SOCIAL SECURITY (UP-RATING OF BENEFITS) ACT 2021

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Social Security (Up-rating of Benefits) Act 2021 (c. 32) which received Royal Assent on 17 November 2021.

- 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 2021 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 2021. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

1 The Act has two sections:

a. Section 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.

b. 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:

a. 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;

b. 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;

c. 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 Final AWE figures for May to July, published on 12 October 2021, has earnings growth at 8.3%. The exceptionally high growth figure is inflated by the negative growth in earnings last year and the unusual employment market flows during the pandemic. This 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 Act 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 Act. Further explanation if required is provided in the section by section 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 Section 2 covers the territorial extent of the Act.

15 The provisions of this Act 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 Act.

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.

Commentary on provisions of Act

Section 1: Up-rating of state pension and certain other benefits following review in tax year 2021-22

19 Section 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).

20 Section 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.

21 Section 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.

22 Section 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.

23 Section 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.

Section 2: Extent, commencement and short title

24 Section 2 provides details of the territorial extent, commencement and short title of the Act.

25 Section 1 and 2 of the Act come into force on Royal Assent.

Related documents

26 The following document is relevant to the Act 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

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	Yes	Yes	Yes	No
Section 2	Yes	Yes	Yes	No

Subject matter and legislative competence of devolved legislatures

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

Annex B - Hansard References

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

Stage	Date	Hansard Reference
House of Commons		
Introduction	08 September 2021	Vol. 700 Col. 318
Second Reading	20 September 2021	Vol. 701 Col. 61
Committee	20 September 2021	Vol. 701 Col. 94
Report and Third Reading	20 September 2021	Vol. 701 Col. 102
House of Lords		
Introduction	11 October 2021	Vol. 814 Col. 1656
Second Reading	13 October 2021	Vol. 814 Col. 1847
Committee	26 October 2021	Vol. 815 Col. 725
Report	2 November 2021	Vol. 815 Col. 1121
Third Reading	9 November 2021	Vol. 815 Col. 1445
Commons Consideration of Lords Amendments	15 November 2021	Vol. 703 Col. 358
Lord Consideration of Commons Reasons	16 November 2021	Vol. 816 Col. 161
Royal Assent	17 November 2021	House of Commons Vol. 703 Col. 623
		House of Lords Vol. 816 Col. 278

Annex C - Progress of Bill Table

29 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2

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