# 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 21 September 2021 (HL Bill 54).

- 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 Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the 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 Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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# Overview of the Bill

1 The Bill has two clauses:

- Clause 1 provides for a review of the state pension and certain other benefits by reference to inflation and for the up-rating of the state pension and those other benefits by at least inflation or 2.5%, whichever is higher. This will apply only for the tax year 2022-23.
- 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: these are mainly additional needs benefits, the largest of which are Personal Independence Payment, Disability Living Allowance, Attendance Allowance and Carer's Allowance. Other benefits that must also rise at least in line with prices include the Additional State Pension;
- 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 Provisional AWE figures for May to July, published on 14 September 2021, has earnings growth at 8.3%. Final May to July figures will be published on 12 October 2021. The Office for Budget Responsibility Spring Budget forecast for 2022-23 was 4.6%. An assessment by Department for Work and Pensions analysts suggests that earnings growth will be between 8% and 8.5% for the period May to July which is the reference period used for up-rating. The exceptionally high growth figure is inflated by the negative growth in earnings last year and the unusual employment market flows during the pandemic. If earnings do turn out to be much higher than forecast when published in October, it would have significant spending implications for State Pensions and other benefits linked to earnings. Once added, these increases would become the baseline for subsequent years.

5 This Bill modifies section 150A of the Social Security Administration Act 1992 (the 1992 Act) for the tax year 2022-23 so as to provide for the up-rating of the basic State Pension and certain other benefits by at least inflation or 2.5%, whichever is higher. Without the modification section 150A would require up-rating by reference to the increase in earnings.

6 Last year, when earnings fell by 1%, the Government took forward primary legislation to ensure that State Pensions could nonetheless be increased and increased State Pensions by

2.5%, well above both earnings (minus 1%) and price inflation (0.5%). If it had not taken this action, most State Pensions would have been frozen. Due to earnings growth being inflated due to negative growth last year and the unusual employment market flows during a pandemic, a further one-year adjustment is needed. For the tax year 2022-23 the State Pension and certain other benefits will be up-rated by at least inflation or 2.5%, whichever is higher.

# Legal background

7 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.

8 The 1992 Act provides for the annual up-rating of social security benefits specified in sections 150, 150A and 151A.

9 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) as to whether or not to increase other benefits in the draft up-rating order. The main benefits affected are the working age benefits.

10 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.

11 Under section 150(1) and 151A (8) the Secretary of State has discretion as to how to measure changes in the general level of prices. In recent years she has decided to measure the increase in prices over the review period using the CPI.

12 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. Benefits affected are: the basic State Pension, the full rate of the new State Pension, the Standard Minimum Guarantee element of Pension Credit, and survivors' benefits in Industrial Death Benefit.

13 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

14 Clause 2 covers the territorial extent of the Bill.

15 The provisions of this Bill extend to England and Wales and Scotland.

16 Survivors' benefits in Industrial Death Benefit are devolved to the Scottish Parliament. As a consequence, the Scottish Parliament passed a Legislative Consent Motion for the Bill on 16 September 2021.

17 Up-rating 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.

18 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

# Fast-track legislation

19 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 Select Committee on the Constitution 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.

20 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 (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.

21 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 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, which process cannot be reversed once started.

22 The Bill will therefore need Royal Assent by mid-November 2021 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.

## 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 earnings growth over the review period had been significantly affected by the Coronavirus pandemic. This provided Parliament with two months for scrutiny.

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[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

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

24 Decisions on up-rating are, by statute, a matter for the Secretary of State alone.

## 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 and the conclusion was that the existing powers were insufficient to deal with the economic consequences of the Coronavirus pandemic. The legislation as it currently stands does not allow the Secretary of State to suspend the link to earnings.

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

28 A memorandum on delegated powers has been prepared for the Delegated Powers and Regulatory Reform Committee 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 2021-22

29 Clause 1 subsection (1) provides for a review of 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 reference to prices (instead of earnings).

30 Clause 1 subsection (2)(a) operates on section 150A (2) of the 1992 Act so that if those benefits have not retained their value in relation to the general level of prices, the Secretary of State is required to bring forward an up-rating order to up-rate them by at least as much as the increase in the general level of prices.

31 Clause 1 subsection (2)(b) inserts a new subsection (2A) into section 150A which imposes a duty on the Secretary of State to increase those benefits by not less than 2.5% if either inflation has been less than 2.5%, or if there has been no inflation, over the review period.

32 Clause 1 subsection (2)(b) 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.

33 Clause 1 subsection (2)(e) amends section 150A (8) to enable the Secretary of State to estimate the general level of prices in such manner as she thinks fit.

## Clause 2: Extent, commencement and short title

34 Clause 2 provides details of the territorial extent, commencement and short title of the Bill.

35 Clauses 1 and 2 of the Bill come into force on Royal Assent.

# Commencement

36 Clauses 1 and 2 of the Bill come into force on Royal Assent.

# Financial implications of the Bill

37 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 2022-23 by at least inflation or 2.5%, whichever is higher. The Bill is a response to a situation in which the AWE figure for May to July are forecast to be inflated by the negative growth in wages last year and the unusual employment market flows during the pandemic when published in mid-October 2021.

# Parliamentary approval for financial costs or for charges imposed

38 The Bill does not require a money resolution or a ways or means resolution. A money resolution is required where a bill authorises new charges on the public revenue – broadly speaking new expenditure – and a ways and means resolution is required where a bill authorises new charges on the people – broadly speaking, new taxation or other similar charges.

# Compatibility with the European Convention on Human Rights

39 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).

40 In the opinion of Baroness Stedman-Scott, Parliamentary Under-Secretary of State for Work and Pensions, the provisions of the Bill are compatible with the Convention rights, and she has made a statement to this effect.

41 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.

42 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.

43 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. Clause 1 operates on certain pensioner benefits including the basic State Pension, the new State Pension, the Standard Minimum Guarantee in Pension Credit and survivor’s benefits in Industrial Death Benefit, and not on working age benefits which could suggest a difference in treatment based on age. However, 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 suspend the earnings element of the Social Security Administration Act 1992 where earnings have been inflated by negative growth in wages last year and the unusual employment market flows during the pandemic and therefore any interference with Article 14 is not unlawful.

# Related documents

44 The following documents are relevant to the Bill and can be read at the stated locations:

- 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

| Provision | England | Wales | | Scotland | | Northern Ireland | |
|---|---|---|---|---|---|---|---|
| | **Extends to E & W and applies to England?** | **Extends to E & W and applies to Wales?** | **Legislative Consent Motion process engaged?** | **Extends and applies to Scotland?** | **Legislative Consent Motion process engaged?** | **Extends and applies to Northern Ireland?** | **Legislative Consent Motion process engaged?** |
| Clause 1 | Yes | Yes | No | Yes | Yes | No | N/A |
| Clause 2 | Yes | Yes | No | Yes | Yes | No | N/A |

## Subject matter and legislative competence of devolved legislatures

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

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