EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY BENEFITS UP-RATING REGULATIONS 2023

2023 No. 340

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 His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Social Security Benefits Up-rating Regulations 2023 ("the Regulations") make provisions in consequence of the Social Security Benefits Up-rating Order 2023[1] ("the Up-rating Order") (S.I. 2023/316) which provides for the annual up-rating of social security benefits.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regulation 3 is made in part under the power to make an order (as opposed to regulations) in section 53 of the Pensions Act 2014[2]. However, section 105 of the Deregulation Act 2015[3] enables different forms of subordinate legislation (orders, regulations and rules) to be combined where it is administratively convenient and would result in a more coherent legislative story.

3.2 This instrument therefore relies on section 105 of the Deregulation Act 2015 in relation to the power in section 53 of the Pensions Act 2014 so that a separate instrument is not required. Section 53 is a power to make consequential amendments in relation to new State Pension.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain save for regulation 2 (insofar as it applies to a benefit which is devolved under Part 3 of the Scotland Act 2016[4]), 4 and 5 which extend to England and Wales only.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain save for regulation 2 (insofar as it applies to a benefit which is devolved under Part 3 of the Scotland Act 2016), 4 and 5 which apply to England and Wales only.

4.3 The matters covered by this instrument are transferred in Northern Ireland.

[1] https://www.legislation.gov.uk/uksi/2023/316/contents/made
[2] https://www.legislation.gov.uk/ukpga/2014/19/contents
[3] https://www.legislation.gov.uk/ukpga/2015/20/contents
[4] https://www.legislation.gov.uk/ukpga/2016/11/contents

4.4 The Scottish Government will be responsible, in respect of the devolved benefits only, for making corresponding provision for Scotland.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Regulations are consequential on the Social Security Benefits Up-rating Order 2023 which is made under sections 150, 150A, and 151A of the Social Security Administration Act 1992[5] ("the 1992 Act"). Under those sections the Secretary of State must review the rates of certain social security benefits.

6.2 In the main the provisions in the Regulations cannot be included in the Up-rating Order because there is no power in section 150, 150A or 151A of the 1992 Act to make such provisions.

Carer's Allowance and Scotland

6.3 The Scotland Act 2016 amended the Scotland Act 1998[6] by inserting exceptions to reserved matters under Schedule 5, Part 2, section F1 (social security schemes). This devolved competence for certain areas of social security (including carer benefits) to the Scottish Parliament. The functions of the Secretary of State in relation to Carer's Allowance, in so far as they relate to residents in Scotland, transferred to the Scottish Ministers with effect from 3 September 2018.

6.4 Following the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018[7], the Secretary of State has entered into an agency agreement[8] with the Scottish Ministers to deliver Carer's Allowance in Scotland. Functions exercisable under an agency agreement cannot include the making of subordinate legislation and consequently the Scottish Ministers will make provision with regard to Carer's Allowance in Scotland.

7. Policy background

What is being done and why?

7.1 Regulation 2 (Exceptions relating to payment of additional benefit by virtue of the Up-rating Order) applies to prevent the incorrect payment of benefit in circumstances where someone is entitled to more than one benefit which is paid for the same purpose. For example, both the State Pension and Carer's Allowance provide an income in place of expected or actual reduction in earnings capacity. In effect they are both income-replacement benefits. And in law these are what are known as overlapping benefits. Accordingly, to pay both would be to provide double provision for the same purpose. So, at up-rating it is important that the decision making is coordinated so that such benefits whilst they are up-rated individually are not paid

[5] https://www.legislation.gov.uk/ukpga/1992/5/contents
[6] https://www.legislation.gov.uk/ukpga/1998/46/contents
[7] https://www.legislation.gov.uk/uksi/2018/626/contents/madehttps://www.legislation.gov.uk/uksi/2018/626/contents/made
[8] https://www.gov.uk/government/publications/carers-allowance-in-scotland-agency-agreement-and-service-level-agreement

separately but only after the overlapping benefit provisions are applied to them. Regulation 2 allows that to happen.

7.2 Regulation 3 (Persons not ordinarily resident in Great Britain) triggers the regulations that disallow State Pension up-rating for overseas residents. This implements the long-standing policy that State Pensions payable to overseas residents are not up-rated unless there is a legal requirement to do so.

7.3 Regulation 4 (Amendment of the Social Security (Invalid Care Allowance) Regulations 1976)[9] increases the amount which a person eligible for payment of Carer's Allowance can earn without being deemed gainfully employed and losing their entitlement. The earnings limit in Carer's Allowance is this year being increased in line with the annual growth in average weekly earnings between May to July 2022 compared to May to July 2021, which was 5.5 per cent.

7.4 Regulation 5 (Amendment of the Social Security Benefit (Dependency) Regulations 1977)[10] relates to the earnings limit for spouses or partners of people claiming increases of Carer's Allowance in respect of dependent children and qualifying young persons. Child Dependency Increases used to be payable with Carer's Allowance, but they were abolished in the Tax Credits Act 2002[11]. This regulation only applies to those Carer's Allowance awards with transitional protection by virtue of article 3 of the Tax Credits Act 2002 (Commencement No. 3 and Transitional Provisions and Savings) Order 2003[12] (S.I. 2003/938). Regulation 5 is consequential on the Up-rating Order, which increased other Child Dependency Increases earnings limits by 10.1 per cent. Therefore, the Carer's Allowance Child Dependency Increases earnings limit is also increased by 10.1 per cent.

7.5 Regulation 6 (Amendment of the Social Security (Claims and Payments) Regulations 1987)[13] increases by 10.1 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.

7.6 Regulation 7 (Amendment of the Universal Credit (Transitional Provisions) Regulations 2014)[14] up-rates the flat rates set in legislation that determine the amounts of additional Universal Credit paid to claimants who meet the eligibility criteria for a transitional severe disability premium element. The rate of increase is equivalent to up-rating of wider benefits (10.1%) and will only apply to amounts paid to eligible new claims to Universal Credit from 10th April 2023.

7.7 Regulation 8 (Revocation) revokes the Social Security Benefits Up-rating Regulations 2022[15] (SI 2022/342).

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

[9] https://www.legislation.gov.uk/uksi/1976/409/contents
[10] https://www.legislation.gov.uk/uksi/1977/620/contents/made
[11] https://www.legislation.gov.uk/ukpga/2002/21/contents
[12] https://www.legislation.gov.uk/uksi/2003/938/contents/made
[13] https://www.legislation.gov.uk/uksi/1987/878/contents/made
[14] https://www.legislation.gov.uk/uksi/2014/1230/contents
[15] https://www.legislation.gov.uk/uksi/2022/342/contents/made

9. Consolidation

9.1 Informal consolidated text of instruments is available to the public free of charge via The National Archives website.

10. Consultation outcome

10.1 The Regulations form part of the regular annual up-rating requirements and consultation is therefore not necessary.

11. Guidance

11.1 Public information products will be updated to reflect the provisions in this instrument where applicable, and corresponding guidance will be issued to operational staff.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it has negligible impact on business or civil society organisations.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 An Up-rating Order is made annually in accordance with the requirements of the 1992 Act, and consequential Regulations are also made annually.

15. Contact

15.1 Lois Teasdale at the Department for Work and Pensions email: lois.teasdale@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Andrew Latto, Deputy Director for Devolution, Pensioner Benefits and Carer's Allowance, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Guy Opperman, Minister of State for Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.