

SOCIAL SECURITY (UP-RATING OF BENEFITS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Social Security (Up-rating of Benefits) Bill as brought from the House of Commons on 1 October 2020 (HL Bill 136).

- These Explanatory Notes have been prepared by the Department for Work and Pensions in order to assist the reader. They do not form part of the Social Security (Up-rating of Benefits) Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Social Security (Up-rating of Benefits) Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Social Security (Up-rating of Benefits) Bill. They are not, and are not intended to be, a comprehensive description of the Social Security (Up-rating of Benefits) Bill.

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Overview of the Bill

- 1 The Bill has two clauses:
 - Clause 1 provides a power for the up-rating of the State Pension and certain other benefits following a review in the tax year 2020-21. Up-rating will apply only for the tax year 2021-22.
 - Clause 2 contains the technical provisions in the Bill which cover the short title, extent and commencement.

Policy background

- 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. 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 these are Personal Independence Payment, Disability Living Allowance, Attendance Allowance, Carer's Allowance and the Additional State Pension. These are largely additional needs benefits.
 - those over which the Secretary of State has discretion: the largest of these is Universal Credit but also included are Employment and Support Allowance and Jobseeker's Allowance. This group is often referred to as the 'working age benefits'.
- 3 Since 2011, the up-rating process has used the September Consumer Prices Index (CPI) figure for the rise in prices and the May-July Average Weekly Earnings (AWE) figure for the growth in earnings.
- 4 The primary power for up-rating which is contained in the Social Security Administration Act 1992 ("the 1992 Act") does not allow the Secretary of State to bring forward an annual up-rating order if earnings or prices are negative. Due to the impact of the COVID-19 pandemic this year there will be no increase in earnings over the review period and therefore no up-rating if earnings are static.
- 5 This Bill allows the Secretary of State to up-rate the basic State Pension and certain other benefits in the tax year 2021-22, despite there being no growth in earnings in the period May-July 2020. This will allow the Government to meet its commitment to the Triple Lock.

Legal background

- 6 The following gives a brief overview of the existing legislation that is referenced by this Bill. Further explanation if required is provided in the clause by clause commentary.
- 7 The 1992 Act provides for the annual up-rating of social security benefits specified in sections 150, 150A and 151A.

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- 8 Section 150(1) of the 1992 Act requires the Secretary of State to review social security benefits, to determine whether they have retained their value in relation to the general level of prices. If the benefits have not retained their value, subsection (2)(a) requires the Secretary of State to bring forward a draft up-rating order to up-rate some of them by at least as much as the increase in the general level of prices. The main benefits affected are Attendance Allowance, Carer's Allowance, Disability Living Allowance, Personal Independence Payment and the Additional State Pension. The Secretary of State has a discretion under subsection (2)(b) to increase other benefits in the draft up-rating order. The main benefits affected are the working age benefits.
- 9 Section 151A of the 1992 Act requires the inherited increments of the old State Pension and certain amounts exceeding the full rate of the new State Pension (payable under transitional arrangements) to be increased in line with prices if there has been an increase in prices over the review period.
- 10 Under section 150(1) and 151A(8) of the 1992 Act, the Secretary of State has discretion as to how to measure changes in the general level of prices. In recent years they have decided to measure the increase in prices over the review period using the CPI.
- 11 Section 150A of the 1992 Act requires the Secretary of State to review certain benefits, to determine whether they have retained their value in relation to the general level of earnings. If the benefits have not retained their value, subsection (2) requires the Secretary of State to bring forward a draft up-rating order to up-rate them by at least as much as the increase in the level of earnings. The benefits affected are: the basic State Pension, the full rate of the new State Pension, the Standard Minimum Guarantee in Pension Credit, and survivors' benefits in Industrial Death Benefit.
- 12 Under section 150A(8) the Secretary of State has discretion over how to measure changes in the general level of earnings and has decided to measure the increase over the appropriate period using the AWE index for the quarter ending July in any given year.

Territorial extent and application

- 13 Clause 2 covers the territorial extent of the Bill.
- 14 The provisions of this Bill extend to England and Wales, and Scotland.
- 15 Up-rating of the earnings-linked benefits except for survivors' benefits in Industrial Death Benefit is a reserved matter in Great Britain. It is a transferred matter in Northern Ireland, although the Department for Communities has a policy of maintaining parity with Great Britain through its own legislation.
- 16 Survivors' benefits in Industrial Death Benefit are devolved to Scotland. The Scottish Government will need to match our change in order to remain within the terms of the Agency Agreement under which the Department for Work and Pensions is temporarily delivering these benefits on behalf of Scottish Ministers (on the understanding that the Scottish Government will mirror DWP legislation in all respects until it is able to replace these benefits with its own new ones). There has been agreement in principle to a Legislative Consent Motion to allow this Bill to cover Scotland in this respect.
- 17 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Fast-track legislation

- 18 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards,¹ the House of Lords Constitution Select Committee recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked.² The justification for fast-tracking the Bill is explained below.
- 19 The legislation is required to be in place for up-rating for the 2021-22 tax year. To ensure that individuals receive their increased pensions and benefits in the first week of the new tax year (see section 150A(7) of the 1992 Act), the up-rating process has to begin six months before those increases are due to take effect. A review under section 150(1), 150A(1) and 151A(1) 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 Parliament at the end of November following which the IT must be programmed.
- 20 The Secretary of State will need to have completed her review of earnings, and made a Statement to Parliament, by 27 November 2020, to meet hard IT delivery deadlines. The Statement provides the legal cover to enable the Department for Work and Pensions 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, the process of which cannot be reversed once started.
- 21 The Bill will therefore need Royal Assent by mid-November 2020 at the very latest. This would give the Secretary of State a week to conclude her review and make decisions about benefit and pension rates in advance of the IT delivery deadlines.
- 22 If the Bill does not receive Royal Assent by mid-November, then it will not be possible to up-rate the relevant benefits and pensions from April 2021. This is because it would not be possible for the IT programming to start before the Secretary of State has concluded her review. Until Royal Assent, the legislation that applies is the 1992 Act, and if there is no earnings growth, then the 1992 Act means the Secretary of State cannot increase the relevant benefit and pension rates.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

- 23 The Bill was introduced as soon as possible after it became clear from the indices that there would be no earnings growth over the review period. This provided Parliament with two months for scrutiny.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

- 24 Up-rating of benefits and pensions is a business as usual process. The Secretary of State has a statutory obligation to conduct an annual review of benefit and pension rates to determine whether they have retained their value in relation to the general level of prices and earnings. Following Royal Assent of the Bill, the Secretary of State will lay the annual draft up-rating order early next year which is subject to debate in both Houses of Parliament.

¹ House of Lords Constitution Committee, [15th Report of session 2008/09](#), HL paper 116-I

² House of Lords Constitution Committee, [15th Report of session 2008/09](#), HL paper 116-I, para. 186

Does the Bill include a sunset clause (as well as any appropriate renewal procedure)?

If not, why does the Government judge that their inclusion is not appropriate?

- 25 The Bill modifies section 150A of the 1992 Act only as it applies to a review of earnings conducted in this tax year. A separate sunset clause is therefore not needed.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?

- 26 These temporary provisions for one tax year will complement the existing powers in the 1992 Act and will form part of the usual annual up-rating exercise. The up-rating order is affirmative and is subject to debate in both Houses of Parliament.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?

- 27 An assessment has been made, which concluded that the existing powers were insufficient to deal with the economic consequences of the COVID-19 pandemic. The legislation as it currently stands does not allow the Secretary of State to bring forward an up-rating order to increase pensions if the earnings measure used (May-July AWE) is zero or negative.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

- 28 A memo on delegated powers has been prepared for the Delegated Powers and Regulatory Reform Committee (DPRRC) and a European Convention on Human Rights analysis is included in these Explanatory Notes for the Joint Committee on Human Rights.

Commentary on provisions of Bill

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

- 29 Clause 1 inserts a new subsection (2A) into section 150A of the 1992 Act. This new subsection allows the Secretary of State, where there has been no increase in earnings during the review period and if she considers it appropriate having regard to the national economic situation and other relevant matters, to lay a draft up-rating order which increases the basic State Pension, the full rate of the new State Pension, the Standard Minimum Guarantee in Pension Credit and survivors' benefits in Industrial Death Benefit by such a percentage as she thinks fit.
- 30 The Clause also inserts a new subsection (2B) into section 150A so that where provision in respect of the amounts of survivors' benefits in Industrial Death Benefit is within the legislative competence of the Scottish Parliament, subsection (2A) has effect as if references to the Secretary of State and to Parliament were references to the Scottish Ministers and the Scottish Parliament respectively.

Clause 2: Extent, commencement and short title

- 31 Clause 2 provides details of the territorial extent, commencement and short title of the Bill.
- 32 Clauses 1 and 2 of the Bill come into force on Royal Assent.

Financial implications of the Bill

- 33 The Bill gives the Secretary of State the power to up-rate the new State Pension, basic State Pension and certain other benefits in the tax year 2021-22 if the earnings figure for May to July 2020 is negative when published in mid-October 2020. This Bill therefore enables the Government to act in line with its manifesto commitment to deliver the Triple Lock policy for 2021-22 and in line with Office for Budget Responsibility (OBR) assumptions around how new State Pension, basic State Pension and certain other benefit increases will be calculated. This aspect would not entail additional public expenditure.

Parliamentary approval for financial costs or for charges imposed

- 34 Clause 1 of the Bill would enable increases in 2021 in certain social security benefits that would not be possible if there were a fall in the general level of earnings in this tax year's review period. Some of those benefits are payable out of the National Insurance Fund, and a money resolution is not required for expenditure from that Fund. But the income of the National Insurance Fund may be supplemented by money voted for by Parliament under the Social Security Act 1993 and, as a result, a money resolution is required for the Bill. Such a money resolution would also cover the other benefits, which are payable out of money voted by Parliament.

Compatibility with the European Convention on Human Rights

- 35 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 of compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of that Act).
- 36 In the opinion of Baroness Stedman-Scott, Parliamentary Under-Secretary of State for the Department for Work and Pensions, the provisions of the Bill are compatible with the Convention rights and she has made a statement to this effect.
- 37 The key Convention right engaged by the provisions in this Bill is the protection of property under Article 1 of Protocol 1 to the Convention and so Article 14 (prohibition on discrimination) is engaged.
- 38 It is acknowledged that a social security benefit is capable of being considered a possession under Article 1 of Protocol 1. However, Article 1 of Protocol 1 does not guarantee the right to acquire a benefit or to any amount of benefit. It is the fact of entitlement which is protected, not a particular amount of benefit. Therefore, as the Bill envisages increases in benefits and pensions, the Government does not consider there will be any interference with Article 1 of Protocol 1.
- 39 For the purposes of Article 14, the Government accepts that a social security benefit is capable of being a possession within the ambit of Article 1 of Protocol 1. The effect of Clause 1 could mean there could be differences of treatment between claimants based on age as the clause only provides a power to increase the new State Pension, basic State Pension and certain other benefits and not working age benefits. The Government's view is that the two groups of people (those on working age benefits and pensioners) are not in an analogous situation. It is proportionate and justifiable to treat claimants differently on the basis of age, as happens in

the current benefits system. The State is afforded a wide margin of appreciation in respect of social security benefits. The Government's position is that the decision to protect the rate of pensions where earnings have fallen is justified as is a freeze to working age benefits if there is no price inflation in 2020-21 and therefore any interference with Article 14 is not unlawful.

Related document

40 The following document is relevant to the Bill and can be read at the stated location:

- Social Security Administration Act 1992 – relevant sections 150, 150A and 151A:
<https://www.legislation.gov.uk/ukpga/1992/5/contents>

Annex A – Territorial extent and application in the United Kingdom

41 The provisions of this Bill extend and apply to England and Wales, and Scotland.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Welsh Parliament	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1 Up-rating of state pension and certain other benefits following review in tax year 2020-21	Y	Y	Y	N	N/A	Y (in so far as the Bill affects survivors' benefits in Industrial Death Benefit which is devolved to the Scottish Parliament)	N/A	Y (in relation to survivors' benefits in Industrial Death Benefit)

Minor or consequential effects³

42 There are no minor or consequential effects.

Subject matter and legislative competence of devolved legislatures

43 Survivors' benefits in Industrial Death Benefit fall within the legislative competence of the Scottish Parliament.

³ References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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