EXPLANATORY MEMORANDUM TO

The Social Security (2022 Benefits Up-rating) Regulations (Northern Ireland) 2023

S.R. 2023 No. 30

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Communities (the Department) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under sections 70(8), 90, 113(1)(a) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, sections 5(1)(q), 135(3) and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992 and sections 20(1) and 51(6) of the Pensions Act (Northern Ireland) 2015 and is subject to the confirmatory resolution procedure.

2. Purpose

2.1. These Regulations revoke and re-enact the provisions of the Social Security Benefits Up-rating (No. 2) Regulations (Northern Ireland) 2022 which would otherwise cease to have effect by virtue of section 51(3) of the Pensions Act (Northern Ireland) 2015.These Regulations contain only provisions in consequence of the Social Security (2022 Benefits Up-rating) Order (Northern Ireland) 2023 ("the Up-rating Order") and are one of a series of statutory rules relating to the annual up-rating of social security benefits and pensions.

2.2. Provision is also included to amend the earnings limit in Carer's Allowance from £128 to £132 net per week. This limit defines the amount a person can earn without their earnings extinguishing their entitlement to the benefit or preventing an entitlement being established.

3. Background

3.1. Regulation 1 provides for the title, commencement and interpretation.

3.2. Regulation 2 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 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. Overlapping benefit provisions prevent a person who is entitled to two or more benefits from being paid both of them in full.

3.3. Regulation 3 restricts the application of increases in benefits (including State Pension) specified in the Up-rating Order where the beneficiary is not ordinarily resident in Northern Ireland. This provision follows the long-standing policy that benefits payable to people not ordinarily resident in Northern Ireland are not up-rated unless there is a legal obligation or

reciprocal agreement to do so e.g. another Member State of the European Economic Area, Switzerland or a country or territory with which the United Kingdom has a reciprocal agreement that allows for up-rating.

3.4. Regulation 4 increases from £128 to £132 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 to Carer's Allowance. The Westminster Government takes a number of factors into account when looking at the Carer's Allowance earnings limit, including changes to wages and work incentives, and the position of the public finances and then decides whether an increase is warranted and affordable. For 2022, it has been decided to increase the earnings limit by £4.

3.5. Regulation 5 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 in transitionally protected cases. These increases were abolished by sections 1(3)(e) and 60 of, and Schedule 6 to, the Tax Credits Act 2002 but are saved for transitional cases by virtue of Article 2 of the Tax Credits Act 2002 (Transitional Provisions and Savings) Order (Northern Ireland) 2003. The 3.1 per cent increase mirrors the September 2021 figure for the annual growth in prices, as measured by the Consumer Prices Index (CPI).

3.6. Regulation 6 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. The 3.1 per cent increase again mirrors the September 2021 CPI figure.

3.7. Regulation 7 revokes the Social Security Benefits Up-rating (No. 2) Regulations (Northern Ireland) 2022.

4. Consultation

4.1. As the Regulations make, in relation to Northern Ireland, only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain consultation with the Social Security Advisory Committee is not required.

5. Equality Impact

5.1. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals and has concluded that the proposals do not have significant implications for equality of opportunity or good relations. In light of this, the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

6.1. These Regulations do not require a Regulatory Impact Assessment as they do not impose a cost on business, charities, social enterprises or voluntary bodies.

7. Financial Implications

7.1. The total cost of the 2022/2023 up-rating exercise is expected to increase the Department's annually managed expenditure by approximately £223 million.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department is satisfied that these Regulations comply with section 24 of the Northern Ireland Act 1998 (conventions rights, etc.).

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The corresponding Great Britain Regulations are the Social Security Benefits Up-rating Regulations 2022.

10.2. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support; during any periods where normal Assembly business is inoperative, it is sometimes necessary to re-make confirmatory regulations to protect the ethos of single systems of social security, as provided for in section 87 of the Northern Ireland Act 1998. To enable the new rates that were in place from 11 April 2022 to continue in force, it was necessary to make these subsequent Regulations.

11. Additional Information

11.1. Not applicable.