Social Justice and Social Security Committee

4th Meeting, 2023 (Session 6), Thursday, 23 February

Subordinate Legislation Cover Note

Title of Instrument:	The Social Security Up-rating (Scotland) Order 2023
Laid Date:	31 January 2023
Reporting deadline:	20/03/2023
Type of instrument:	Affirmative
Motion to approve:	S6M-07738

Parliamentary procedure

1. 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).

2. 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).

3. 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.

4. 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.

5. The lead committee must report its recommendation to Parliament within 40 days of the SSI being laid. 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

6. According to the Policy Note and Explanatory Note (both available in Annexe A), , this Order reviews the rates of some devolved social security benefits for which the Scottish Government follows DWP policy.

7. The Scottish Government states that the instrument uprates the following benefits:

   - Attendance Allowance
   - Carer's Allowance
   - Disability Living Allowance
   - Personal Independence Payment
   - Severe Disablement Allowance
   - Industrial Injuries Disablement Benefits
   - Industrial Death Benefit.

8. The Scottish Government says that the Order also restates the amount of Child Dependency Increase as an additional weekly payment payable to some recipients of Carer's Allowance and Severe Disablement Allowance and an increase to the Adult Dependency Increase as an additional weekly payment payable to some recipients of Severe Disablement Allowance.

9. It adds that other benefits associated to the Severe Disablement Allowance and Industrial Injuries Scheme benefits will also increase.

Delegated Powers and Law Reform Committee consideration

10. The DPLR Committee will consider the instrument at its meeting on 21 February 2023. When available, the Official Report for the meeting will be published here.

Previous consideration by the Social Justice and Social Security Committee

11. At its meeting on 09 February 2023, the Committee heard from the Scottish Commission on Social Security on their recommendations for the 2023 up-rating regulations and the Scottish Government's response to their report. You can read the Official Report of the meeting here.

For decision

12. **The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 20 March 2023.**

13. **The Committee is also invited to delegate responsibility for the drafting and publication of a short, factual report to the Convener and Clerk**.

ANNEXE A

POLICY NOTE

THE SOCIAL SECURITY UP-RATING (SCOTLAND) ORDER 2023

SSI 2023/XXX

The above instrument will be made in exercise of the powers conferred by sections 150(9) and 150A(6) of the Social Security Administration Act 1992 ('the 1992 Act'). These powers, in UK legislation, are excercised by the Scottish Government through their executive competence. The instrument is subject to the affirmative procedure and will come into force from the 1 April 2023. For the purposes of this note, the instrument will be referred to as 'the 2023 Order'.

Purpose of the instrument

This Order fulfils the statutory duty on the Scottish Ministers to review the rates of social security benefits that they are responsible for and provides for the uprating of certain benefits. Various weekly rates of payment of Attendance Allowance, Carer's Allowance, Disability Living Allowance, Industrial Injuries Disablement Benefit, Industrial Death Benefit, Personal Independence Payment and Severe Disablement Allowance will increase. The Order also restates the amount of Child Dependency Increase as an additional weekly payment payable to some recipients of Carer's Allowance and Severe Disablement Allowance and an increase to the Adult Dependency Increase as an additional weekly payment payable to some recipients of Severe Disablement Allowance. Other associated benefits of the Severe Disablement Allowance and Industrial Injuries Scheme benefits will also increase.

Policy Objectives

The purpose of the 2023 Order is to uprate the weekly rates of payment of Attendance Allowance, Carer's Allowance, Disability Living Allowance, Industrial Injuries Disablement Benefit, Industrial Death Benefit, Personal Independence Payment and the Severe Disablement Allowance.

The functions of the Secretary of State for Work and Pensions in relation to Carer's Allowance payable to people resident in Scotland transferred to the Scottish Ministers, with effect from 3 September 2018 and for all the other remaining devolved benefits from 1 April 2020. The result is that the Scottish Ministers are responsible for the provision of these benefits to people who usually live in Scotland. Agency agreements have been entered with the Secretary of State for Work and Pensions, exercising powers arising from the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018. This has the effect that the Secretary of State delivers these benefits on behalf of the Scottish Ministers. In terms of that agreement, the Scottish Ministers are committed to uprate these benefits at the same rate as the Department for Work and Pensions (DWP). It is, though, a matter for the Scottish Ministers to make an order effecting the uprating. Given the transfer of functions, it is policy for Scottish Ministers to make legislation relating to these benefits, insofar as they relate to Scotland.

Benefits linked to the general level of prices

Section 150(1) of the 1992 Act requires a review of Attendance Allowance, Carer's Allowance, Disability Living Allowance, Industrial Injuries Disablement Benefit, Personal Independence Payment and the Severe Disablement Allowance and to uprate them where there has been in increase in the general level of prices. It has been determined that there has been an increase in the general level of prices in the past year. Accordingly, this Order is brought forward in reliance on section 150(2)(a), to increase the relevant sums so far as they fall within the competence of the Scottish Ministers. In line with the approach of the DWP, the uprate to be applied is according to the September 2022 Consumer Price Index (CPI) as published on 19 October 2022, in this case 10.1%. This is the 12-month inflation rate, which compares prices for September 2022 with the same month a year ago.

Other Miscellaneous Benefits

The Order restates the Child Dependency Increase which is an additional weekly payment payable to a recipient of Carer's Allowance or Severe Disablement Allowance who is entitled to receive Child Benefit. There is also an increase to the Adult Dependency Increase as an additional weekly payment payable to some recipients of Severe Disablement Allowance. The benefits associated with the Industrial Injuries Scheme such as Exceptionally Severe Disablement Allowance, Reduced Earnings Allowance and Retirement Allowance are also increased. The complete associated benefits are set out in the 2023 Order.

Benefits linked to earnings

Section 150A(1)(c) of the 1992 Act requires a review of the Industrial Death Benefit widow's and widower's pension as these are linked to earnings.

The Industrial Death Benefit is normally uprated through the triple lock guarantee, which ensures that pensions increase by the greatest of average earnings, prices as measured by CPI or 2.5%. The UK Government has determined that IDB is to be uprated by September CPI, or 10.1%.

The uprates will match the rate that the UK Government will apply to all of these benefits in England and Wales. The increase to these benefits will take effect as set out in the 2023 Order. The uprate will ensure that the benefits will keep pace with price inflation. The Cabinet Secretary for Finance announced the proposed rates of the benefits for 2023/24 to the Scottish Parliament during the Scottish Budget on 15 December 2022. In accordance with the 1992 Act, a draft of this Order is laid before the Scottish Parliament for approval by resolution.

Consultation

There is no statutory requirement to consult on this instrument. However, a comprehensive report, including analytical evidence, on the measures that could be used to uprate devolved social security assistance was provided to the Social Security Committee and the Scottish Commission on Social Security (SCoSS) in 2019 to allow them to engage on the proposed uprating policy. The analytical report was prepared to provide a detailed review of relevant inflation measures to inform the options available to uprate devolved social security assistance. The Policy Paper set out the Scottish Government's proposed approach to uprating and recommended the use of the September CPI with the payment rounded to the nearest multiple of 5 pence. The paper also noted that, during any period when a benefit is delivered by DWP on behalf of Scottish Ministers under an agency agreement, Scottish Ministers will be obliged to uprate on the same basis as DWP. The SCoSS were supportive of the Scottish Government's uprating policy in the short term and the Social Security Committee noted the Scottish Government's position and had no further views to report beyond the discussion at the Committee on 10 October 2019.

Impact Assessments

The full range of impact assessments were considered and completed where necessary for the Social Security (Scotland) Bill (which included provision for the Carer's Allowance Supplement) and will take place for each of the devolved benefits e.g. impact assessments have been published, for Best Start Grant , Funeral Expense Assistance , Young Carer Grant, Child Winter Heating Assistance, Winter Heating Payment, Scottish Child Payment, Child Disability Payment and Adult Disability Payment.

Impact assessments for any new Scottish benefits will be undertaken at the point where policy is being developed and regulations are being drafted. As the uprating of these benefits ensures that the benefits people receive keep pace with inflation, and maintain the current situation, then it is considered that there is no significant impact on the private, voluntary or public sector.

Financial Effects

A Financial Memorandum was completed prior to introduction of the Social Security (Scotland) Bill. The Financial Memorandum considers the costs of uprating and recognises that the methodology of uprating of benefits for inflation is a source of financial risk as any future policy differentials between Scotland and the UK for uprating could result in additional pressures on the Scottish Budget. However, as this uprate to the devolved benefits for recipients in Scotland is the same as to recipients in England and Wales this means there will be no impact on the Scottish Budget. The block grant adjustment methodology detailed in the “Agreement between the Scottish Government and the UK Government on the Scottish Government’s fiscal framework” published on 23 February 2016, continues to link adjustments to the Scottish block grant in respect of welfare to spending on equivalent policy areas in England and Wales. This means the Scottish Government is funded to provide the same level of benefits as in England and Wales.

Scottish Government Social Security Directorate
28 January 2023

EXPLANATORY NOTE

(This note is not part of the Regulations)

This Order provides for an increase in the various rates of carer’s allowance, attendance allowance, disability living allowance, industrial injuries disablement benefit, industrial death benefit, severe disablement allowance, and personal independence payment. Article 2 comes into force on the first day of the first benefit week to commence for a particular beneficiary on or after 1 April 2023. Articles 3, 4, 5, 6(1)(b), 7, 8 and 9 come into force on 10 April 2023. All other articles in this order come into force on 1 April 2023. Articles 3, 4, 5, 6 and 7 set out the dates on which certain increases take effect.

Articles 5 and 6 include mandatory re-statements of amounts of payments which are not to be increased. These give effect to the requirement in section 150(2)(c) of the Social Security Administration Act 1992 to re-state amounts of payments that are not being increased.

Article 2 amends section 80(4) of the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”) to provide increases in the earnings limits which relate to child dependency increase. This is an additional payment payable to a recipient of carer’s allowance who is entitled to receive child benefit in relation to a child or children. It is payable only to those with transitional protection. Child dependency increase was abolished by section 1(3)(e) and schedule 6 of the Tax Credits Act 2002 but saved for transitional cases by article 3 of the Tax Credits Act 2002 (Commencement No. 3 and Transitional Provisions and Savings) Order 2003. Given that child benefit is payable, in certain circumstances, until a child reaches the age of 20, child dependency increase is potentially payable until 2023.

Article 3 amends Part III of schedule 4 of the 1992 Act to provide increases in both the higher and lower weekly rates of attendance allowance.

Article 4 amends Part III of schedule 4 of the 1992 Act to provide increases in the weekly rate of severe disablement allowance and all three weekly rates of the age related addition of that allowance.

Article 5 amends Part III and Part IV of schedule 4 of the 1992 Act to provide for the increase in the weekly rate of carer's allowance. It also re-states the weekly rate of carer's allowance increase for a qualifying child.

Article 6 amends Part IV of schedule 4 of the 1992 Act to increase the rates for adult dependants payable with severe disablement allowance. It also re-states the rate of increase for a qualifying child.

Article 7 amends Part V of schedule 4 of the 1992 Act to amend various weekly rates of industrial injuries benefit, as set out in the schedule.

Article 8 amends regulation 4 of the Social Security (Disability Living Allowance) Regulations 1991 to increase the five weekly rates, as divided across both the care and mobility components, of disability living allowance.

Article 9 amends regulation 24 of the Social Security (Personal Independence Payment) Regulations 2013 to increase the four weekly rates, as divided across both the daily living and mobility components, of personal independence payment.

No business and regulatory impact assessment has been prepared for this Order as no impact upon business, charities or voluntary bodies is foreseen.