EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY BENEFITS UP-RATING ORDER 2019

2019 No. 480

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

The Social Security Benefits Up-rating Order 2019 ("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.

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 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

3.3 This is the first year in which the Scottish Government will be responsible for making provision for the up-rating of Carer's Allowance payable to carers resident in Scotland (Please see paragraphs. 6.13 and 6.14). Provision for the up-rating of that benefit in England and Wales is made through this Order.

4. Extent and Territorial Application

4.1 The extent and territorial application of this instrument is Great Britain, save for article 3, which, in so far as it increases the sums specified for Carer's Allowance in parts III and IV of Schedule 4 to the Social Security Contributions and Benefits Act 1992, extends and applies to England and Wales only.

4.2 The Department for Communities in Northern Ireland will be responsible for making corresponding provision for Northern Ireland.

4.3 The Scottish Government will be responsible, in respect of Carer's Allowance only, for making corresponding provision for Scotland.

5. European Convention on Human Rights

5.1 The Minister for Family Support, Housing and Child Maintenance (Parliamentary Under Secretary of State), Justin Tomlinson MP, has made the following statement regarding human rights:

"In my view the provisions of the Social Security Benefits Up-rating Order 2019 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]

6.2 The Welfare Reform and Work Act 2016 has frozen the main rates of most working-age benefits at their 2015-16 levels.[2] Consequently, these rates were excluded from the Secretary of State's review under section 150 of the 1992 Act and are not included in the Order. Rates affected include: the personal allowance elements of Income Support and Jobseeker's Allowance; the personal allowances and work-related activity components of Employment and Support Allowance and Housing Benefit; and the standard allowance, limited capacity for work element and the lower disabled child addition under Universal Credit.

Benefits linked to the general level of prices

6.3 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 Additional State Pension.

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 in relation to prices over the period October 2017 to September 2018 and has decided to up-rate them in line with CPI.[3]

Benefits linked to earnings

6.7 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 increase in the level of earnings. Benefits affected include: the basic State Pension, the full rate of the new State Pension, the standard minimum guarantee element of Pension Credit, and the widow's[4] and widower's pension in Industrial Death Benefit.

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[1] http://www.legislation.gov.uk/ukpga/1992/5
[2] http://www.legislation.gov.uk/ukpga/2016/7/contents
[3] The Consumer Price Index (CPI) (all items) for the 12-month period to end September 2018 showed growth of 2.4 per cent.
[4] Apart from the initial rate.

6.8 The Secretary of State has discretion over how to measure changes in the general level of earnings and has decided to measure the increase over the appropriate period using the Average Weekly Earnings ("AWE") index for the quarter ending July 2018.[5]

6.9 Following her review, the Secretary of State has determined that benefits linked to the general level of earnings have not maintained their value in relation to earnings and has decided to up-rate them in line with the AWE. This is in accordance with the Government's commitment to a 'triple lock' of the basic State Pension and the full rate of the new State Pension (see paragraph 7.3).

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

6.10 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.

6.11 She has decided to up-rate premiums paid to disabled people receiving working-age benefits, the additional amount paid to severely disabled people receiving Pension Credit, the support group component of Employment and Support Allowance, and the limited capability for work and work-related activity element of Universal Credit in line with CPI.

6.12 In line with the announcement in the Autumn Budget 2018, Universal Credit work allowances will be increased by £1,000, which will take effect after the rates have been increased in line with the increase in prices.

Carer's Allowance and Scotland

6.13 The Scotland Act 2016[6] amended the Scotland Act 1998[7] 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's benefits) to the Scottish Parliament. The functions of the Secretary of State in relation to Carer's Allowance transferred to the Scottish Ministers with effect from 3 September 2018.

6.14 Following the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018[8], the Secretary of State has entered into an agency agreement[9] 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

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[5] The Average Weekly Earnings (AWE) revised statistic, whole economy, including bonuses, seasonally adjusted showed annual growth of 2.6 per cent for the quarter ending July 2018.
[6] http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted
[7] https://www.legislation.gov.uk/ukpga/1998/46/contents
[8] http://www.legislation.gov.uk/uksi/2018/626/contents/made
[9] https://www.gov.uk/government/publications/carers-allowance-in-scotland-agency-agreement-and-service-level-agreement

Scottish Ministers will be making provision with regard to the uprating of Carer's Allowance in Scotland.

Additional Information

6.15 The Minister for Family Support, Housing and Child Maintenance announced the proposed rates of social security benefits and pensions for 2019-20 to Parliament in a Written Statement on 23 November 2018.[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.

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 A full list of the proposed social security benefit rates for 2019-20 can be found on the website for the libraries of the House of Commons and the House of Lords at: http://data.parliament.uk/DepositedPapers/Files/DEP2018-1159/Proposed_Benefit_and_Pension_Rates_2019-2020.pdf

Basic State Pension

7.3 The statutory minimum increase to the basic State Pension is the rise in earnings (see paragraph 6.7). The Government has given a commitment to 'triple lock' the increase to the basic State Pension by the highest out of the growth in earnings, the growth in prices or 2.5 per cent. As the increase in earnings over the relevant period (2.6 per cent) is higher than both the growth in prices (2.4 per cent) and 2.5 per cent, the basic State Pension will increase by 2.6 per cent from April 2019.

7.4 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 £125.95 a week to £129.20 a week from April 2019.

7.5 The lower rate of Category B basic pension (payable to a married person or civil partner in certain circumstances) will be increased from £75.50 a week to £77.45 a week from April 2019.

New State Pension

7.6 The statutory minimum increase to the full rate of new State Pension is the rise in earnings. The Government has also committed to 'triple lock' the full rate of the new State Pension. As the increase in earnings over the relevant period (2.6 per cent) is higher than both the growth in prices and 2.5 per cent, the full rate of the new State Pension will increase by 2.6 per cent in April 2019 (from £164.35 to £168.60 a week).

[10] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-11-23/HCWS1104/

7.7 Existing awards of the new State Pension as at April 2019 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.

7.8 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 2.5859 per cent.[12] Where the transitional rate exceeds the full rate, the excess amount[13] will be increased in line with the increase in prices (see paragraph 7.16 below).

7.9 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.[14] 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.[15] 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.

Benefits that must increase by at least the increase in earnings (2.6 per cent)

7.10 The standard minimum guarantee element of Pension Credit for single people will be increased from £163.00 a week to £167.25 a week. The rate for couples will be increased from £248.80 a week to £255.25 a week.

7.11 The higher rate of widow's pension and the widower's pension in Industrial Death Benefit will be increased from £125.95 a week to £129.20 a week.

Benefits that must increase by at least the increase in prices (2.4 per cent)

7.12 Additional State Pension, Graduated Retirement Benefit, increments to State Pension, Attendance Allowance, Carer's Allowance, Disability Living Allowance, Personal Independence Payment, Industrial Injuries Benefit, Widowed Mother's Allowance, Widow's Pension, Widowed Parent's Allowance, Incapacity Benefit and Severe Disablement Allowance will be increased by 2.4 per cent. This also applies to transitional amounts of new State Pension above the level of the full rate, and to inherited increments of old State Pension payable to a surviving spouse or civil partner in the new State Pension.

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[11] Schedule 2 to the Pensions Act 2014

[12] The difference between £164.35 and £168.60 as a percentage of £164.35 (accounting for the rounding of the full rate to the nearest five pence).

[13] Also known as the 'protected payment'. The inheritable amount may also be derived from Graduated Retirement Benefit in the old State Pension.

[14] These components are derived from the additional State Pension in the old State Pension.

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

Benefits over which the Secretary of State has discretion

7.13 Statutory Sick Pay, Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay, Statutory Shared Parental Pay, the support group component of Employment and Support Allowance, disability premiums, carer premiums, the carer element of Universal Credit, and limited capability for work and work-related activity element of Universal Credit will be increased by 2.4 per cent.

7.14 Bereavement Support Payment will remain at the same rate as in 2018/19. This benefit replaced Bereavement Payment, Bereavement Allowance and Widowed Parent's Allowance for deaths occurring or that have occurred on or after 6 April 2017. 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.

7.15 Increments to new State Pension are up-rated in the same manner as old State Pension increments and will be increased by 2.4 per cent.

Rounding conventions

7.16 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. This includes, for example, the standard (full) rates of Category A and Category B basic State Pension and the full rate of new State Pension.

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) Act.

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.

10. Consultation outcome

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 There will be negligible impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is negligible. There will be an estimated £2.5 billion of extra payments in 2019-20 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 No Impact Assessment has been prepared for this instrument as 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 and Statutory Maternity Pay, since such employers are reimbursed 100 per cent of the amount paid out plus an additional 3 per cent in compensation for the employers' national insurance costs on these payments. Larger employers are reimbursed 92 per cent.

13.2 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 Lawrence Price, Policy Adviser, at the Department for Work and Pensions (Telephone: 0207 416 6266; email: lawrence.price@dwp.gsi.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Andrew Latto, Deputy Director, Devolution; and Welfare in Later Life, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Justin Tomlinson, Parliamentary Under Secretary of State for Family Support, Housing and Child Maintenance, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.