EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY BENEFITS UP-RATING ORDER 2009

2009 No.

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 2009 ("the Order") fulfils the statutory duty of the Secretary of State to review the rates of social security benefits and provides for the up-rating of those 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 contributory[1], non-contributory[2] and extra-costs benefits[3] at least in line with prices.

4.3 The Order also increases incapacity benefits (incapacity benefit and severe disablement allowance). However the power provided by paragraph 10 of schedule 4 to the welfare reform Act 2007 (c.5) has been used for the first time to make regulations (the Employment and Support Allowance (Up-rating Modification) (Transitional) Regulations 2008) that modify the statutory requirement to increase incapacity benefits at least in line with prices so that the Up-rating Order may, instead, reduce the age related additions.

4.4 Section 150A(1) 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.

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[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.

4.5 The Secretary of State may also, if he considers it appropriate, having regard to the economic situation and any other matters which he considers relevant, increase other benefits by a percentage as he thinks fit. These other benefits include the income related benefits[4] (including contribution-based Jobseeker's Allowance and contribution-related Employment and Support Allowance).

4.6 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 (Cm 7537) 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. Equivalent provision will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

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

In my view the provisions of the Social Security Benefits Up-rating Order 2009 are compatible with the Convention rights.

7. Policy background

- *What is being one and why?*

7.1 The annual review has been performed on the social security benefit rates. The up-rating Order provides for benefits to be increased by the amounts set out in the following paragraphs. A full list of the proposed social security benefit rates for 2009/2010 can be found on the DWP website at; http://www.dwp.gov.uk/mediacentre/pressreleases/2008/dec/NewBenefitRates.pdf

Basic State Pension, Carer's Allowance, Attendance Allowance, Disability Living Allowance, Industrial Injuries Benefits

7.2 These benefits and allowances are increased by 5.0 per cent. in line with the increase in the Retail Prices Index from 1 October 2007 to 30 September 2008.

Pension Credit standard minimum guarantee

[4] Income related benefits = Income Support, Jobseeker's Allowance, Employment and Support Allowance Housing Benefit and Council Tax Benefit.

7.3 The standard minimum guarantee element of State Pension Credit is increased by 4.8 per cent. in line with the announcement made in the 2008 Pre-Budget Report.

Income related benefits

7.4 Income related benefits are increased by 6.3 per cent, which is the September 2008 increase in the Rossi index (Retail Prices Index 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 is aged over 60. These premiums will be increased so that overall the personal allowance for a household with a person over the age of 60 will equal 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 is aged over 60 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 equal 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) are increased by the Rossi index (6.3 per cent.) and the severe disability premium (and the additional amount for severe disability in Pension Credit) is increased in line with the Retail Prices Index (5.0 per cent.).

Contributory incapacity benefits

7.8 From April 2009, customers in receipt of incapacity benefit without an age addition will have their benefit up-rated by the Rossi index (6.3 per cent.) in line with Employment and Support Allowance, Jobseeker's Allowance and Income Support. Those customers who receive an age addition will receive a cash increase in their overall benefit amounting to at least half of Rossi (3.15 per cent.). (The Explanatory Memorandum to The Employment and Support Allowance (Up-rating Modification) (Transitional) Regulations 2008 provides more detailed background information and is available at;
http://www.opsi.gov.uk/si/si2008/em/uksiem_20083270_en.pdf.)

7.9 Customers in receipt of Severe Disablement Allowance with an age addition will have the overall level of their benefit up-rated by the Rossi index in line with the Government's aim of protecting the most severely disabled people.

Commencement

7.10 The Order provides for the increases to take effect, in most cases, in the week commencing 6 April 2009. However for Statutory maternity pay, statutory paternity pay, statutory adoption pay, housing benefit, council tax benefit 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*

7.11 Informal consolidation of the instrument will be addressed by up-dating 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/advisers/docs/lawvols/bluevol/.

8. Consultation outcome

8.1 Consultation is not necessary because the Order forms part of the regular annual up-rating requirements. However the policy to modify the up-rating requirements for contributory incapacity benefits was subject to formal consultation as part of the government's strategy for welfare reform as set out in its Green Paper 'No one written off: reforming welfare to reward responsibility' (Cm 7363) published in July 2008. The government's response was published in the White Paper 'Raising expectations and increasing support' (Cm 7506) on 10 December 2008 and is available at; http://www.official-documents.gov.uk/document/cm75/7506/7506.pdf.

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.

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 per cent. of the Statutory Adoption Pay, Statutory Paternity Pay and Statutory Maternity Pay paid out. Larger employers are reimbursed 92 per cent. 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 (PTS). This will minimise the impact of increased 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

Carol Krahe at the Department for Work and Pensions (Tel: 0113 232 4646. email:Carol.Krahe@dwp.gsi.gov.uk.) can answer queries regarding this statutory instrument.