

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY BENEFITS UP-RATING REGULATIONS 2017

2017 No. 349

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 2017 (“the Regulations”) make provisions in consequence of the Social Security Benefits Up-rating Order 2017 (“the Up-rating Order”) (S.I.2017/260) 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 2015 in relation to the power in section 53 of the Pensions Act 2014. 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 that provision to be included in this instrument, rather than requiring a separate instrument.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Regulations are consequential on the Social Security Benefits Up-rating Order 2017 which is made under sections 150, 150A and section 151A of the Social Security Administration Act 1992 (“the Act”). 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.
- 4.2 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 Act to make such provisions.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 Corresponding provision will be made for Northern Ireland.

6. European Convention on Human Rights

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

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”) prevents any rate that is changed by the Up-rating Order from applying in cases where there is a question about its effect on a benefit that is already in payment that is still to be determined. This provision is intended to avoid incorrect payments of benefit where the increase or decrease is not payable, either in part or 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. Overlapping benefit provisions prevent a person who is entitled to two or more relevant benefits from being paid both of them in full.
- 7.2 Regulation 3 (“Persons not ordinarily resident in Great Britain”) restricts the application of increases of benefits, including the new State Pension, specified in the Up-rating Order to beneficiaries who are ordinarily resident in Great Britain. This provision follows the long-standing policy that benefits payable to people not ordinarily resident in Great Britain are not up-rated unless there is a legal obligation to do so – e.g. in another Member State of the European Economic Area, Switzerland or a country or territory with which Great Britain has a relevant reciprocal agreement that allows for up-rating.
- 7.3 Regulation 4 (“Amendment of the Social Security (Claims and Payments) Regulations 1987”) increases by 1.0 per cent the amount of benefit that a person must be left with if they live in a care home and, because they find it difficult to budget for their care fees, the care home costs are paid direct from their benefit to the person or body charging for care. The 1.0 per cent increase mirrors the September 2016 figure for the annual growth in prices, as measured by the Consumer Price Index (CPI).
- 7.4 Regulation 5 (“Revocations”) revokes the Social Security Benefits Up-rating Regulations 2016 (“the 2016 Regulations”) and regulation 5 of the Social Security Benefits Up-rating Regulations 2015 (the equivalent of regulation 4 of the Up-rating Regulations 2017 – i.e. Amendment of the Social Security (Claims and Payments) Regulations 1987).

Consolidation

- 7.5 Informal consolidated text of instruments is available to the public free of charge via the ‘National Archive’ website legislation.gov.uk.

8. Consultation outcome

- 8.1 The Regulations form part of the regular annual up-rating requirements, and consultation is therefore usually not necessary.
- 8.2 This year, restriction of the application of up-rating of some transitional components of the new State Pension has meant a reference to the Social Security Advisory Committee, which has agreed that proposals in respect of this part of the Regulations should not be referred to it.

9. Guidance

- 9.1 Leaflets will be up-dated to reflect the new rates in due course. Guidance has been issued to operational staff to advise them on the new rates.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 The impact on the public sector is negligible.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

- 12.1 The rates of social security benefits under sections 150, 150A and 151A of the Act are subject to review each tax year (see paragraph 4.1 above).

13. Contact

- 13.1 James McMeekin at the Department for Work and Pensions (Telephone: 020 7449 5387; or email: james.mcmeekin@dwp.gsi.gov.uk) can answer any queries regarding the instrument.