

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY BENEFITS UP-RATING ORDER 2010**

No.793

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 2010 (“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 the Joint Committee on Statutory Instruments.**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The Order provides for the annual up-rating of social security benefits under sections 150 and 150A of the Social Security Administration Act 1992 (“the Act”).
 - 4.2 The Secretary of State is required to review the levels of benefits annually with a further requirement to increase contributory¹, non-contributory² and extra-costs benefits³ at least in line with prices.
 - 4.3 The Secretary of State has determined that benefits have maintained their value in relation to prices as measured by the Retail Prices Index (all items) over the period October 2008 to September 2009.⁴
 - 4.4 In the absence of an increase in prices the Secretary of State is making this Order to increase the rates of certain benefits under the temporary powers provided at section 150(2A) by virtue of section 23 of the Welfare Reform Act 2009 (c.24).
 - 4.5 The Order reduces certain rates of invalidity allowance, age addition and age related addition payable with incapacity benefits (Incapacity Benefit

¹ Contributory benefits = State Pension (Categories A and B).

² Non-contributory benefits = State Pension (Categories C and D), Carer’s Allowance, Industrial Injuries Benefit.

³ Extra-costs benefits = Attendance Allowance and Disability Living Allowance.

⁴ The Retail Prices Index (all items) for the 12 month period to end September 2009 showed negative growth of minus 1.4%

and Severe Disablement Allowance) under the modification to section 150 made by the Employment and Support Allowance (Up-rating Modification) (Transitional) Regulations 2008 (made under the power provided by paragraph 10 of schedule 4 to the Welfare Reform Act 2007 (c.5)). The reduction in these allowances and additions is designed to provide further alignment between the rates of incapacity benefits and those of Employment and Support Allowance, which replaced Incapacity Benefit in October 2008.

- 4.6 Section 150A(1) and (2) of the Act requires the Secretary of State to review and up-rate the standard minimum guarantee element of State Pension Credit at least in line with the increase in earnings.
- 4.7 The Secretary of State has determined the standard minimum guarantee element of State Pension Credit has not maintained its value in relation to earnings as measured by annual growth in the Average Earnings Index, whole economy, seasonally adjusted for the quarter ending July 2009.⁵
- 4.8 In accordance with the Act a draft of this Order is laid before Parliament for approval by resolution of each House together with a copy of the report of the Government Actuary giving his opinion on the likely effect on the National Insurance Fund of the making of this Order.

5. Territorial Extent and Application

- 5.1 The Order applies to Great Britain. Separate but corresponding provision will be made for Northern Ireland.

6. European Convention on Human Rights

The Minister of State for Pensions and the Ageing Society, Angela Eagle, has made the following statement regarding Human Rights:

In my view the provisions of the Social Security Benefits Up-rating Order 2010 are compatible with the Convention rights.

7. Policy background

- *What is being done and why?*
- 7.1 The annual review has been performed on the social security benefit rates. Notwithstanding negative growth in the Retail Prices Index (RPI) (see para 4.3) the up-rating Order provides for certain benefits to be

⁵ The Average Earnings Index, whole economy, including bonuses, seasonally adjusted showed annual growth of 1.8% for the quarter ending July 2009.

increased by the amounts set out in the following paragraphs. A full list of the proposed social security benefit rates for 2010/2011 can be found on the DWP website at:

<http://www.dwp.gov.uk/docs/benefitrates2010.pdf>

Basic State Pension, and equivalent components in Widow's, Bereavement and Industrial Death Benefits.

- 7.2 These benefits are increased by 2.5% in line with the Government's commitment to up-rate basic State Pension⁶ by the higher of 2.5% or growth in the RPI (increasing the standard rate by £2.40 from £95.25 to £97.65 a week).

Pension Credit standard minimum guarantee

- 7.3 The standard minimum guarantee element of State Pension Credit is increased by 2% giving a cash increase of £2.60 for single people (from £130 to £132.60 a week) and £3.95 for couples (from £198.45 to £202.40 a week). This increase is slightly higher than the 1.8% growth in average earnings to ensure that most pensioners retain the full value of the increase in their basic State Pension.

Income-related benefits (including contribution-based Jobseeker's Allowance and contributory Employment and Support Allowances)

- 7.4 Income-related benefits are increased by 1.8%, which is the September 2009 increase in the Rossi index (RPI less the elements representing housing costs). This index is used because housing costs are typically met by separate specific provision within these benefits.
- 7.5 Pensioner premiums may be paid with Income Support, Jobseeker's Allowance and Employment and Support Allowance when a member of the household has reached State Pension age for women⁷. These premiums will be increased so that overall the personal allowance for a household with a person over the age of 60 will reflect the new standard minimum guarantee in Pension Credit.
- 7.6 In Housing Benefit and Council Tax Benefit the personal allowance when a member of the household has reached State Pension age for women will be increased so that overall the personal allowance will equal the new standard minimum guarantee in Pension Credit. Where a member of the household is aged over 65 the personal allowance will

⁶ Rates of Widow's and Bereavement Benefits and Industrial Death Benefit are determined by reference to the standard rate of basic State Pension

⁷ This is currently 60. State Pension age for women born between 6 April 1950 and 5 April 1955 gradually increases from 60 to 65 between April 2010 and April 2020. For women born on or after 6 April 1955 to 5 April 1959 it is 65

reflect the new standard minimum guarantee plus the new savings credit maximum.

- 7.7 Disability and carer premiums (including the additional amount for a carer in Pension Credit) other than the severe disability premium (and the additional amount for severe disability in Pension Credit) are increased by the Rossi index (1.8%).

Contributory incapacity benefits

- 7.8 In April 2009, customers in receipt of Incapacity Benefit without an age addition or invalidity allowance had their benefit up-rated by the Rossi index in line with Employment and Support Allowance, Jobseeker's Allowance and Income Support. As part of measures to align the rates of Incapacity Benefit with Employment and Support Allowance customers with age additions had them reduced to give an overall cash increase equivalent to half the level of growth in the Rossi index. The same approach is adopted for April 2010 however, the lowest rate of invalidity allowance will see a small increase in order to maintain parity with rates of Employment and Support Allowance paid to people in the support group
- 7.9 As in April 2009, customers in receipt of Severe Disablement Allowance with an age addition will have the overall level of their benefit up-rated by at least the Rossi index.

Attendance Allowance, Disability Living Allowance, Carer's Allowance, Industrial Injuries Disablement Benefit, Maternity Allowance and Statutory Maternity, Paternity and Adoption Payments.

- 7.10 As the RPI showed negative growth in September 2009, these benefits and payments would not conventionally be up-rated. However, the RPI has now moved back to positive growth which is forecast to continue. In order to smooth the transition from negative to positive inflation a proportion of the increases expected in April 2011 will be brought forward by a year for these benefits and payments. Under this proposal these benefits would be increased by 1.5% from April 2010 with the intention that the 2011 up-rating will be based on annual RPI growth to September 2010 less the 1.5% increase from April 2010.

For example, it is proposed that the higher rate of Attendance Allowance will increase from £70.35 to £71.40 (an increase of £1.05) from April 2010 – assuming annual RPI growth to September 2010 is 3%, it will increase by a further £1.05 from April 2011 taking the rate to £72.45 giving an overall increase of 3% on the current rate.

Additional Pension, Invalidation Allowances and Age Additions payable with State Pension, Graduated Retirement Benefit, Increments to State Pension, Increases for Adult Dependants and Statutory Sick Pay

7.11 It is proposed that these benefits and payments should remain at current levels and not be up-rated for the reasons outlined in the following paragraphs.

Additional pension (AP)

7.12 Up-rating AP payable under the State Earnings Related Pension and State Second Pension schemes (SERPS and S2P) has to be considered in the context of pensions more generally as there is a statutory requirement for public sector pensions to be uprated by the same percentage as AP. The cost of up-rating public sector pensions would be broadly double that of up-rating AP. Many occupational pension schemes outside the public sector also uprate their pensions by reference to RPI, however these private sector schemes will have based their financial assumptions on their pensions being frozen because of negative RPI. Increasing the additional pension and consequently public sector pensions would then put pensioners in receipt of the latter at an advantage over their private sector counterparts. For these reasons it is proposed that AP should not be increased in 2010.

Graduated Retirement Benefit (GRB)

7.13 GRB, a forerunner of SERPS, ran from 1961 to 1975. The amounts in payment under this scheme are low at around £3.00 per week on average. Entitlement is based on the number of units derived from the payment of graduated contributions under the scheme. The unit value is currently 11.53 pence and the maximum possible holding is 86 units. Uprating the unit value by 1.5% would generate a maximum increase of 14 pence per week. Those recipients who have only accrued one or two units – around 10% (900,000) of GRB recipients – would see no cash increase because the value of their benefit is rounded to the nearest penny. Increasing GRB when AP is not being increased would again be anomalous, therefore for consistency it is proposed that GRB should not be increased in April 2010.

7.14 Although both AP and GRB can be paid where the individual does not have entitlement to basic State Pension this occurs in only around 0.5% (approximately 65,000) of cases where State Pension is paid in GB or a country where State Pension is up-rated.

Invalidity Allowances and Age Additions (IVAs and AAs)

- 7.15 IVAs and AAs payable with State Pension are abated by the amount of any AP to which the pensioner is entitled, the logic behind the abatement being that these allowances and additions are paid in lieu of AP that the individual would have accrued had he or she not been incapable of work and subsequently unable to build up AP. On this basis it would be anomalous to increase these payments while not increasing AP. Therefore it is proposed that these payments will not be increased in April 2010.

Increments

- 7.16 Increments to State Pension and GRB are payable where the person has deferred drawing his or her pension. For periods of deferral lasting 12 months or more from April 2005 onwards the individual may opt to take a lump sum payment instead of increments. For periods prior to April 2005 increments accrued at 7.5% per annum – for subsequent periods they accrue at 10.4% per annum. Any up-ratings during the period of deferral are factored into the value of increments awarded when State Pension is claimed. Around 10% of pensioners (1.2 million) have increments – the average weekly value is in the region of £7.00. Given that additional pension is not to be uprated in April 2010 and that the accrual rate for increments, particularly that applied to accruals from April 2005, already provides a significant advantage for pensioners, it is proposed that increments should not be increased in April 2010.

Overall effect of measures on pensioners

- 7.17 Without an up-rate on AP, GRB and increases to State Pension, such as increments, the 2.5% increase in basic State Pension will on average provide pensioners in Great Britain with a 2% increase in their overall level of State Pension.
- 7.18 Pensioners on low and modest incomes are guaranteed a 2% increase through the up-rating of the Pension Credit standard minimum guarantee. As a result pensioners will on average see an increase in their pension above the level of earnings growth and above the level of increase in benefits paid to people of working age.

Increases for adult dependants

- 7.19 Increases for adult dependants are payable with State Pension, Incapacity Benefit, Severe Disablement Allowance, Carer's Allowance and Maternity Allowance. Such increases are also being phased out from April. The numbers currently in payment are as follows:
- State Pension 40,000 (approx 0.5% of caseload)

- Incapacity Benefit	26,000 (approx 1% of caseload)
- Severe Disablement Allowance	1,000 (approx 0.5% of caseload)
- Carer's Allowance	18,000 (approx 3.5% of caseload)
- Maternity Allowance	200–300 (approx 0.5% of caseload)

7.20 To up-rate the amount payable in the small minority of cases where an increase for an adult dependant is retained beyond April on a transitionally protected basis would be anomalous given that such increases are being phased out for new claims. Therefore it is proposed that increases for adult dependants should not be up-rated in April 2010.

Statutory Sick Pay

7.21. Statutory Sick Pay is paid by employers and the cost is only reimbursed by Government in limited circumstances. To have imposed a 1.5% advance on the 2011 up-rating would have placed an unfair and unexpected burden on employers. Therefore it is proposed that Statutory Sick Pay should not be increased in April 2010.

Deductions from Housing and Council Tax Benefits and support provided within the income-related benefits for mortgage interest costs

7.22 Deductions may be made from Housing and Council Tax Benefits, as well as from the support provided within the income-related benefits for mortgage interest costs, to reflect the presence of non-dependants (such as adult relatives) living in the household of people of claiming those benefits. There is an expectation that these non-dependants should contribute to the household expenses of the accommodation where they live. Non-dependants who are in employment have a deduction applied which reflects their gross weekly income.

7.23 Since 2001/2002, the deduction rates have remained unchanged. The income bands used to determine which rate of deduction to apply have been uprated annually by increases in average earnings.

7.24 From April 2010, both the rate of deduction and income bands used to determine which rate to apply will remain at their 2009/2010 levels. Some people will not see an increase that they would have seen if the income bands had been uprated in line with average earnings as in previous years. This would have been on average around £7.00 per week in Housing and or Council Tax Benefits, and on average around £2.00 per week in Alternative Maximum Council Tax Benefit (a form of Council Tax Benefit that is based on the financial circumstances of a second adult who shares the home of a person liable for Council Tax, which can be paid instead of, but not as well as, Council Tax Benefit). This will affect:

- an estimated 14,000 of the estimated 340,000 Housing and Council Tax Benefit cases with a non-dependant deduction⁸; and
- an estimated 1,000 of the estimated 43,000 Alternative Maximum Council Tax Benefit cases with a non-dependant deduction⁹

This action reflects the current fiscal constraints within which spending decisions must be made.

Commencement

7.25 The Order provides for the increases to take effect, in most cases, in the week commencing 12 April 2009. However for Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay, Housing and Council Tax Benefits and earnings limits in respect of child dependency increases the Order specifies that the rates can take effect from an earlier date in April. Increases take effect on various dates because of differences in the prescribed payday of the benefit and depending on whether the benefit is a weekly or daily benefit.

- *Consolidation*

7.26 Informal consolidation of the instrument will be addressed by updating the relevant values in the appropriate statutory instruments in due course in the Department's "the law relating to Social Security" (the Blue Volumes). This publication is available at no cost to the public on the internet at:

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

8. Consultation outcome

8.1 Consultation is not necessary because the Order forms part of the regular annual up-rating requirements.

9. Guidance

9.1 Leaflets will be up-dated to reflect the new rates in due course and guidance bulletins have been issued to operational staff to advise them of the new rates.

⁸ Numbers of cases with a non-dependant deduction are estimated based on HB and CTB data in the Department's Policy Simulation Model, which is the tool used by the Department to assess the effects of the non-dependant deduction policy.

⁹ Numbers of cases with a non-dependant deduction are estimated based on CTB data in the Department's Single Housing Benefit Extract and the Policy Simulation Model.

10. Impact

- 10.1 This Order imposes no new costs on business, charities or voluntary bodies.
- 10.2 The Order imposes no new costs on the public sector; the annually recurring costs are already provided for in the Government's expenditure plans.
- 10.3 A full impact assessment has not been produced for this instrument as it amends an existing regulatory regime by a pre-determined formula such as the rate of inflation, and imposes no new costs on business, charities and the voluntary sector. A full impact assessment is not necessary for such legislation.

11 Regulating small business

- 11.1 Small businesses in the same way as all other employers must pay Statutory Adoption Pay, Statutory Paternity Pay, Statutory Maternity Pay and Statutory Sick Pay to qualifying employees who take time off work. The up-rating order however imposes no new costs on small businesses.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken continues to be that small businesses whose annual gross National Insurance payments are £45,000 or less are reimbursed 104.5% of the Statutory Adoption Pay, Statutory Paternity Pay and Statutory Maternity Pay paid out. Larger employers are reimbursed 92%. All employers, including small businesses meet the costs of Statutory Sick Pay. However those with unusually high levels of sickness can recover some or all of the Statutory Sick Pay paid in a tax month under The Percentage Threshold Scheme. This will reduce the impact of increased numbers of payments of Statutory Sick Pay in such circumstances.

12 Monitoring & review

- 12.1 The position is subject to review each tax year (please see paragraph 4.2 above).

13. Contact

Arthur McNulty at the Department for Work and Pensions (Tel: 020 7449 5996. email: Arthur.McNulty@dwp.gsi.gov.uk.) can answer queries regarding this statutory instrument.