



EXPLANATORY NOTES

Social Security (Up-rating of Benefits) Act 2020

Chapter 23

£6.90

SOCIAL SECURITY (UP-RATING OF BENEFITS) ACT 2020

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Social Security (Up-rating of Benefits) Act 2020 (c. 23) which received Royal Assent on 23 November 2020.

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

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These Explanatory Notes relate to the Social Security (Up-rating of Benefits) Act 2020 (c. 23) which received Royal Assent on 23 November 2020.

Overview of the Act

- 1 The Act has two sections:
 - Section 1 provides a power for the up-rating of 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.
 - Section 2 contains the technical provisions in the Act 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 / prices are negative. Due to the impact of the Coronavirus 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 Act allows the Secretary of State to up-rate the basic 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 Act. Further explanation if required is provided in the section by section commentary.
- 7 The 1992 Act provides for the annual up-rating of social security benefits specified in sections 150, 150A and 151A.
- 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) as to whether or not 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) 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.
- 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. 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 Section 2 covers the territorial extent of the Act.
- 14 The provisions of this Act 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

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with its own new ones). There has been agreement in principle to a Legislative Consent Motion to allow this Act 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.

Commentary on provisions of Act

Social Security (Up-rating of Benefits) Act

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

- 18 Section 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, 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.
- 19 The section 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.

Section 2: Extent, commencement and short title

- 20 Section 2 provides details of the territorial extent, commencement and short title of the Act.
- 21 Sections 1 and 2 of the Act come into force on Royal Assent.

Related documents

- 22 The following documents are relevant to the Act 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

23 The provisions of this Act 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?
Section 1 Up-rating of state pension and certain other benefits following review in tax year 2020-21	Y	Y	Y	N

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Annex B – Hansard References

24 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	23 September 2020	No debate
Second Reading	01 October 2020	Vol. 681 Col. 559
Public Bill Committee	01 October 2020	Vol. 681 Col. 572
Report and Third Reading	01 October 2020	Vol. 681 Col. 579
<i>House of Lords</i>		
Introduction	01 October 2020	Vol. 806 Col. 359
Second Reading (Debate)	13 October 2020	Vol. 806 Col. 279GC
Second Reading	15 October 2020	Vol. 806 Col. 1213
Grand Committee	27 October 2020	Vol. 807 Col. 182
Report	17 November 2020	Vol. 807 Col. 1340
Third Reading	17 November 2020	Vol. 807 Col. 1340
Commons Consideration of Lords Amendments	n/a	n/a
Royal Assent	23 November 2020	House of Commons Vol. 684 Col. 579
		House of Lords Vol. 808 Col. 2

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