EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY BENEFITS UP-RATING ORDER 2017

2017 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 Her Majesty.

2. Purpose of the instrument

2.1 The Social Security Benefits Up-rating Order 2017 ("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.

Other matters of interest to the House of Commons

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

4. Legislative Context

4.1 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[1] ("the 1992 Act").

4.2 Section 150A was amended by the Pensions Act 2014[2] ("the 2014 Act") to insert a reference to the full rate of the new State Pension, introduced by that Act for people reaching State Pension age on or after 6 April 2016. Section 151A was inserted in the 1992 Act by the 2014 Act, and provides for up-rating of certain amounts which exceed the full rate of new State Pension, and are payable under transitional arrangements. This is the first up-rating of new State Pension and consequently the first use of these new powers.

4.3 Many of the main rates of benefits are frozen at their 2015-16 rates under the Welfare Reform and Work Act 2016[3]. They were not part of the Secretary of State's review under section 150 of the 1992 Act and are not included in the Order.

4.4 Section 150 of the 1992 Act requires the Secretary of State to review and up-rate certain contributory, non-contributory and extra-costs disability benefits at least in line with the general level of prices. This also applies in respect of transitional components of a new State Pension award covered by section 151A, which must be increased in line with prices.

[1] http://www.legislation.gov.uk/ukpga/1992/5
[2] http://www.legislation.gov.uk/ukpga/2014/19/contents
[3] http://www.legislation.gov.uk/ukpga/2016/7/contents

4.5 The Secretary of State has discretion over how to measure changes in the general level of prices. The Secretary of State has measured the increase in the general level of prices in the appropriate period using the Consumer Price Index (CPI).

4.6 The Secretary of State has determined that benefits linked to the general level of prices have not maintained their value in relation to prices as measured by the CPI over the period October 2015 to September 2016.[4] He has decided to up-rate them by prices in line with CPI.

4.7 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 such a percentage as he thinks fit. He has decided to up-rate premiums paid to disabled people receiving working-age benefits, the Support Group component of Employment and Support Allowance, and the Limited Capability for Work and Work-Related Activity element of UC in line with CPI (1.0 per cent).

4.8 Section 150A(1) and (2) of the 1992 Act requires the Secretary of State to review and up-rate the standard minimum guarantee element of Pension Credit and widow's[5] and widower's pension in Industrial Death Benefit at least in line with earnings.

4.9 The Secretary of State has determined that these benefits have not maintained their value in relation to earnings as measured by annual growth in the Average Weekly Earnings (AWE) statistic for the quarter ending July 2016.[6] He has decided to up-rate them in line with the growth in earnings as measured by AWE (2.4 per cent).

4.10 Sections 150A(1) and (2) of the Act also require that the basic State Pension and the full rate of the new State Pension must be reviewed and up-rated at least in line with earnings. The Secretary of State has decided to up-rate these by 2.5 per cent in line with the Government's commitment to a "triple lock" on these payments.

4.11 Each benefit has an individual rounding convention for how new rates are calculated. The majority of new rates are rounded to the nearest 5p. 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.

4.12 The Minister for Welfare Delivery announced the proposed rates of social security benefits and pensions for 2017-18 to Parliament in a Written Statement on 28 November 2016.[7]

4.13 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.

4.14 As is the case every year, the Secretary of State intends to make regulations consequential to this Order which trigger the provisions that disapply the uprating increases to the State Pension in respect of persons resident in countries where there is

[4] The Consumer Price Index (CPI) (all items) for the 12-month period to end September 2016 showed growth of 1.0 per cent

[5] Apart from the initial rate

[6] The Average Weekly Earnings (AWE) revised statistic, whole economy, including bonuses, seasonally adjusted showed annual growth of 2.4 per cent for the quarter ending July 2016

[7] http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-11-28/HCWS287/

neither a legal obligation to up-rate the State Pension, nor any reciprocal agreement in place that provides for up-rating.

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 Subject to the agreement of the Northern Ireland Assembly, the Department of Social Development in Northern Ireland will be making corresponding provision for Northern Ireland.

6. European Convention on Human Rights

6.1 The Minister for Welfare Delivery, Rt. Hon Caroline Nokes, MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Social Security Benefits Up-rating Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The annual review of social security benefit rates is required by sections 150, 150A and 151A of the 1992 Act. A full list of the proposed social security benefit rates for 2017-18 can be found on the website for the libraries of the House of Commons and the House of Lords at: http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2016-11-28&td=2016-11-28&search_term=Department+for+Work+and+Pensions&itemId=119004.

Basic State Pension

7.2 The statutory minimum increase to the basic State Pension is the rise in earnings (see 4.10). However, the Government has given a 'triple lock' commitment to increase the basic and new State Pension by the highest in the growth in average earnings, the growth in prices or 2.5 per cent. As both the relevant increase in prices (1.0 per cent CPI) and earnings (2.4 per cent AWE) are lower, the basic and full rate of new State Pension will increase by 2.5 per cent from April 2017.

7.3 The rate of the full basic pension in a Category A and Category B retirement pension (based respectively on a person's own National Insurance contributions and those of a late spouse or civil partner) will be increased from £119.30 a week to £122.30 a week.

7.4 The lower rate of Category B basic pension, payable in certain circumstances to a married person or civil partner, will be increased from £71.50 a week to £73.30 a week.

7.5 There were an estimated 13 million recipients of the basic State Pension during 2016-17.

New State Pension

7.6 The full rate of new State Pension will increase by 2.5 per cent in April 2017 – from £155.65 to £159.55 a week.

7.7 Existing awards of new State Pension as at April 2017 will be at the transitional rate. This incorporates a "starting amount" based on a person's National Insurance contributions to 5 April 2016 and comprises the higher of the calculations of their State Pension as at 6 April 2016 under the rules of both the new system and the "old" (i.e. the State Pension for people who reached State Pension age before 6 April 2016). The transitional rate is therefore not a fixed rate, and can be more or less than, or equal to, the full rate. Schedule 2 to the 2014 Act provides that transitional rates of new State Pension equal to or less than the full rate are to be increased by the percentage increase in the full rate. These amounts will therefore be increased by 2.5056 per cent - the difference between £155.65 and £159.55 as a percentage of £155.65, taking account of the rounding of the new full rate to the nearest 5p. Where the transitional rate exceeds the full rate, the excess amount – also known as the "protected payment" – will be increased in line with the increase in prices (see paragraph 7.14 below).

7.8 Schedules 4 and 9 to the 2014 Act provide, respectively, for the up-rating of inherited amounts and shared state pension. These are components which are derived from the additional State Pension in the old State Pension, and may be payable in certain circumstances as part of the transitional arrangements to widowed or divorced people who reach State Pension age under the new system. These amounts are up-rated by either the percentage increase in the full rate or prices, or by a combination of the two, depending on the total amount of the person's award, excluding any increments from deferral. For example: in September 2016, Person A becomes entitled to £145 a week new State Pension at the transitional rate, plus an inherited amount of £20. The total award is £165. At up-rating 2017, £145 plus the first £10.65 of the inherited amount will be increased in line with the increase in the full rate. The balance of £9.35 inherited amount will be increased by prices. This ensures that transitional amounts are treated consistently for up-rating purposes.

7.9 Around 180,000 individuals were estimated to reach State Pension age in 2016-17 with entitlement to at least the full rate of new State Pension payable directly by the state.[8]

Benefits that must rise at least with earnings (2.4 per cent)

7.10 The standard minimum guarantee element of Pension Credit for single people will be increased from £155.60 a week to £159.35 a week. The rate for couples will be increased from £237.55 a week to £243.25 a week.

7.11 There have been an estimated 1,596,000 recipients of the Guarantee Credit element of Pension Credit during 2016-17.

7.12 The higher rate of widow's pension and the widower's pension in Industrial Death Benefit will be increased from £119.30 a week to £122.30 a week.

7.13 There have been an estimated 5,000 recipients of Industrial Death Benefit during 2016-17.

[8] See figure 19 in https://www.gov.uk/government/publications/new-state-pension-impact-on-an-individuals-pension-entitlement-longer-term-effects . This estimate excludes individuals who were contracted-out of the additional State Pension and receive the equivalent of at least the full rate through a combination of the pension paid directly by the state and the pension paid by the contracted-out scheme in place of the State scheme benefits.

Benefits that must rise at least with prices (1.0 per cent)

7.14 Additional State Pension, Graduated Retirement Benefit, increments to State Pension, Attendance Allowance, Carer's Allowance, Disability Living Allowance, Personal Independence Payment, Industrial Injuries Benefit, Bereavement Benefits, Incapacity Benefit and Severe Disablement Allowance will be increased by 1.0 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.

Benefits over which the Secretary of State has discretion

7.15 Statutory Sick Pay, Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay, Statutory Shared Parental Pay, Support Group component of Employment and Support Allowance, Disability premiums, Carer premiums, Carer element of UC, and Limited capability for Work and Work-Related Activity component of UC will be increased by 1.0 per cent.

7.16 Increments to new State Pension will be treated in the same way for up-rating purposes as old State Pension increments, which is to say that they will be increased by 1.0 per cent.

Consolidation

7.17 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 Order forms part of the regular annual up-rating requirements, and is therefore not subject to consultation requirements.

9. Guidance

9.1 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.

10. Impact

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

10.2 The impact on the public sector is that there will be an estimated £1.9 billion of extra payments in 2017-18 from the National Insurance Fund as a result of the Order, as estimated by the Government Actuary in the report laid before Parliament.

10.3 An Impact Assessment has not been prepared for this instrument as it has negligible impact on business or civil society organisations.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses. In respect of Statutory Adoption Pay, Statutory Paternity Pay, Statutory Maternity Pay and Statutory Sick Pay this Order does not impose any new costs on small businesses and the impact on such employers continues to be minimised in respect of Statutory

Adoption Pay, Statutory Paternity Pay and Statutory Maternity Pay, in respect of small businesses whose annual gross National Insurance payments are £45,000 or less, as such employers are reimbursed 100 per cent of the amount paid out plus an additional 3 per cent in compensation for employers' national insurance costs on these payments. (Larger employers are reimbursed 92 per cent).

11.2 Small businesses, like all employers, meet the costs of Statutory Sick Pay without reimbursement but are able to access the services of the Fit for Work Service, a free occupational health service funded by Government for employees absent from work through ill health for four weeks or more.

12. Monitoring & review

12.1 The rates of social security benefits covered by sections 150, 150A and 151A of the 1992 Act are subject to review each tax year.

13. Contact

13.1 James McMeekin at the Department for Work and Pensions (Telephone: 0207 449 5387 or e-mail: james.mcmeekin@dwp.gsi.gov.uk) can answer any queries regarding the instrument.