EXPLANATORY MEMORANDUM TO THE

SOCIAL SECURITY BENEFITS UP-RATING REGULATIONS 2005

2005 No.632

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. Description

2.1 The Social Security Benefits Up-rating Regulations 2005 make provisions in consequence of the Social Security Benefits Up-rating Order 2005. In particular, they: provide that, where a question has arisen about the effect of the Up-rating Order on a benefit already in payment, the altered rates will not apply until that question is determined; restrict the application of the increases specified in the Up-rating Order in cases where the beneficiary lives abroad; raise the earnings limits for child dependency increases payable with a carer's allowance in line with the increase for other benefits in Article 8 of the Up-rating Order.

3. Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None

4. Legislative background

4.1 The Social Security Benefits Up-rating Regulations 2005 are being made in consequence of the Social Security Benefits Up-rating Order 2005 which fulfils the statutory duty of the Secretary of State to review the rates of social security benefits and provides for the annual uprating of those benefits.

4.2 This instrument is being made in order to ensure that uprating is applied correctly to those to whom payment of an increase (in full or part) may not be appropriate, benefit recipients living abroad and carers with dependent children.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 These regulations are being made in consequence of the Up-rating Order which fulfils the statutory duty of the Secretary of State to review the rates of social security benefits and provides for the annual uprating of those benefits.

7.2 The provision to prevent altered rates from applying until a question which has arisen about the effect of the Up-rating Order on a benefit already awarded is determined is intended to avoid overpayment of benefit where the increase is not payable, either in part or full, (for example, where adjustment of a benefit is required, under the overlapping benefit provisions, because another benefit is also in payment) or where there is no entitlement to the increase (for example, where the award is being reviewed).

7.3 The restriction on the application of increases specified in the Up-rating Order in cases where the beneficiary lives abroad follows the long-standing policy of successive Governments that benefits payable to people living abroad are not uprated unless there is a legal obligation or reciprocal agreement to do so.

7.4 The increase in the earnings limits for child dependency increases payable with a carer's allowance in line with the increase for other benefits in Article 8 of the Up-rating Order ensures that those receiving child dependency increases with carer's allowance are treated in the same way as those receiving child dependency increases with other benefits.

7.5 Around 1 million benefit recipients live abroad of whom around half will not have their benefit uprated. Around 19,000 Carer's Allowance recipients are receiving a Child Dependency Increase. The number of people affected by the technical provision in regulation 2 is not known.

7.6 These consequential regulations, of which a similar set is made each year following the Up-rating Order, have not been subject to a consultation exercise. However, there has been some public interest in the case of Carson, in which the Court of Appeal held that the Government is not in breach of the European Convention on Human Rights by not annually uprating State Pensions in countries where there is no legal obligation or reciprocal agreement to do so. This case is to come before the House of Lords on 28 February.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared because these regulations will have no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is included in the overall cost of uprating benefits of £2.92 billion which was included in the explanatory memorandum for the Social Security Benefits Up-rating Order 2005.

9. Contact

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