EXPLANATORY MEMORANDUM TO

THE GUARANTEED MINIMUM PENSIONS INCREASE ORDER 2023

2023 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 His Majesty.

2. Purpose of the instrument

2.1 This instrument specifies the amount by which the Guaranteed Minimum Pension element of an individual's occupational pension entitlement (a Guaranteed Minimum Pension accrued in a formerly contracted-out occupational pension scheme between 1978 and 1997), must be increased with effect from 6 April 2023.

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 of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

4.3 The Department for Communities in Northern Ireland will be producing its own legislation replicating the effect of this Order for Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister for Pensions has made the following statement regarding Human Rights:

"In my view the provisions of the Guaranteed Minimum Pensions Increase Order 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This Order fulfils the Secretary of State's statutory duty under section 109 of the Pension Schemes Act 1993[1] ("the 1993 Act") to provide for an annual increase of the rate of Guaranteed Minimum Pensions where there has been an increase in the general level of prices in the period under review.

[1] [1] https://www.legislation.gov.uk/ukpga/1993/48/contents/enacted

7. Policy background

What is being done and why?

7.1 The State Pension used to be made up of two parts: the flat rate basic State Pension and the earnings-related additional State Pension. However, many employees were already members of pension schemes provided by their employer, and between 6 April 1978 to 5 April 1997, salary related or defined benefit occupational pension schemes could contract out their members from the earnings related element of the State Pension (the "additional State Pension"), provided the scheme promised to pay a Guaranteed Minimum Pension to each scheme member. The Guaranteed Minimum Pension was intended to provide a pension which was broadly similar to the amount of additional State Pension the member would otherwise have been entitled to had they stayed in the State system.

7.2 A Guaranteed Minimum Pension is payable for life at age 60 for a woman or 65 for a man, and includes survivor benefits which are payable to a widow, widower or surviving civil partner of the member. Contracting out continued to operate until April 2016, but Guaranteed Minimum Pensions did not accrue after 1997.

7.3 This is a yearly statutory Order which specifies the amount by which the Guaranteed Minimum Pension element of an individual's contracted-out occupational pension, built up from 6 April 1988 to 5 April 1997 must be increased, with effect from April each year. Guaranteed Minimum Pensions are increased yearly to help ensure that the value of a member's pension has some protection against the effects of inflation.

7.4 Under section 109(1) of the 1993 Act the Secretary of State is required to annually review the general level of prices in Great Britain.

7.5 Where there has been an increase in the general level of prices since the last review, section 109(2) of the 1993 Act requires the Secretary of State to specify the percentage by which there is to be an increase in the rate of that part of Guaranteed Minimum Pensions which is attributable to earnings factors for the tax years in the relevant period. The relevant period is the period beginning with the tax year 1988-89 and ending with the tax year 1996-97: see section 109(3A) of the 1993 Act. A Guaranteed Minimum Pension built up before 6 April 1988 is not subject to a statutory requirement to increase.

7.6 In accordance with section 109(3) of the 1993 Act, the specified percentage is to be the percentage increase in the general level of prices or 3 per cent, whichever is less.

7.7 The Secretary of State measures the increase in the general level of prices in the appropriate period using the Consumer Prices Index.

7.8 The increase in the Consumer Prices Index for the appropriate review period (i.e. the 12 months to September 2022) is 10.1 per cent. This instrument therefore specifies that the minimum rate of Guaranteed Minimum Pensions is to be increased by 3 per cent.

7.9 As the rate of inflation is higher than the cap the increase will be 3 per cent.

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.[2]

9. Consolidation

9.1 This Order applies only to the 12 months commencing 6 April 2023 and does not amend another statutory instrument, consolidation is therefore not necessary.

10. Consultation outcome

10.1 There is no statutory duty on the Secretary of State to consult on this Order. The Department does not consider informal consultation is appropriate in this case, as this is a technical Order which gives effect to a statutory requirement, the terms of which are specified in primary legislation.

11. Guidance

11.1 Trustees and scheme administrators of formerly contracted-out schemes holding Guaranteed Minimum Pensions (which ceased to accrue from 1997) will be aware of the requirement to increase the Guaranteed Minimum Pensions in accordance with this instrument; no guidance is therefore necessary.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no new impact on pension schemes in the private sector, as businesses are already required by law to provide a measure of protection against inflation.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people) from the original requirement to uprate Guaranteed Minimum Pensions in line with general prices.

13.3 Removing small businesses (i.e. small schemes) from this requirement would adversely affect scheme members because their pensions would not be protected from the effects of inflation.

14. Monitoring & review

14.1 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Minister for Pensions (Parliamentary Under-Secretary of State), Laura Trott, MP, has made the following statement:

"There are no plans to monitor the effect of this Order. There is a statutory requirement to annually review the general level of prices in Great Britain and where prices have increased, to lay a draft Order before Parliament".

[2] European Union (Withdrawal) Act 2018 https://www.legislation.gov.uk/ukpga/2018/16/contents

15. Contact

15.1 Molly Adcock at the Department for Work and Pensions email: molly.adcock@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Fiona Frobisher, Deputy Director for Defined Benefit Pension Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Laura Trott at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.