EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY BENEFITS UP-RATING REGULATIONS 2007

2007 No. 775

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 2007 make provisions in consequence of the Social Security Benefits Up-rating Order 2007 ('the Up-rating Order'). 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 by the Secretary of State, an appeal tribunal or a Commissioner,
- 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, and
- increase the amount of benefit that a person must be left with after any deductions in respect of care home fees.

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 2007 are being made in consequence of the Social Security Benefits Up-rating Order 2007 which fulfils the statutory duty, under Section 150 of the Social Security Administration Act 1992 (c.5), of the Secretary of State to review the rates of social security benefits and provides for the annual up-rating of those benefits.

4.2 The provisions in these regulations cannot be included in the Up-rating Order because it is made under section 150 of the Social Security Administration Act 1992 and there is no power to do so in that section.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 Regulation 2 prevents any altered rate from applying until a question, which has arisen about the effect of the Up-rating Order on a benefit already awarded, is determined. This provision 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 because another benefit is also in payment (under the overlapping benefit provisions).

7.2 Regulation 3 restricts the application of increases specified in the Up-rating Order where the beneficiary lives abroad. This provision follows the long-standing policy that benefits payable to people living abroad are not up-rated unless there is a legal obligation or reciprocal agreement to do so. (Around 1 million benefit recipients live abroad of whom around half will not have their benefit up-rated.)

7.3 Regulation 4 increases 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. This 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.

7.4 Regulation 5 increases 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.

Consultation

7.5 As these regulations are consequential on the Up-rating Order there is no requirement to consult the Social Security Advisory Committee in respect of them.

Consolidation and Guidance

7.6 Informal consolidation of this instrument will be included in due course in the Department's "the law relating to Social Security" (the Blue Volumes) which are available at no cost to the public on the internet at: http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/

8. Impact

8.1 A Regulatory Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

8.2 The impact on the public sector is included in the overall estimated cost of up-rating benefits of £3.56 billion[1]. This total cost was quoted in the explanatory memorandum for the Social Security Benefits Up-rating Order 2007.

9. Contact

Carol Krahe at the Department for Work and Pensions; Tel- 0113 232 4646 or Email: carol.krahe@dwp.gsi.gov.uk can answer any queries regarding this instrument

[1] This amount relates to additional programme costs; there is no increase in administration costs.