

Social Justice and Social Security Committee

SSI cover note

12th Meeting, (Session 6), 31 March 2022

Title of Instrument: [The Social Security \(Up-rating\) \(Miscellaneous Amendment\) \(Scotland\) Regulations 2022](#)

Laid Date: 17 March 2022

Reporting date: 31 March 2022

Coming into force date: 1 April 2022

Type of instrument: Affirmative

Parliamentary procedure:

The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).

Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee which examined the Bill for the Act that the SSI is made under or whose remit is most aligned).

It is usual practice for the lead committee to take evidence from the relevant Scottish minister in advance of considering the instrument. The committee can ask the minister and any officials questions about the SSI.

During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion.

There has been agreement between the Scottish Parliament and the Scottish Government to follow an expedited timetable for this instrument and the Committee will publish its report on 31 March 2022. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

Background

1. This instrument was previously laid on 28 January and the Committee was due to consider it at its meeting on 17 March 2022. However, it was withdrawn by the Scottish Government on 16 March 2022. The letter from the Minister to the Presiding Officer on 16 March 2022 is attached at Annexe A. The Minister wrote to the Committee on [17 March 2022](#) once the revised instrument had been re-laid.
2. The Scottish Government noted that the instrument was withdrawn and re-laid to respond to the growing cost of living pressures. The Minister spoke about these reasons during his appearance at the Committee Meeting on [17 March 2022](#) (OR, col 26).
3. According to the [Policy Note](#) (Annexe B), this re-laid instrument would increase:
 - Funeral Support Payment, Young Carer Grant, Best Start Grant and Child Winter Heating Assistance by 6% (not the 3.1% previously advised).
 - Child Disability Payment mobility and care components, Adult Disability Payment daily living and mobility components would increase by 3.1% (in line with September 2021 Consumer Price Index) as these must increase in line with benefits still administered by DWP under agency agreement to avoid creating a two-tier system.
 - The regulations would also increase Scottish Child Payment by 100%.
4. Committee Members took the opportunity at the meeting on 17 March 2022 to briefly discuss these new regulations, asking the Minister where the money was coming from, where there are flexibilities within the budget and whether there will be a knock-on effect on the Government's ability to pay for other things. The Minister responded that budgets always have a degree of flexibility and the Scottish Government feels it can absorb the £2.7 million increase.
5. The increases to Young Carers Grant, Best Start Grant, Funeral Support Payment, Scottish Child Payment and Child Winter Heating Assistance would come into effect on 1 April 2022.
6. The increases to Child Disability Payment and Adult Disability Payment would come into effect on 11 April 2022.
7. The policy also makes a technical amendment to The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019, increasing the income threshold for Best Start Foods to take account of the increases in the National Living Wage and the increased levels of Working Tax Credit and Child Tax Credit.

8. Due to the expedited timetable to ensure these regulations could come into effect on 1 April the Minister advised that the Scottish Commission on Social Security (SCoSS) were unable to report on these re-laid regulations. A statement in accordance with section 97(9)(b) of the Social Security (Scotland) Act 2018 was laid in Parliament alongside these regulations (Annexe C).
9. SCoSS produced its report on the initial draft regulations on [17 January 2022](#) and the Scottish Government responded to the recommendations by SCoSS on [28 January 2022](#). SCoSS may choose to issue a new or updated report on these re-laid regulations.
10. Further information on the instrument is available in the SPICe paper (Paper 2).

Delegated Powers and Law Reform Committee consideration

11. The DPLR Committee considered this instrument at its meeting on [22 March 2022](#) and no points were raised in relation to this instrument.

For decision

12. The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 31 March 2022 to ensure the proposed expedited timetable is met.
13. The Committee is also invited to delegate responsibility for the drafting and publication of a short, factual report to the Convener and Clerk.

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CC: DPLR.Committee@parliament.scot

16 March 2022

Dear Presiding Officer,

The Social Security (Up-rating) (Miscellaneous Amendment) (Scotland) Regulations 2022

I am writing to inform Parliament of an urgent need to implement new, expedited arrangements in relation to the above draft regulations and associated uprating of social security benefit payments.

In response to the growing cost of living pressures, which have risen significantly recently due to the war in Ukraine, Ministers are seeking to urgently provide additional support to people by further increasing several forms of devolved social security benefits and assistance, from the 3.1% raise in the current draft, up to 6%.

To this end, it will be necessary to withdraw the Social Security (Up-rating) (Miscellaneous Amendment) (Scotland) Regulations 2022 and re-lay a revised draft which provides the additional increase. In order to achieve these changes by 01 April I am seeking to re-lay these revised regulations on Thursday 17 March 2022 and rely on an expedited parliamentary process with a coming into force date of 01 April.

The revised regulations will be almost identical to the draft that Parliament has already seen save for the figures for awards increased in line with a 6% uprate. The only other change to the new regulations is to now also uprate the Best Start Grant payments which were not previously included for uprating in the previous draft. Scottish Child Payment will maintain the same uprate of 100% from £10 to £20 a week per child.

Best Start Foods will not be further uprated in these regulations but was already increased from £4.25 to £4.50 in August – an increase of 5.88%.

Adult Disability Payment and Child Disability Payment will still increase by 3.1% in line with the equivalent benefits (Disability Living Allowance and Personal Independence Payment) which are still administered by DWP under agency agreement. This is to avoid creating a two-tier system where individuals paid by Social Security Scotland are paid more than clients whose cases have not yet transferred to the Scottish system.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

It is important to note that there is no change to the Social Security Up-rating (Scotland) Order 2022 which was laid alongside the above amending regulations. This up-rates the benefits that are administered by DWP on Scottish Ministers' behalf for which we have executive competence for under agency agreement, including Disability Living Allowance and Personal Independence Payment.

I am aware that the Delegated Powers and Law Reform Committee will need to consider the new draft of the regulations as well as the Social Justice and Social Security Committee. My officials are also liaising with the Parliament and Legislation Unit on the timing of the scrutiny of the regulations.

I would like to apologise for any inconvenience to Parliament, and in particular those Committees, because of the need to implement these urgent measures. However, I trust Parliament will be supportive of the need to act urgently to support low income households who are disproportionately affected by rising costs.

Best regards,



BEN MACPHERSON

POLICY NOTE

**THE SOCIAL SECURITY (UP-RATING) (MISCELLANEOUS AMENDMENT)
(SCOTLAND) REGULATIONS 2022**

SSI 2022/XXX

The above instrument will be made in exercise of the powers conferred by section 28(2), 31(2), 32(2), 34(2) and 79 of the Social Security (Scotland) Act 2018 ('the 2018 Act') and section 13 of the Social Security Benefits Act 1988. The instrument is subject to the affirmative procedure. For the purposes of this note, the instrument will be referred to as the '2022 Regulations'.

Purpose of the instrument

The 2022 Regulations fulfil the duty on the Scottish Ministers under section 86A of the Social Security (Scotland) Act 2018 ("the Act") to consider the effects of inflation on the assistance that are in effect, and under section 86B to bring forward legislation to increase the amount of Child Disability Payment, Adult Disability Payment, Scottish Child Payment, Funeral Support Payment and Young Carer Grant to an amount which is at least as high as if the existing amount was adjusted in line with price inflation. In addition, Best Start Grants and Child Winter Heating Assistance are increased by 6%.

After considering the effects of inflation, the Scottish Ministers have decided to increase Funeral Support Payment, Young Carer Grant, Best Start Grant and Child Winter Heating Assistance by 6%. Adult Disability Payment and Child Disability Payment are increased by 3.1% which is the September 2021 Consumer Price Index (CPI) rate. This is because Adult Disability Payment and Child Disability Payment must increase in line with benefits still administered by DWP under agency agreement to avoid creating a two-tier system. Scottish Child Payment will be increased by 100% to £20. The 2022 Regulations increase the amount of;

- the Young Carer Grant payable under the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019;
- Funeral Support Payment payable under the Funeral Expense Assistance (Scotland) Regulations 2019; namely, 1) the standard amount of assistance that is available towards other funeral costs, 2) the amount which is payable towards other funeral costs if the deceased has a pre-paid funeral plan and 3) the amount which is payable towards a fee for removing an active implantable medical device from the deceased;
- Child Disability Payment payable under the Disability Assistance for Children and Young People (Scotland) Regulations 2020; namely 1) the mobility component and 2) the care component;
- Adult Disability Payment payable under the Disability Assistance for Working Age People (Scotland) Regulations 2021; namely 1) the daily living component, and 2) the mobility component
- the amount payable under the Scottish Child Payment Regulations 2020,
- The amount of Best Start Grant 1) Pregnancy and Baby Payment (1st Child Payment), 2) Pregnancy and Baby Payment (Subsequent Child Payment & Extra Payment for Twins/Triples), 3) Early Learning Payment and 4) School Age Payment payable under the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 and

- the Child Winter Heating Assistance payable under the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020.

The increases to Young Carers Grant, Funeral Support Payment, Scottish Child Payment, Best Start Grant and Child Winter Heating Assistance come into effect on 1 April 2022. The increases to Child Disability Payment and Adult Disability Payment come into effect on 11 April 2022.

The opportunity has also been taken through these regulations to make amendments to The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 to increase the income thresholds for Best Start Foods to take account of the increases in the National Living Wage and the increased levels of Working Tax Credit and Child Tax Credit .

Policy Objectives

Section 86A of the 2018 Act requires Scottish Ministers to calculate the inflation-adjusted level of each amount of assistance prescribed in regulations under any section in Chapter 2 and report to the Scottish Parliament, before the end of each financial year, on what they have done or intend to do as a result of the changes to prices. Section 86B of the 2018 Act requires Scottish Ministers to bring forward legislation before the end of each financial year to replace the amounts of, Scottish Child Payment, Child Disability Payment, Adult Disability Payment, Funeral Support Payment and Young Carer Grant with amounts which are at least as high as the inflation-adjusted level of each amount. Scottish Ministers also decide whether to apply this uprate to Best Start Grant and Child Winter Heating Assistance and explain their decision in the report as required under section 86A.

It has been determined that there has been an increase in the general level of prices in the past financial year. Accordingly, the 2022 Regulations are brought forward in reliance on section 28, 31, 32 and 34 to increase the relevant sums for Adult Disability Payment and Child Disability Payment by 3.1% with the payment rounded to the nearest multiple of 5 pence. Scottish Child Payment will be increased to £20 and Young Carers Grant, Funeral Support Payment, Best Start Grant and Child Winter Heating Assistance are increased by 6%.

The 2022 Regulations provide for a 6% increase to the Young Carer Grant payment (from £308.15 to **£326.65**); a 6% increase to the Funeral Support Payment of the standard amount that is available towards other funeral costs (from £1,010 to **£1,070.60**), a 6% increase to the Funeral Support Payment that is available towards funeral costs where the deceased has left in place a pre-paid funeral plan (from £123.25 to **£130.65**) and a 6% increase to the Funeral Support Payment of the fee for removing an active implantable medical device from the deceased (from £20.55 to **£21.55**); a 6% increase to Child Winter Heating Assistance (from £202 to **£214.10**); a 6% increase to Best Start Grant Pregnancy and Baby Payment (1st Child Payment) (from £606.00 to **£642.35**), Best Start Grant Pregnancy and Baby Payment (Subsequent Child Payment & Extra Payment for Twins/Triplets) (from £303.00 to **£321.20**), Best Start Grant Early Learning Payment (from £252.50 to **£267.65**) and Best Start Grant School Age Payment (from £252.50 to **£267.65**); a 3.1% increase to Child Disability Payment mobility component (higher rate from £62.55 to **£64.50** and lower rate from £23.70 to **£24.45**) and care components (highest rate from £89.60 to **£92.40**, middle rate from £60.00 to **£61.85** and lowest rate from £23.70 to **£24.45**); a 3.1% increase to Adult Disability Payment Daily Living Component (standard rate from £60.00 to **£61.85**, enhanced rate from £89.60 to **£92.40**) and Mobility Component (standard rate from £23.70 to **£24.45** and enhanced rate from £62.55 to **£64.50**); an increase to Scottish Child Payment (from £10.00 to **£20.00**).

The opportunity has also been taken to make minor technical amendments to The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 by increasing the income threshold amounts for certain qualifying benefits. This change will ensure that families on the lowest incomes retain their eligibility to Best Start Foods.

The Cabinet Secretary for Finance announced the proposed rates of devolved social security assistance for 2022-23 to the Scottish Parliament during the Scottish Budget on 9 December 2021. In accordance with the Social Security (Scotland) 2018 Act, a draft of these Regulations is laid before the Scottish Parliament for approval by resolution.

Consultation

Section 97(2) of the Social Security (Scotland) Act 2018 requires Scottish Ministers to inform the Scottish Commission on Social Security (SCoSS) of proposals in the form of draft regulations to meet the scrutiny and consultation process.

As the situation requires legislation to be laid immediately, it has not been possible to allow SCoSS sufficient time for the necessary time to scrutinise and publish a report on the regulations. SCoSS scrutinised the previous version of the Regulations and provided a report on 17 January 2022, to which Scottish Ministers responded on 28 January 2022.

As such we are laying this draft instrument under section 97(9)(b) of the Act without a report from the Commission having yet been prepared on the new version of the regulations. If SCoSS decide to provide a further scrutiny report, Ministers will respond to that report when it is published including to bring forward further legislation and to explain why they do not accept recommendations as appropriate.

Impact Assessments

The full range of impact assessments were considered and completed where necessary for the Social Security (Scotland) Act 2018 and have been published for Funeral Expense Assistance¹, Young Carer Grant², Child Disability Payment³, Adult Disability Payment⁴ and Scottish Child Payment⁵, and Child Winter Heating Assistance⁶. Impact assessments for any new Scottish assistance will be undertaken at the point where policy is being developed and regulations are being drafted.

As the increase to Scottish Child Payment, Child Disability Payment, Adult Disability Payment, Young Carer Grant, Funeral Support Payment, Best Start Grant and Child Winter Heating Assistance ensures that the assistance people are eligible for in 2022-23 at least keeps pace with inflation, then it is considered that there is no significant impact on the private, voluntary or public sector.

¹ <https://www.gov.scot/publications/consultation-funeral-expense-assistance-regulations/pages/8/>

² <https://www.gov.scot/publications/consultation-young-carer-grant-regulations/pages/8/>

³ The Disability Assistance for Children and Young People (Scotland) Regulations 2021 (legislation.gov.uk)

⁴ The Disability Assistance for Working Age People (Scotland) Regulations 2022 (legislation.gov.uk)

⁵ The Scottish Child Payment Regulations 2020 (legislation.gov.uk)

⁶ The Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020 (legislation.gov.uk)

It is not considered necessary to carry out additional impact assessments for the amendments to The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019. These Regulations do not seek to substantively change the policy intent of the regulations.

Financial Effects

A Financial Memorandum⁷ was completed prior to introduction of the Social Security (Scotland) Bill.

The Financial Memorandum states that funding for existing benefits will be transferred from the UK Government under the terms of the Fiscal Framework agreement. The Financial Memorandum also considers the costs of uprating and recognises that the methodology of uprating of benefits for inflation is a source of financial risk. This is because any future policy differentials between Scotland and the UK for the method of uprating could result in additional pressures on the Scottish Budget.

Scottish Child Payment, Young Carer Grant and Child Winter Heating Assistance are new forms of assistance, therefore there is no funding transfer from the UK government and the cost of these and the uprating increase will be met from the existing Scottish Budget. The Funeral Support Payment and Best Start Grant are not uprated annually by inflation in England and Wales and therefore the cost of the uprating increase will be met from the existing Scottish Budget. The Scottish Fiscal Commission used the September CPI rate of 3.1% and the £20 weekly amount for Scottish Child Payment when producing their forecasts of benefits expenditure which are set out in their Economic and Fiscal Forecasts December 2021⁸.

For the amendments to The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 the Scottish Fiscal Commission said in their December forecast publication that the cost of this measure is below their materiality threshold.

The Scottish Government has since opted to amend the regulations and to uprate the benefits described above by 6%. This means that the impact of uprating Funeral Support Payment will be 2.9% higher than what is set out in the Scottish Fiscal Commission's December 2021 forecast. Additionally, uprating for Child Winter Heating Assistance is 1% higher, and Best Start Grant is now included and will therefore receive a full uprate of 6%. The overall cost of these changes are expected to be below the Scottish Fiscal Commission's £5 million materiality threshold for small measures and a supplementary costing has therefore not been prepared to accompany these regulations. The new uprating policy will be included in the Scottish Fiscal Commission's forecasts in May.

Scottish Government
Social Security Directorate
17 March 2022

⁷[http://www.parliament.scot/S5_Bills/Social%20Security%20\(Scotland\)%20Bill/SPBill18FMS052017.pdf](http://www.parliament.scot/S5_Bills/Social%20Security%20(Scotland)%20Bill/SPBill18FMS052017.pdf)

⁸ Forecasts | Scottish Fiscal Commission

**THE SOCIAL SECURITY (UP-RATING) (MISCELLANEOUS AMENDMENT)
(SCOTLAND) REGULATIONS 2022**

SSI 2022/XXX

Statement made under s97(9)(b) of the Social Security (Scotland) Act 2018

These regulations are being laid without a report from the Scottish Commission on Social Security. As such, this statement has been prepared setting out why Scottish Ministers consider it appropriate to lay the draft instrument before the Parliament before the Commission has submitted its report on the proposals for the regulations.

Scottish Ministers consider laying this draft without a new Commission report is appropriate.

The Scottish Commission on Social Security reported on an earlier draft of these regulations on 17 January 2022. Those draft regulations were withdrawn and the current draft re-laid in order to increase the amount by which various forms of devolved assistance would be uprated, from 3.1 per cent to 6 per cent. The decision to re-lay the regulations was taken in response to the growing cost of living pressures, which have risen significantly recently due to the war in Ukraine.

In order to fulfil the duties placed on Scottish Ministers by s86B of the Social Security (Scotland) Act 2018 it is essential that these regulations enter into force by 1 April 2022. As such, it was not possible to maintain current legislative timelines and lodge a response to a new report from the Scottish Commission on Social Security.

The Commission would have had insufficient time to prepare a new report, and Scottish Ministers would have similarly had insufficient time to prepare a response. The revised regulations are almost identical to the draft that the Commission has already seen, save for the figures for awards increased in line with a 6% uprate. The only other change to the new regulations is to now also uprate the Best Start Grant payments which were not previously included for uprating in the previous draft.

When a new report is published by the Scottish Commission on Social Security, Scottish Ministers will respond, including bringing forward further provision where that is necessary to implement recommendations that we accept and to explain why we will not do so where we do not agree with recommendations made.

SCOTTISH GOVERNMENT