These notes refer to the Welfare Benefits Up-rating Bill as brought from the House of Commons on 22nd January 2013 [HL Bill 78]

WELFARE BENEFITS UP-RATING BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Welfare Benefits Up-rating Bill as brought from the House of Commons on 22nd January 2013. They have been prepared by the Department for Work and Pensions in conjunction with HM Treasury in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The measures contained within this Bill implement decisions made as part of the Autumn Statement 2012.

4. Welfare expenditure is a significant driver of public spending, and the Government has made a commitment to deliver a more sustainable welfare system. In the Autumn Statement, it was announced that in light of the national economic situation, certain working-age social security benefits and payments, and certain elements of tax credits, would be up-rated by 1 per cent, rather than prices (as measured by the Consumer Prices Index ('CPI'), 2.2 per cent), for the tax year 2013-14.

5. The working-age social security benefits and payments in question are:

- The main rates of Income Support, Jobseeker's Allowance, Employment and Support Allowance and Housing Benefit; and the work-related activity group component of Employment and Support Allowance
- Maternity Allowance; and Statutory Adoption, Maternity, Paternity and Sick Pay.

6. Also for 2013-14, the Government has decided that the basic State Pension should be up-rated by 2.5 per cent as under the 'triple lock' commitment. The Standard Minimum Guarantee in Pension Credit will be increased beyond the statutory minimum of earnings to

give an equivalent to the cash increase in basic State Pension, with the cost off-set by an increase in the Savings Credit threshold. Premia paid to pensioner recipients of working-age benefits as listed above will continue to be up-rated to match Pension Credit rates. Premia paid to disabled people receiving working-age benefits as listed above, and the Support Group component of Employment and Support Allowance, will be up-rated by CPI at 2.2 per cent. Applicable amounts specified for children or young persons in the working-age benefits as listed above will continue to be up-rated with reference to Tax Credit and Child Benefit rates.

7. The above up-rating decisions for 2013-14 will take effect through the up-rating Order provided for by sections 150 and 150A of the Social Security Administration Act 1992. The order is to be laid before Parliament early in the New Year and debated in spring 2013. Subject to Parliamentary approval, the new rates will take effect in April 2013.

8. The Government also decided that certain tax credits – the couple element and lone parent element of Working Tax Credit, and the child element of Child Tax Credit – would be up-rated by 1 per cent in 2013-14. These decisions will come into force in April 2013, subject to Parliamentary approval.

9. Also at the Autumn Statement it was announced that the 1 per cent decision would apply in 2014-15 and 2015-16 to the working-age benefits and payments as listed above (and therefore the corresponding Universal Credit rates, draft regulations for which were laid on 10th December 2012); Child Benefit; and certain elements of tax credits. It is these decisions in respect of 2014-15 and 2015-16 which are the subject of this Bill.

10. For ease of reference when reading these explanatory notes, please note the following abbreviations for existing pieces of legislation affected by the Bill:

- SSAA 1992 – Social Security Administration Act 1992
- SSAA (NI)1992 – Social Security Administration (Northern Ireland) Act 1992
- TCA – Tax Credits Act 2002.

SUMMARY

11. Under the SSAA 1992, the Secretary of State for Work and Pensions is required to review the value of benefits and pensions in light of changes in prices, and where it appears to him that prices have increased relative to the value of those benefits he must make an up-rating Order, subject to Parliamentary approval, in each tax year. The Bill provides that for the tax years 2014-15 and 2015-16, the relevant sums listed in paragraph 1 of the Schedule will be up-rated by 1 per cent, and obliges the Secretary of State to make an order for each of those tax years to bring those increases into effect.

12. Under section 41 of the TCA 2002, the Treasury is required to review the amounts of certain elements of tax credits each year to determine whether the elements have retained their value in relation to the general level of prices. Therefore, as for DWP benefits and pensions, the Bill provides that for the tax years 2014-15 and 2015-16 the relevant monetary amounts listed in paragraph 2 of the Schedule will be up-rated by 1 per cent, and obliges the Treasury to make an order for each of those tax years to bring those increases into effect.

BILL OVERVIEW

13. The Bill has three clauses and one schedule:

- Clause 1 provides for the up-rating of certain social security benefits and payments by 1 per cent in the tax years 2014-15 and 2015-16
- Clause 2 provides for the up-rating of certain elements of tax credits by 1 per cent in the tax years 2014-15 and 2015-16
- Clause 3 contains the miscellaneous measures and technical provisions in the Bill.
- The Schedule sets out the “relevant sums” for the purposes of Clause 1 and the “relevant amounts” for the purposes of Clause 2.

TERRITORIAL EXTENT

14. Clause *1(1) to (7)* and paragraph 1 of the Schedule extend to England and Wales and Scotland only; *subsection (9)* of that clause extends to Northern Ireland; the other provisions of the Bill extend to England and Wales, Scotland and Northern Ireland.

Territorial application: Wales

15. The Bill’s effect in Wales is the same as in England. The Bill contains no provisions that relate exclusively to Wales, or affect the National Assembly for Wales.

Territorial application: Scotland

16. The Bill’s effect in Scotland is the same as in England.

17. The Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

Territorial application: Northern Ireland

18. Social security in Northern Ireland is a devolved matter.

19. Child benefit and tax credits are excepted matters.

COMMENTARY ON CLAUSES

Clause 1: Up-rating of certain social security benefits for tax years 2014-15 and 2015-16

20. *Clause 1* introduces a duty on the Secretary of State for Work and Pensions to up-rate relevant sums by 1 per cent, to take effect in the tax years 2014-15 and 2015-16; and introduces the Schedule, paragraph 1 of which defines the relevant sums. It also makes provision for the event that the increase in prices is less than 1 per cent.

21. *Subsection (1)* sets out the new duty on the Secretary of State for Work and Pensions to make an order by statutory instrument, in each of the tax years ending with 5th April 2014 and 5th April 2015, increasing each of the relevant sums by 1 per cent.

22. *Subsection (2)* specifies that the order under subsection (1) must bring the increases into force in the week beginning with the first Monday of the new tax year, or, on an earlier date in April. Increases take effect on various dates because of differences in the prescribed payday of the benefit or payment and depending on whether the benefit or payment is a weekly or daily benefit.

23. *Subsection (3)* allows for the rounding of sums after the 1 per cent increase has been applied. This follows the existing provision set out in section 150(5) of the SSAA 1992. Generally, rounding is to the nearest 5 pence (up or down).

24. *Subsection (4)* requires the Secretary of State to lay with the order specified in subsection (1) a copy of a report by the Government Actuary on the likely effects of the order on the National Insurance Fund. This follows the existing provision set out in section 150(8) of the SSAA 1992.

25. Under section 150 of the SSAA 1992, the Secretary of State for Work and Pensions must in each tax year review the sums of benefits and certain pensions in order to determine whether they have retained their value in relation to the general level of prices obtaining in Great Britain estimated in such manner as the Secretary of State thinks fit. *Subsection (5)* sets out that if, when conducting that review, the Secretary of State finds that prices have not increased, or have increased by less than 1 per cent, for the period under review, new *subsection (1)* does not apply. In this circumstance, the Secretary of State must revert to exercising his discretion in the up-rating of the relevant sums for the tax year in question (as he must continue to do for certain other benefits and payments not covered by this Bill).

26. *Subsection (6)* requires that where *subsection (1)* applies in relation to a tax year, the draft of any up-rating order made under the existing provisions of section 150 of the SSAA 1992 must not include any of the relevant sums as defined in paragraph 1 of the new Schedule.

27. *Subsection (7)* secures that for the purposes of the sums set out in section 150(l)(i) of the SSAA 1992, namely Child Benefit, it is the Treasury on which the obligations of Clause 1 fall.

28. *Subsection (8)* provides that where there is a reference in any other enactment to an order made under section 150 of the SSAA 1992, that reference includes a reference to an order made under clause 1 (with the exception of sections 189 and 190 of the SSAA 1992, which concern general points with respect to orders). In particular, this includes section 132 of the SSAA (NI) 1992, which includes a reference to an order under section 150 of the SSAA 1992, and therefore will also include a reference to an order under clause 1.

29. *Subsection (*9) provides that nothing in section 166 of the SSAA (NI) 1992, which concerns the control of orders and regulations, should apply in relation to an order made by the Treasury (under section 132 of the Act) with respect to the up-rating of Child Benefit in Northern Ireland, corresponding to an Order under Clause 1.

30. The Schedule, paragraph 1, sets out the relevant sums for the purposes of Clause 1. These are:

- The personal allowances for a person or couple used in the calculation of Income Support
- The personal allowances for a person or couple used in the calculation of Housing Benefit
- Rates of Child Benefit; and of Statutory Sick Pay, Statutory Maternity Pay, Ordinary Statutory Paternity Pay, Additional Statutory Paternity Pay, and Statutory Adoption Pay
- The age-related amount for contribution-based Jobseeker’s Allowance which is relevant for calculating the claimant's personal rate
- The personal allowances for a person or couple used in the calculation of income-related Jobseeker’s Allowance
- The contributory allowance of Employment and Support Allowance

- The work-related activity component of contributory Employment and Support Allowance
- The prescribed amounts for income-related Employment and Support Allowance
- The work-related activity component of income-related Employment and Support Allowance
- The standard allowance for a single or a joint claimant of Universal Credit
- The additional amount of Universal Credit for a disabled child or qualifying young person (but only the smaller or smallest of sums specified)
- The limited capability for work element of Universal Credit

Clause 2: Up-rating of tax credits for tax years 2014-15 and 2015-16

31. *Clause 2* introduces a duty on the Treasury to up-rate relevant amounts by 1 per cent, to take effect in the tax years 2014-15 and 2015-16; and introduces the Schedule, paragraph 2 of which defines the relevant amounts. It also makes provision for the event that the increase in prices is less than 1 per cent.

32. *Subsection (1)* sets out the new duty on the Treasury to make an order by statutory instrument increasing the relevant amounts by 1 per cent in each of the tax years ending with 5th April 2014 and 5th April 2015.

33. *Subsection (2)* specifies that the order made under subsection (1) must come into force for the tax year following that in which the order is made.

34. *Subsection (3)* allows for the rounding of sums after the 1 per cent has been applied. Generally, rounding is to the nearest £5 a year (up or down).

35. Under section 41 of the Tax Credits Act 2002, the Treasury is required to review the amounts of certain elements of tax credits each year to determine whether the elements have retained their value in relation to the general level of prices. *Subsection (4)* sets out that if, when conducting the review, the Treasury finds that prices have not increased, or have increased by less than 1%, for the period under review, new *subsection (1)* does not apply. In this circumstance, the Treasury will revert to exercising discretion in the up-rating of the relevant amounts for the tax year in question.

36. *Subsection (5)* requires that the Treasury does not exercise discretion to up-rate by any other amount the relevant amounts to be up-rated by 1 per cent under *subsection (1).*

37. The Schedule, paragraph 2 defines the relevant amounts for the purposes of Clause 2. These are:

- The basic element, the 30 hour element, the second adult element and the lone parent element of Working Tax Credit
- The child element of Child Tax Credit (including qualifying young people).

FINANCIAL EFFECTS OF THE BILL

Benefit and tax credit expenditure

38. The Bill is expected to deliver significant savings in welfare expenditure to Government, in the order of £1.9 billion in cash terms in 2015-16.

Administrative costs

39. With reference to both clauses 1 and 2, the change to the up-rating of working-age benefits and of tax credits and Child Benefit is expected to result in no additional administrative costs to Government.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

40. The overall effect of the Bill on public service staffing levels is considered to be marginal.

SUMMARY OF THE IMPACT ASSESSMENT

41. An Impact Assessment of the Bill was published on 08 January 2013. Copies are available for Members from the Printed Paper Office and Vote Office; and also from the Department for Work and Pensions website (www.dwp.gov.uk).

Impact on Government

42. The legislative proposals of the Bill will deliver significant savings to Government. The combined effect of changes to the up-rating of working-age benefits, Child Benefit, statutory payments and tax credits (with reference to clauses 1 and 2) is expected to be net

savings of approximately £1.9 billion (in cash terms) in welfare expenditure in 2015-16, taking account of decisions for the tax years 2014-15 and 2015-16.

Impact on Employers

43. For employers, the impact of changes to the up-rating of statutory payments by 1 per cent in 2014-15 and 2015-16 is expected to be marginal as the Bill does not change qualifying criteria for these payments.

Impacts on Individuals

44. It is expected that the majority of households in Great Britain will not be affected, either because they do not receive any state support, or because they are receiving one of the benefits unaffected by this Bill. For example, the basic State Pension will increase by at least 2.5 per cent under the 'triple lock' commitment, and the main disability-related benefits will be up-rated with prices in 2014-15 and 2015-16. Although resulting in no cash losses, the Bill will create notional losses to individuals in receipt of specified benefits, statutory payments, and tax credits as against expectations of up-rating by prices. The effect of these is equivalent to the net savings of approximately £1.9 billion (in cash terms) in welfare expenditure in 2015-16.

EUROPEAN CONVENTION ON HUMAN RIGHTS

45. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of that Act). The statement has to be made before Second Reading. The Parliamentary Under-Secretary of State and Minister for Welfare Reform (Lords), Lord Freud, has made the following statement:

> "In my view the provisions of the Welfare Benefits Up-rating Bill are compatible with the Convention rights."

46. Whilst clauses 1 and 2 allow for the up-rates to be restricted for a specific group of claimants, the Government's view is that the proposed changes to benefits or tax credits do not amount to 'treatment' for the purposes of Article 3. Even if a small increase in benefits or tax credits does amount to 'treatment', the very high threshold as to what is 'inhuman or degrading treatment' will not be met. Claimants will continue to be eligible for an increase in the tax years in question, albeit a potentially smaller than inflation increase (depending on the relevant figures for price inflation over the relevant review period which will not be available until October 2013 (for the tax year 2014-15) and October 2014 (for the tax year 2015-16).

47. The Government considers that Article 8 is not engaged in relation to clauses 1 and 2. In particular, it is clear that Article 8 does not impose an obligation upon the State to provide benefit, much less a particular amount of benefit.

48. If, contrary to the Government's belief, Article 8 were to be engaged, any risk that the proposed change might impact on family life would in the Government's view be justified on the grounds that it was done in accordance with the law and was necessary in a democratic society in pursuance of the legitimate aim of safe-guarding the economic well-being of the country. Welfare expenditure is a significant driver of public spending, and the Government has made a commitment to deliver a more sustainable welfare system. As announced in the Autumn Statement 2012, the Government's proposal to up-rate certain working-age benefits, tax credits, and Child Benefit by 1 per cent for 2013-14, 2014-15 and 2015-16 is expected to result in savings of approximately £2.6 billion in 2015-16 resulting from the decisions for the three tax years.

49. The provision of the benefits and tax credits in question falls within the ambit of Article 1 of the First Protocol, so Article 14 is engaged. The effect of clause 1 will mean that there will be differences of treatment between claimants based on age. The benefits that are to receive the 1 per cent increase are mainly working-age rather than pensioner benefits. Pensioners are protected by the 'triple lock' which means that they will receive an increase in line with prices, earnings or 2.5% whichever is the highest. It is therefore possible that someone in receipt of the benefits concerned could argue that they were being discriminated against (they would be getting a lower amount) when compared with a pensioner. Age is an 'other status' for the purposes of Article 14 but is not a status attracting special protection.

50. In the Government's view the two groups of people are not in an analogous situation. Further, it is proportionate and justifiable to treat claimants differently on the basis of age, as happens in the current benefits system. On justification, the Government's position is that pensioner benefits are broadly intended to provide an earnings replacement from the point at which a person retires from paid employment. Once a person starts to draw their pensioner benefits they will generally continue to do so for the remainder of their life. Conversely, where possible (this does not apply to Employment and Support Allowance claimants in the support group), the Government expects working-age benefit claimants to be able to move into the labour market. The Government expects that generally their situation would be relatively short term, which means they will be better able to cope with a below inflation increase in benefit.

51. On proportionality, the Government's position is that if it sought to spread the burden of making the savings more fully, it would have an effect on a wider group of beneficiaries, including the disabled and pensioners. Furthermore, the claimants affected by the current policy won't be left without an increase to their rate of benefit. The Bill also makes it clear that the 1 per cent will only apply for a limited number of years after which time the current intention is for the law to revert back to its current form.

52. Under current legislation, Employment and Support Allowance claimants may be eligible for either a work-related activity component or a support component. Clause 1 provides for a 1 per cent increase for the work-related activity component. Claimants in receipt of a support component will, however, receive a prices increase under the existing legislation.

53. The Government considers that the difference in treatment is justified. Persons in the support group, that is, the more severely disabled, are less likely to be able to improve their economic situation by moving into work so it is acceptable for up-rating to treat them more generously. Employment and Support Allowance claimants in the work-related activity group will be able to move towards the labour market so, again, the Government considers they will be better able to cope with a below inflation increase in their benefit. The two groups of Employment and Support Allowance claimants are already treated differently in the current system and the different treatment has not been successfully challenged to date.

54. There will also be a difference in treatment for claimants in receipt of Universal Credit, in particular, between adults getting the limited capability for work ('LCW') element who will receive a 1 per cent increase under clause 1 as opposed to those receiving the limited capability for work and work-related activity ('LCWRA') element at a higher rate which is likely to attract an inflationary prices increase. The Government considers that these two groups of claimants are not in an analogous situation and in any event, the policy is justified. Those getting the LCW element may be able to work or to work in the near future, so the lower up-rate reflects the relatively shorter period of time that they are expected to spend on benefit. Those adults who are receiving the LCWRA element are not expected to undertake any work related activity. The prices increase for the tax years in question reflects the longer (potentially indefinite) period the Government expects them to face on benefit.

55. In Universal Credit, there will also be a difference between those in receipt of the lower as opposed to the higher rate of the additional amount for a disabled child or qualifying young person. Again, the Government considers that the two groups are not in an analogous situation, though it would accept that the fact of there being a disability is common here, and that the policy is justified. Single claimants or parents of children in receipt of the lower disabled child addition would be expected to find work whereas for claimants or parents of children in the higher disabled child group, the expectation of labour market engagement is reduced.

56. Further, the Universal Credit policy structure restores the original legacy rate alignment of the disabled child addition with the LCW element to reduce the number of different rates operating in the benefit, which creates a simpler system and smoothes the transition for children/qualifying young people to the adulthood LCW rate.

57. In terms of tax credits, the effect of clause 2 will mean that there will be differences of treatment between claimants based on their status, that is, on whether or not the family includes someone who is disabled or severely disabled. It will be apparent from the Bill that

the tax credit elements that are to receive a 1 per cent increase are those unrelated to disability.

58. It is therefore possible that someone in receipt of only the elements concerned could argue that they were being discriminated against (they would be getting a lower amount) when compared with others. Being in such a position is an 'other status' for the purposes of Article 14 but is not a status attracting special protection.

59. The Government considers that the two groups of people are not in an analogous situation. A person without disability is assumed to have a better capacity to change their situation.

60. Further, it is proportionate and justifiable to treat claimants differently on the basis of such status, as happens in the current system. On justification, the Government's view is that generally speaking families with someone who is disabled are less likely to be able to improve their economic situation by changing lifestyles, so it is acceptable for up-rating to treat them more generously. Other claimants in receipt of tax credits will, however, receive the 1 per cent increase. As regards proportionality, the Government's position is that if it sought to spread the burden of making the savings more fully, this would have an effect on a wider group of beneficiaries. Furthermore, the claimants affected by the current policy won't be left without an increase to their rate of tax credit. The Bill also makes it clear that the 1 per cent will only apply for a limited number of years after which time the law will revert back to its current form (but bearing in mind that tax credits are to be replaced by Universal Credit by 2017).

61. Although it is acknowledged that a social security benefit is capable of being considered a possession under Article 1 of the First Protocol, it is the fact of entitlement which is protected, not a particular amount of benefit. There is also a clear implication from the case law that in order to succeed, a claim under Article 1 of the First Protocol would require such a substantial reduction in the amount of benefit that it would affect the very substance of the right.

62. In the event that it were to be considered that there were an interference with property rights, the Government considers that the interference is in the public interest, given the significant cost to the public purse of paying a full prices increase for the discretionary working-age benefits and tax credit elements for the years in question.

TRANSPOSITION NOTES

63. None of the measures in this Bill has any effect on or is affected by any European Directive.

COMMENCEMENT

64. Clause 3 provides for Clauses 1 and 2 and the Schedule to come into force by commencement order. Clause 3 comes into force on the day the Act is passed.

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