LEGISLATIVE CONSENT MEMORANDUM

SOCIAL SECURITY (UP-RATING OF BENEFITS) BILL

Background

1. This memorandum has been lodged by Shona Robison MSP, Cabinet Secretary for Social Justice, Housing and Local Government, under Rule 9.B.3.1(a) of the Parliament's standing orders, and is supported by Ben Macpherson MSP, Minster for Social Security and Local Government. The Social Security (Up-rating of Benefits) Bill was introduced in the House of Commons on 8 September 2021. The Bill can be found at https://bills.parliament.uk/bills/3042.

Content of the Social Security (Up-rating of Benefits) Bill

2. Up-rating is the annual mechanism by which the Secretary of State is required by law to conduct a review of applicable benefit and pension rates each year to determine whether they have retained their value in relation to the general level of prices or earnings. Where the relevant benefit or pension rates have not retained their value, legislation provides that the Secretary of State is required to (or in some instances may) up-rate their value.

3. UK Ministers advise that legislation is necessary as a result of the highly unusual impacts of the Covid-19 pandemic on earnings growth figures. The Secretary of State for Work and Pensions has stated that it is required in order to achieve "fairness to taxpayers". The most recent figures for Average Weekly Earnings, published by the Office for National Statistics on 17 August 2021, show earnings growth at an unprecedented 8.8%. The Department for Work and Pensions (DWP) also took powers to suspend the automatic link last year when earnings growth was running at -1% and otherwise pensions would have been frozen.

4. The UK Government is therefore seeking a temporary (one-year) amendment to the 1992 Act to give the Secretary of State discretion to up-rate, by either 2.5% or in line with increases in prices, whichever is highest, the amount of certain pensions and industrial death benefit (IDB).

5. The legislation is required to be in place for up-rating for the 2022-23 tax year. To ensure that individuals receive their increased pensions and benefits in the first week of the new tax year, the up-rating process has to begin six months before those increases are due to take effect. A review is carried out by the Secretary of State in the autumn (following publication of the September inflation and earnings figures in mid-October). The proposed increases to benefits and pensions are then announced to the UK Parliament at the end of November following which the IT must be programmed.

6. The Secretary of State will need to have completed her review of earnings, and made a Statement to Parliament, by 26 November 2021, to meet hard IT delivery deadlines. The Statement provides the legal cover to DWP to make advance awards of State Pension at the increased rate. It also authorises the Annually Managed

Expenditure (AME) which is committed by starting the IT process, a process which cannot be reversed once started.

Provisions Which Relate to Scotland

7. The Bill amends section 150A of the Social Security Administration Act 1992 ("the 1992 Act") which requires the Secretary of State, in each tax year, to review the amounts of specified pensions and industrial death benefit (listed in subsection (1)), to determine whether they have retained their value in relation to the general level of earnings obtaining in Great Britain. Where the general level of earnings is greater at the end of the review period than at the beginning, the Secretary of State is required to lay a draft order before Parliament which increases the amounts by at least the percentage of the increase in the general level of earnings (unless the amount of the increase would be inconsiderable). If the order is approved by resolution of Parliament, the Secretary of State is then required to make the order.

8. Clause 1 of the Bill inserts new subsections (2A) and (2B) into section 150A of the 1992 Act. Subsection (2A) creates a new discretionary power to up-rate, which will apply only for the 2022-23 tax year. It will allow the pensions and benefit listed in section 150A(1) to be up-rated in line with prices or 2.5%, whichever is highest. The power is exerciseable if the Secretary of State considers appropriate having regard to the national economic sitation and any other matters the Secretary of State considers relevant, and allows the amounts to be increased by such percentage as the Secretary of State thinks fit. Subsection (2B) provides that where the provision referred to in subsection (2A) in respect of amounts of Industrial Death Benefit is within the legislative competence of the Scottish Parliament, the power is exerciseable by the Scottish Ministers instead of the Secretary of State.

Reasons for seeking a legislative consent

9. The issue relates primarily to reserved benefits (State Pensions and the Standard Minimum Guarantee in Pension Credit), but includes Industrial Death Benefit. Responsibility for Industrial Death Benefit as regards Scotland is devolved by virtue of section 22 of the Scotland Act 2016 ("the 2016 Act"). The functions of the Secretary of State under section 150A, in so far as exerciseable in relation to devolved industrial injuries benefits, have transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998, as amended by section 22 of the 2016 Act. In accordance with transitional arrangements in connection with commencement of the 2016 Act, that transfer took place on 1 April 2020.

10. Industrial injuries benefits continue to be delivered by DWP on behalf of the Scottish Ministers on a temporary basis, under an Agency Agreement. The Agency Agreement is entered into on the basis that benefits that continue to be administered by the DWP on the Scottish Ministers' behalf will be administered consistently across Great Britain. As such, the intention underpinning the Agency Agreement is that the Scottish Ministers will mirror in Scottish legislation the amount of any increases in the amounts of devolved benefits that are proposed by the UK Government for the duration of the Agreement. It is thought that there are around 300 recipients of Industrial Death Benefit in Scotland.

11. The UK Government requested that Scottish Ministers make provision to allow for Industrial Death Benefit to be up-rated in 2022/23 in the same way that they will be up-rated in England and Wales and has included provision in the Bill to give necessary SSI powers to enable Scottish Ministers to deliver uprating legislation in tandem with the UK. Since the new power that is proposed to be inserted in section 150A(2A) is not a pre-commencement enactment for the purposes of the Scotland Act 1998, the power is conferred directly on the Scottish Ministers by Clause 1 of the Bill. It is this provision that triggers the need for legislative consent of the Scottish Parliament.

12. The only alternative to consenting to the UK Government making provision for Scotland in its Bill is to bring forward equivalent Scottish primary legislation. Given the need to have primary legislation in place before the Secretary of State conducts and concludes her review of benefit rates by mid-November, seeking to have Scottish primary legislation in force by mid-November, which would entail truncated development time, truncated parliamentary scrutiny and the need to request truncated Royal Assent, would generate significant risk.

Consultation

13. The Scottish Government has not undertaken any consultation on the provisions. It is standard practice for the benefits in question to be uprated on an annual basis.

Financial Implications

14. The LCM will not result in a material increase to the cost of the Agency Agreement under which the benefit is delivered. This is because the uprating applies to benefit expenditure only and will therefore be funded via Block Grant Adjustment.

Conclusion

15. For the reasons set out above, the Scottish Government believes that the LCM is necessary and appropriate.

Draft Legislative Consent Motion

16. The draft motion, which will be lodged by the Cabinet Secretary for Social Justice, Housing and Local Government:

> “That the Parliament agrees that the relevant provisions of the Social Security (Up-rating of Benefits) Bill, introduced in the House of Commons on 8 September, relating to Industrial Death Benefit, so far as these matters fall within the legislative competence of the Scottish Parliament, or executive competence of Scottish Ministers should be considered by the UK Parliament.”

SCOTTISH GOVERNMENT
September 2021

This Legislative Consent Memorandum relates to the Social Security (Up-rating of Benefits) Bill (UK legislation) and was lodged with the Scottish Parliament on 10 September 2021

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