SOCIAL SECURITY (UP-RATING OF BENEFITS) BILL

Memorandum from the Department for Work and Pensions to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Social Security (Up-rating of Benefits) Bill ("the Bill"). The Bill was introduced in the House of Commons on 23 September 2020. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. Up-rating is the annual mechanism by which the Secretary of State for Work and Pensions is required by the Social Security Administration Act 1992 ('the 1992 Act') 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. Broadly, there are three sets of benefit groups:

- those that must rise at least in line with earnings: these are the basic State Pension and the full rate of the new State Pension, the Standard Minimum Guarantee in Pension Credit and survivors' benefits in Industrial Death Benefit;

- those that must rise at least in line with prices: the largest of which are Personal Independence Payment, Disability Living Allowance and Attendance Allowance, Carer's Allowance and the Additional Pension.

- those over which the Secretary of State has discretion: the largest is Universal Credit but this group also includes Employment and Support Allowance and Jobseeker's Allowance. This group is often referred to as 'working age benefits'.

3. Since 2011, the up-rating process has used the September Consumer Prices Index (CPI) figure to measure the rise in prices over the previous tax year and the May-July Average Weekly Earnings (AWE) figure for the growth in earnings over the review period.

4. Under section 150A of the 1992 Act, earnings-linked benefits (those mentioned in the first bullet in paragraph 2 above) can only be increased where there has been an increase in earnings in the preceding year.

5. For the tax year 2021-22 the Social Security (Up-rating of Benefits) Bill 2020 gives the Secretary of State the power to up-rate those earnings-linked benefits (notably State Pensions) even where, upon the Secretary of State's review, there has been no earnings growth. This would enable her to deliver the Triple Lock manifesto commitment whereby the State Pension rises by the highest of earnings, prices or 2.5%, despite the impact of the Coronavirus pandemic on earnings figures for 2020.

6. These decisions will take effect through the Social Security Benefits Up-rating Order 2021 made under the power in section 150A of the 1992 Act. The Order is expected to be laid in January 2021, debated in February/March 2021, and will come into force in April 2021.

C. DELEGATED POWERS

7. The powers in clause 1 will be used by the Secretary of State to make one order, relating to the tax year 2021-22, to deliver up-rating for the relevant pensions and benefits in the event that earnings indices show no growth in autumn 2020. This order will be the Social Security Benefits Up-rating Order as mentioned above.

Clause 1: up-rating of state pension and certain other benefits following review in tax year 2020-21

Power conferred on: Secretary of State for Work and Pensions

Power exercised by: Order

Parliamentary Procedure: affirmative procedure

Context and Purpose

8. The purpose of this clause is to give the Secretary of State for Work and Pensions the power to lay an Up-rating Order following her review in the tax year 2021-22 if the earnings indices have shown no growth in that review.

9. The Secretary of State may, if she considers it appropriate having regard to the national economic situation and other matters she considers relevant, lay before Parliament the draft of an order which increases each of the amounts referred to in section 150A(1) by such a percentage as she thinks fit.

Justification for taking the power

10. We need this new power as there is currently no power to up-rate where earnings indices have shown no growth. In light of the Coronavirus outbreak, the economic outlook is very uncertain. There have been a number of differing scenarios for how average earnings growth may be affected by the pandemic, including from the Office for Budget Responsibility (OBR) and the Bank of England.

11. On 14 July 2020 the OBR published its latest Fiscal Sustainability Report, in which its medium-term scenarios for the economy show earnings falling in the middle of 2020 (under all three scenarios). The provisional AWE data published by the Office for National Statistics on 15 September for the up-rating reference period May to July show that earnings fell by 1%.

12. If these forecasts turn out to be accurate, under normal circumstances State Pensions will be frozen for a year from April 2021. This would be unacceptable, since it would break a manifesto commitment to up-rate State Pensions[1] by the highest of earnings, CPI or 2.5% (the ‘triple lock’).

13. The Bill therefore gives the Secretary of State the power to increase these rates even where there has been no increase in earnings. The Bill is drafted so as to provide the DWP Secretary of State with discretion to decide what increases to apply in light of the Coronavirus pandemic based on economic forecasts at that time.

[1] Basic State Pension and up to the full rate of the new State Pension.

14. Clause 1 is modelled on section 23 of the Welfare Reform Act 2009. The way that the power has been drafted also fits within the current legislative framework. Secondary legislation is the most appropriate legislative vehicle for up-rating due to the sheer complexity of the benefits system. Also it is necessary for there to be complicated provisions for commencement as there are differences in the prescribed payday of benefits and to reflect the differences between weekly and daily benefits.

15. Therefore, in accordance with the annual process, the increases in the rates of the benefits in question will be contained in an up-rating order which will helpfully set out all the relevant increases for the affected tax year and which will also contain the necessary commencement provisions.

16. There are no new Henry VIII powers in this Bill. The power in the Bill will be used to make the Social Security Benefits Up-rating Order 2021. This order will make changes to amounts that are contained in primary legislation (amounts of the basic State Pension and amounts of widow’s and widower’s pension in Industrial Death Benefit). This is the standard approach used annually to uprate benefits and State Pension. The power does not enable amendments to be made to primary legislation outside that limited sphere. The up-rating order can only be used to substitute new rates for those which already appear in the primary, the order cannot change benefit entitlement conditions for example.

Justification for the procedure

17. The order making power in the existing legislation (section 150A of the 1992 Act) is subject to the affirmative resolution procedure. The new power provided for in the Bill is grafted onto the current power (a new subsection (2A)) and therefore is also subject to the affirmative procedure. The procedure gives Parliament the opportunity to debate the draft up-rating order and therefore the relevant increases as they apply to the various benefits. As this is about Government spending this is thought to be an appropriate degree of Parliamentary scrutiny.

Department for Work and Pensions

06 October 2020