, whichever is higher (see paragraph 6.3). Without the modification section 150A would require up-rating by reference to the increase in earnings.

[1] http://www.legislation.gov.uk/ukpga/1992/5
[2] https://www.legislation.gov.uk/ukpga/2021/32/introduction

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 150A of the 1992 Act as amended by the Up-rating of Benefits Act requires the Secretary of State to review the basic State Pension, the full rate of the new State Pension, the Pension Credit Standard Minimum Guarantee and widows' and widowers' benefits in Industrial Death Benefit 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 150A as amended requires the Secretary of State to up-rate them by at least inflation or 2.5 per cent, whichever is higher.

6.4 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.

6.5 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").

6.6 Following her review, the Secretary of State has determined that benefits linked to the general level of prices have not maintained their value over the period October 2020 to September 2021 and has decided to up-rate them in line with CPI.[3]

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

6.7 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.

6.8 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 elements in benefits for people below State Pension age and in Pension Credit are linked to HMRC tax credits 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 3.1 per cent.

6.9 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.

6.10 She has also 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.

[3] The Consumer Price Index (CPI) (all items) for the 12-month period to end September 2021 showed growth of 3.1 per cent.

Benefits devolved to the Scottish Parliament

6.11 The Scotland Act 2016[4] amended the Scotland Act 1998[5] 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.

6.12 Following the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018[6], 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

6.13 The Secretary of State announced the proposed rates of social security benefits and pensions for 2022-23 to Parliament in a Written Statement on 25 November 2021.[7] The table8 setting out the new rates was placed in the Libraries of both Houses on 25 November 2021.

6.14 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 (as amended by section 1(1) of the Up-rating of Benefits Act) and 151A of the 1992 Act.

State Pensions

7.2 The Up-rating of Benefits Act requires the Secretary of State to review the basic State Pension and the full rate of the new State Pension to determine whether they have retained their value in relation to the general level of prices. If they have not retained their value, section 150A as amended requires the Secretary of State to up-rate them at

[4] http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted
[5] https://www.legislation.gov.uk/ukpga/1998/46/contents
[6] http://www.legislation.gov.uk/uksi/2018/626/contents/made
[7] https://questions-statements.parliament.uk/written-statements/detail/2021-11-25/hcws420
[8] https://depositedpapers.parliament.uk/depositedpaper/2283768/details

least in line with the general increase in prices or by 2.5 per cent, whichever is higher. They will therefore increase by 3.1 per cent from April 2022. This means the full rate of the basic State Pension (Category A or B) increases from £137.60 to £141.85, and the full rate of the new State Pension increases from £179.60 to £185.15.

7.3 The lower rate of Category B basic pension (payable to a married person or civil partner in certain circumstances) will increase by 3.1 per cent from £82.45 to £85.00 a week from April 2022.

7.4 The Additional State Pension will also increase by 3.1 per cent from April 2022.

7.5 Existing awards of the new State Pension as at April 2022 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.

7.6 Transitional rates of the new State Pension that are equal to or less than the full rate will increase by the same percentage as the full rate.[9] These amounts will, therefore, increase by 3.0902 per cent.[10] Where the transitional rate exceeds the full rate, the excess amount[11] will increase in line with the increase in prices (see paragraph 7.10 below).

7.7 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.[12] 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.[13] 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

7.8 The standard minimum guarantee in Pension Credit will increase by 3.1 per cent from April 2022. For single people it will increase from £177.10 to £182.60 a week, and for couples from £270.30 to £278.70 a week.

7.9 The higher rate of widows' and the rate of widowers' benefits in Industrial Death Benefit will increase by 3.1 per cent from April 2022, from £137.60 to £141.85 a week.

Other benefits

7.10 The following rates will increase by 3.1 per cent from April 2022:

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9 Schedule 2 to the Pensions Act 2014.

10 The difference between £179.60 and £185.15 as a percentage of £179.60 (accounting for the rounding of the full rate to the nearest five pence).

11 Also known as the 'protected payment'.

12 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.

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

- Attendance Allowance
- Carer’s Allowance
- Disability Living Allowance
- Graduated Retirement Benefit
- Incapacity Benefit
- increments to State Pension
- Industrial Injuries Disablement Benefit
- Personal Independence Payment
- Severe Disablement Allowance
- Widowed Mother’s Allowance
- Widowed Parent’s Allowance
- Transitional amounts of the State Pension above the level of the full rate, and inherited increments of old State Pension payable to a surviving spouse or civil partner in the new State Pension
- 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 the legacy benefits and the carer element and limited capability for work elements in Universal Credit
- Statutory Adoption Pay, Statutory Maternity Pay, Statutory Parental Bereavement Pay, Statutory Paternity Pay, Statutory Shared Parental Pay and Statutory Sick Pay.

7.11 The savings credit threshold in Pension Credit will be increased to produce an increase in the maximum savings credit of 3.1 per cent. The maximum savings credit will rise from £14.04 to £14.48 per week for a single pensioner and from £15.71 to £16.20 per week for a couple.

7.12 Certain child and family elements in benefits for people below State Pension age and in Pension Credit are linked to HMRC tax credits 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 3.1 per cent.

Rounding conventions

7.13 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.[14]

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 that the overall Exchequer effect of the provisions in this Order will be £6.6 billion in 2022-23. There will be an estimated £3.4 billion of extra payments in 2022-23 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 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. 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 Sophie Willis-Hicks, Policy Adviser, at the Department for Work and Pensions (email: sophie.willis-hicks@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.

[14] https://www.legislation.gov.uk/

15.3 David Rutley, 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.