

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY BENEFITS UP-RATING REGULATIONS 2022

2022 No. 342

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 2022 (“the Regulations”) make provisions in consequence of the Social Security Benefits Up-rating Order 2022 (“the Up-rating Order”) (S.I. 2022/292)¹ which provides for the annual up-rating of social security benefits.
- 2.2 The amendment to the Social Security (Invalid Care Allowance) Regulations 1976² amends the earnings limit for carers in receipt of Carer’s Allowance.

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 2015³ in relation to the power in section 53 of the Pensions Act 2014⁴. 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 the provision to be included in this instrument, rather than requiring a separate instrument.

4. Extent and Territorial Application

- 4.1 The extent and application of this instrument is Great Britain save for regulation 2 (insofar as it applies to a benefit which is devolved under Part 3 of the Scotland Act 2016), 4 and 5 which extend and apply to England and Wales only. The revocations under regulation 7 have the same extent as the provisions that are revoked.
- 4.2 Subject to the agreement of the Northern Ireland Assembly, the Department for Communities in Northern Ireland will be making corresponding provision for Northern Ireland.
- 4.3 The Scottish Government will be responsible, in respect of the devolved benefits only, for making corresponding provision for Scotland.

¹ <https://www.legislation.gov.uk/ukSI/2022/292>

² <https://www.legislation.gov.uk/ukSI/1976/409/contents>

³ <https://www.legislation.gov.uk/ukpga/2015/20/contents>

⁴ <https://www.legislation.gov.uk/ukpga/2014/19/contents>

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Regulations are consequential on the Social Security Benefits Up-rating Order 2022 which is made under sections 150, 150A, and 151A of the Social Security Administration Act 1992 (“the 1992 Act”)⁵. Under those sections the Secretary of State must review the rates of certain social security benefits.
- 6.2 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 1992 Act to make such provisions.

Carer’s Allowance and Scotland

- 6.3 The Scotland Act 2016⁶ amended the Scotland Act 1998⁷ 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 benefits) to the Scottish Parliament. The 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.
- 6.4 Following the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018⁸, the Secretary of State has entered into an agency agreement⁹ 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 Scottish Ministers will be making provision with regard to the up-rating of Carer’s Allowance in Scotland.

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 in 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.
- 7.2 Regulation 3 (Persons not ordinarily resident in Great Britain) triggers the regulations that restrict the application of some increases of benefits, including State Pensions, specified in the Up-rating Order to beneficiaries who are ordinarily resident in Great

⁵ <https://www.legislation.gov.uk/ukpga/1992/5/contents>

⁶ <https://www.legislation.gov.uk/ukpga/2016/11/contents>

⁷ <https://www.legislation.gov.uk/ukpga/1998/46/contents>

⁸ <https://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>

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. an international agreement or a reciprocal agreement that allows for up-rating.

- 7.3 Regulation 4 (Amendment of the Social Security (Invalid Care Allowance) Regulations 1976) increases the amount which a person eligible for payment of Carer's Allowance can earn in the immediately preceding week without being deemed gainfully employed and losing their entitlement. The earnings limit in Carer's Allowance is this year being increased by the September 2021 Consumer Prices Index figure of 3.1 per cent, which is consistent with other decisions taken as part of the wider up-rating exercise.
- 7.4 Regulation 5 (Amendment of the Social Security Benefit (Dependency) Regulations 1977)¹⁰ specifies the increase by 3.1 per cent of the earnings limit for spouses or partners of people claiming increases of Carer's Allowance in respect of dependent children and qualifying young persons in transitionally protected cases. These increases were abolished by section 1(3)(e) of, and Schedule 6 to, the Tax Credits Act 2002¹¹ but are saved for transitional cases by virtue of article 3 of the Tax Credits Act 2002 (Commencement No. 3 and Transitional Provisions and Savings) Order 2003¹² (S.I. 2003/938). The 3.1 per cent increase mirrors the September 2021 figure for the annual growth in prices, as measured by the Consumer Prices Index.
- 7.5 Regulation 6 (Amendment of the Social Security (Claims and Payments) Regulations 1987)¹³ increases by 3.1 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.
- 7.6 Regulation 7 (Revocations) revokes the Social Security Benefits Up-rating Regulations 2020¹⁴ (S.I. 2020/266) to the extent that they remain in force and the Social Security Benefits Up-rating Regulations 2021¹⁵ (S.I. 2021/312).

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 Regulations form part of the regular annual up-rating requirements and consultation is therefore not usually necessary.

¹⁰ <https://www.legislation.gov.uk/ukxi/1977/620/contents/made>

¹¹ <https://www.legislation.gov.uk/ukpga/2002/21/contents>

¹² <https://www.legislation.gov.uk/ukxi/2003/938/contents/made>

¹³ <https://www.legislation.gov.uk/ukxi/1987/878/contents/made>

¹⁴ <https://www.legislation.gov.uk/ukxi/2020/266/contents>

¹⁵ <https://www.legislation.gov.uk/ukxi/2021/312/contents/made>

10.2 The Regulations were considered by the Social Security Advisory Committee which agreed that proposals in respect of the Regulations should not be referred to it.

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 negligible.

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

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.

14.2 The Government will keep the earnings limit in Carer's Allowance under review and make further changes when they are warranted and affordable.

15. Contact

15.1 Dave Pryce, Policy Adviser, at the Department for Work and Pensions (email: dave.pryce@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 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.