



Scottish
Commission
on Social
Security

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Scrutiny report on:

The Social Security Assistance (Funeral Expense Assistance and Young Carer Grants) (Uprating and Miscellaneous Provisions) (Scotland) Regulations 2020

Submitted to the Scottish Government and the Scottish Parliament's Social Security Committee on 14 February 2020.

Summary of recommendations and observations

Recommendation 1: The Scottish Government should routinely assess whether uprating Regulations contain matters where stakeholders may have an interest and a contribution to make, and ensure adequate time is available for this.

Recommendation 2: The Scottish Government should review, in consultation with stakeholders, additional or different information that could usefully be included in section 77 reports. This would inform scrutiny, monitor risk and accord with the Scottish Government's commitment to keeping its approach to uprating under review.

Recommendation 3: The Scottish Government should consult with stakeholders on any implications for devolved assistance of the UK Government's consultation on aligning RPI methodology with that of CPI.

Recommendation 4: The Scottish Commission on Social Security welcomes the exemption of YCG from immigration-related restrictions and underlines the usefulness of monitoring numbers receiving it, including, specifically, people subject to immigration-related restrictions.

Observation: The amendment to the treatment of 'funeral insurance', to ensure applicants are not disadvantaged, where it concerns people with low or incomplete insurance, is a small but positive measure.

Recommendation 5: The Scottish Government is invited to explain how its decision not to uprate BSG is consistent with its child poverty goals and with the proposed introduction of the Scottish Child Payment and to consider their combined impact, in the round, on child poverty.

Recommendation 6: In the event that the decision not to uprate Best Start Grant is not a one-off, Section 77 reports should include figures for what its cumulative total value would have been had it been uprated annually and provide an equality impact assessment.

1. Introduction

1.1 Background and overview

The Scottish Commission on Social Security (SCoSS) is pleased to present its report on the Social Security Assistance (Funeral Expense Assistance and Young Carer Grants) (Uprating and Miscellaneous Provisions) (Scotland) Regulations 2020¹. We refer to these throughout the report as the ‘draft Regulations’.

Our report has been completed in accordance with the Commission’s pre-legislative scrutiny function, set out in sections 22 and 97 of the Social Security (Scotland) Act 2018². Section 97 states that the Commission must report on draft Regulations proposed to be made under any section in Chapter 2 of Part 2 of the Act³. The draft Regulations are made under powers conferred by sections within this part and chapter.

SCoSS has previously reported on the Scottish Government’s general approach to uprating⁴, in response to a referral by the Cabinet Secretary for Social Security and Older People in September 2019, under section 22(1)(b) of the Social Security (Scotland) Act 2018. This was comprised of an ‘uprating policy paper’ and ‘analytical report 2019’, and set out the “options available for uprating devolved social security assistance and the Scottish Government’s proposed approach based on the available evidence”⁵.

In our ‘Uprating Measures Report’ we provided our views on the Scottish Government’s preferred measure for increasing the value of certain forms of social security assistance. We also took the opportunity to set out a longer-term view by exploring options for developing improved approaches to uprating. The Scottish Government’s response was provided in November 2019⁶. It confirmed the Scottish Government’s intention to use the Consumer Price Index (CPI) for the purpose of uprating social security assistance, at least in the short-term. CPI has been used as the basis for uprating the forms of assistance covered in the draft Regulations.

¹ <https://www.gov.scot/groups/scottish-commission-on-social-security/>

² <http://www.legislation.gov.uk/asp/2018/9/enacted>

³ Other than in relation to regulations made only for the purpose of the consolidation of earlier regulations (section 97(11)).

⁴ <https://www.gov.scot/publications/scottish-commission-on-social-security-uprating-report-2019/>

⁵ <https://www.gov.scot/publications/scottish-commission-on-social-security-letters-uprating-2019-2/>

⁶ <https://www.gov.scot/publications/uprating-2019-reponse-to-report/>

The draft Regulations include a few ‘tidying’ amendments to earlier Regulations covering Young Carer Grant (YCG)⁷ and Funeral Support Payment (FSP)⁸. While clearly it is desirable to make strenuous efforts to avoid the need for such amendments where possible (although, as with the YCG amendment, they may concern a development since the approval of the original Regulations), in the course of establishing a new social security system it is reasonable to expect these may occasionally be necessary from time to time.

1.2 Approach to scrutiny

As always, SCoSS has carried out its scrutiny role in accordance with Section 97 of the Act; with regard to the Scottish social security principles⁹ and any relevant provisions of human rights law; and also with reference to our scrutiny framework.¹⁰

The draft Regulations had originally been timetabled for referral to SCoSS in December 2019. However, they were formally submitted on 10th February 2020 by the Cabinet Secretary, with a request by officials that we report by 14th February. Therefore, the Commission has only had five working days in which to draft and agree this report. The delay in formally referring the draft Regulations to SCoSS was due to the UK General Election and the subsequent delay to the publication of the Scottish Budget. The Scottish Government did provide SCoSS with an earlier indication of the likely content of the draft Regulations in December 2019, although this did not cover all of the provisions that are contained within the version on which we are reporting.

This delay and the very tight timescales have had inevitable implications for our approach to scrutiny. We were unable to invite officials to a SCoSS Board meeting to discuss the draft Regulations (and clearly, had we wished to consult stakeholders, it would have been impossible). However, Scottish Government officials provided helpful responses, by email, to our questions on the intended policy and legal effect.

As noted in our Uprating Measures Report, the Scottish Government did not consult on its overall approach to uprating, as far as we are aware.

⁷ <http://www.legislation.gov.uk/ssi/2019/324/contents/made>

⁸ <http://www.legislation.gov.uk/sdsi/2019/9780111040461>

⁹ Social Security (Scotland) Act 2018 asp 9 s1

¹⁰ <https://www.gov.scot/publications/scottish-commission-on-social-security-draft-scrutiny-framework/>

Thus, to date, there appears to have been no stakeholder engagement on the topic of uprating. It is true that matters to do with uprating may be technical and, once established, often routine. However, decisions on which indices to use for uprating and decisions not to up-rate – particularly where cumulative over time – can have a significant impact on people’s lives. This may create risks to social security principles (a), (b) and (e)¹¹. It is therefore important that risks are carefully monitored and that principle (f) – that the social security system should be designed with the people of Scotland on the basis of evidence – is not sacrificed. Moreover, if it is the intention to use uprating Regulations as a vehicle for ‘tidying up’ other Regulations, it will be important to ensure such additions do not cover matters of substance where stakeholder engagement would be beneficial.

Recommendation 1: The Scottish Government should routinely assess whether uprating Regulations contain matters where stakeholders may have an interest and a contribution to make, and ensure adequate time is available for this.

2. ‘Section 77’ report

2.1 Role of the report

Under section 77 of the Act, the Scottish Government has to report on the impact of inflation on all Part 2 Chapter 2 assistance currently being delivered; what it intends to do for the next financial year; and what it intends to do for the types of assistance where there is no requirement to uprate. While the Commission is not required formally to scrutinise the section 77 report, it is a critically important source of information and evidence that can be drawn upon to identify options, implications and risks, and so inform scrutiny of the Uprating Regulations, both ours and potentially that of the Social Security Committee and other stakeholders.

In our Uprating Measures Report referenced above, we made a number of recommendations concerning information that it would be helpful to include in Section 77 reports. We are pleased to note that the Scottish Government has taken into account some of the recommendations¹². As this is the first time we have gone through this process, it may be worth

¹¹ Social security principle (a): social security is an investment in the people of Scotland; (b) social security is itself a human right and essential to the realisation of other human rights; and (e) the Scottish social security system is to contribute to reducing poverty in Scotland.

¹² For example, recommendation 9 said: “In order to understand the impact of inflation on the people receiving benefits, it would be useful if section 77 reports covered all forms of devolved assistance (or were accompanied by documents providing this information).”

reviewing whether it would be helpful to include additional or different information in Section 77 reports.

Recommendation 2: The Scottish Government should review, in consultation with stakeholders, additional or different information that could usefully be included in section 77 reports. This would inform scrutiny, monitor risk and accord with the Scottish Government’s commitment to keeping its approach to uprating under review.

2.2 Review of RPI

In our Uprating Measures Report we recommended that:

“CPI should be adopted in the short-term, but with scope to review it in the longer-term. Meanwhile, we invite the Scottish Government to actively monitor comparisons between CPI, CPIH and RPI and develop future projections” (Recommendation 3).

Our recommendation on CPI was largely based on pragmatic considerations, notably the need for consistency with DWP’s approach while agency agreements pertain and the current lack of robust alternatives (see our full report for further details of our reasoning).

Regarding the second part of recommendation 3 above, we note that the Section 77 report helpfully provides rates for the 3 indices in September 2019 (the basis for uprating):

- Consumer Price Index (CPI): 1.7%
- Consumer Price Index including some Housing costs (CPIH): 1.7%
- Retail Price Index (RPI): 2.4%

We further note that the UK Government proposes to consult in 2020 on aligning RPI methodology with that of CPIH. RPI continues to be used with respect to Government index-linked bonds, interest rates on student loans and rail-fare increases, despite its acknowledged methodological flaws and calls from the UK Parliament to cease using it for such purposes¹³. The implications for poverty and inequality of using RPI in these instances, instead of CPI or CPIH, would merit further

¹³ See for example: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/economic-affairs-committee/news-parliament-2017/measuring-inflation-report-publication/>
<https://www.theguardian.com/business/2019/feb/12/mps-press-treasury-to-abandon-absurd-inflation-measures>

investigation, in accordance with social security principles (e) and (g)(ii). Moreover, as we noted in our report on the draft Scottish Child Payment (SCP) regulations¹⁴, some forms of assistance have specific goals to reduce poverty, and poverty may (as in the case of SCP) be measured with reference to median income. It would also, therefore, be helpful for the section 77 report to provide information on changes to median income as well as CPI, CPIH and RPI.

In its response to SCoSS's recommendation that CPI should be used in the short-term, the Scottish Government committed to keeping developments in inflation measures under review and to consider alternatives approaches should there be a 'material change'. We welcome that the Section 77 report specifically states the alignment of RPI with CPIH methodologies would constitute a material change.

Recommendation 3: The Scottish Government should consult with stakeholders on any implications for devolved assistance of the UK Government's consultation on aligning RPI methodology with that of CPI.

3. Uprated benefits

3.1 Overview

Section 78 of the Act requires that certain forms of assistance are uprated annually. Young Carer Grant was added to the list through the Young Carer Grant Regulations¹⁵. The forms of assistance in place that will be covered by this requirement are Funeral Support Payment and Young Carer Grant. Legislation is not required to uprate Carer's Allowance Supplement as its value is calculated with reference to the formula in 81(4) of the Act¹⁶. The Scottish Government does not have to uprate Best Start Grant under section 78 and has chosen not to do so.

The new payment levels for uprated forms of assistance will come into effect on 1st April 2020. The draft Regulations clarify that the level of payment that applicants for Young Carer Grant or Funeral Support Payments receive will depend on the date a valid application is received, with applications before 1st April receiving the non-uprated amounts and

¹⁴ <https://www.gov.scot/publications/scottish-commission-on-social-security-uprating-report-2019/>

¹⁵ <http://www.legislation.gov.uk/ssi/2019/324/made>

¹⁶ The value of Carer's Allowance Supplement is the difference between Jobseekers Allowance and Carer's Allowance and so it is contingent on their values.

applications made on or after 1st April receiving the uprated amounts. As both have a large application window, this is a helpful clarification.

3.2 Young Carer Grant

The Scottish Government intends to amend the Young Carer Grant (YCG) regulations to ensure that a young carer subject to immigration control (which includes carers who are asylum seekers) and with no recourse to public funds could nonetheless receive the grant. In our report on the draft YCG regulations we welcomed the Scottish Government's intention to seek this exemption¹⁷. We also recommended that, should people subject to immigration control be granted exemption, the impact of this should be monitored (recommendation 17(i)).

Officials have assured us that this amendment will have no impact on recipients' immigration status and that the Home Office has undertaken not to add YCG to either the benefits listed as unavailable to persons subject to immigration control in section 115 of the Immigration and Asylum Act 1999, or to the list of restricted public funds in the Immigration Rules.

Eligibility for YCG is contingent on the cared-for person being in receipt of reserved benefits such as PIP/ DLA care component or AA¹⁸, which cannot be claimed by people subject to immigration-related restrictions. Young carers are likely to be caring for family members and there is a strong likelihood that the whole family will be subject to immigration restrictions. This could mean that the change to YCG will only benefit a small number of young carers who are subject to immigration-related restrictions and who are caring for people who are **not** subject to such restrictions. Of course, it would be welcome, and advance various social security principles and human rights, particularly concerning dignity and adequate living standards (the two clearly being interconnected) even if just a small number of people benefit, particularly as it may reasonably be expected that asylum seekers, for example, will be in acute poverty. It will also be important to ensure this limitation is communicated to young carers and their advisers.

Officials have confirmed that they do not hold estimates of the number of young carers who will gain from this exemption, which adds weight to

¹⁷ See heading 4.7 'Applicants subject to immigration control'

<https://www.gov.scot/publications/young-carer-grants-scotland-draft-regulations-2019-scrutiny-report/>

¹⁸ PIP is Personal Independence Payment; Disability Living Allowance; and AA is Attendance Allowance.

the need to monitor the impact. It also flags a possible wider issue that could arise concerning the interface between devolved benefits, including top-up benefits, with reserved powers and benefits.

Recommendation 4: The Scottish Commission on Social Security welcomes the exemption of YCG from immigration-related restrictions and underlines the usefulness of monitoring numbers receiving it, including, specifically, people subject to immigration-related restrictions.

4.3 Funeral Support Payment

Funeral Support Payment is comprised of three components. In summary, these are: reasonable costs incurred in arranging the funeral; a flat-rate payment of £700 or £120; and reasonable transport costs.

The Scottish Government has decided to ‘uplift’ (i.e. increase the value over and above uprating) of the higher flat-rate component from £700 to £1,000. This is a welcome measure, consistent with the social security principle on contributing towards the reduction of poverty (e). It also clarifies the Scottish Government’s response to a recommendation in our Uprating Measures Report¹⁹, that the purpose of uprating is just to maintain the value of a particular assistance, and to uplift value beyond that would require separate regulations. While that may indeed be the policy intention of uprating, it seems there is nothing to preclude uplifting measures from being wholly integrated into uprating regulations. This is demonstrated in Regulation 5(3)(a), which directly replaces £700 with £1,000.

In addition, the draft Regulations rectify minor technical issues in the Funeral Expense Assistance regulations²⁰ (these were finalised before SCoSS was established and so were not subject to our scrutiny) concerning clarification of the different treatment of pre-paid funeral plans and funeral insurance or similar²¹.

¹⁹ Recommendation 16. <https://www.gov.scot/publications/scottish-commission-on-social-security-uprating-report-2019/>

²⁰ <http://www.legislation.gov.uk/sdsi/2019/9780111040461/conents>

²¹ Funeral plans are effectively savings made towards a funeral during a person’s life-time. With ‘funeral insurance’, occupational pension scheme and ‘burial clubs’, premiums are paid during the person’s life-time and a lump sum is paid after the person’s death. The amendments correct an unintended anomaly whereby when it concerns someone with low level or incomplete ‘funeral insurance’ (or similar), below the value of the higher flat-rate, the applicant would have automatically only been entitled to the lower rate. The amendment means that people in this situation will now be entitled to the higher rate, with the value of the scheme then deducted from the award.

Observation: The amendment to the treatment of ‘funeral insurance’, to ensure applicants are not disadvantaged, where it concerns people with low or incomplete insurance, is a small but positive measure.

4. Best Start Grant

The Section 77 report states that Best Start Grant will not be uprated in 2020-21. This decision is for the Scottish Government to make and it is not required annually to uprate Best Start Grant or Best Start Foods. It does, however, have the option to uprate any form of devolved assistance should it wish to do so.

While Best Start Grant is already considerably more generous than the equivalent Sure Start Maternity Grant in England and Wales²², the Scottish Government has placed particular importance on reducing child poverty. It has explicitly sought to introduce Scottish Child Payment (SCP) to that end and to introduce it as quickly as possible for children aged under 6 in low incomes households. To uprate Best Start Grant would appear to be consistent with that direction of travel. However, in the Section 77 report, the introduction of SCP is presented as a reason not to uprate Best Start Grant.

Recommendation 5: The Scottish Government is invited to explain how its decision not to uprate BSG is consistent with its child poverty goals and with the proposed introduction of the Scottish Child Payment and to consider their combined impact, in the round, on child poverty.

The Scottish Government is, though, obliged to calculate what the figures would be for Best Start Grant (BSG) had it been uprated and include this information in the Section 77 report. These figures show that, had they been uprated, BSG Pregnancy and Baby Payment (first child) would have increased from £600 to £610.20, for subsequent children from £300 to £305.10. BSG Early Learning Payment and School Age Payment would have increased from £250 to £254.25. While these may not seem to be large amounts, they may nonetheless be significant to people on very low incomes. It will be important to track the cumulative impact on total value, should the Scottish Government

²² Paragraph 7.3 of the Section 77 report states: “For example, an eligible family with two children would receive Best Start Grant payments totalling £1,900 in their children’s early years. This is £1,400 more than they would receive if they lived elsewhere in the UK.”

continue to not uprate BSG in future. This is in line with a recommendation in our Uprating Measures Report:

“Section 77 reports could usefully describe, or be accompanied by documents describing, what the cumulative total value of a benefit would have been had it been uprated annually. This would allow for an evaluation of the effect on poverty levels of not uprating benefits.”²³

There may also be equalities implications, where people with protected characteristics disproportionately rely on a form of assistance that is repeatedly not uprated.

Recommendation 6: In the event that the decision not to uprate Best Start Grant is not a one-off, Section 77 reports should include figures for what its cumulative total value would have been had it been uprated annually and provide an equality impact assessment.

²³ <https://www.gov.scot/publications/scottish-commission-on-social-security-uprating-report-2019/>. Recommendation 14.