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17 January 2022

Neil Gray MSP
Convener
Social Justice and Social Security Committee

By email only

Dear Convener,

I am pleased to provide a copy of the Scottish Commission on Social Security's scrutiny report on The Social Security (Up-rating) (Miscellaneous Amendment) (Scotland) Regulations 2022.

This report was prepared after Scottish Ministers formally referred the draft regulations to the Commission on 9 December 2021, in accordance with the 'super-affirmative' procedure outlined in section 97 of the Social Security (Scotland) Act 2018.

A copy of the report has been submitted to the Minister for Social Security and Local Government and will be published on our temporary webpage once it has been laid in the Parliament.

We hope the Committee find this report helpful and we welcome your feedback.

Yours sincerely,

Dr Sally Witcher OBE
Chair
Scottish Commission on Social Security

Scottish Commission on Social Security

Scrutiny report on draft Regulations:

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

Submitted to the Scottish Government and the Scottish Parliament's Social Security Committee on 17 January 2022.

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Summary of recommendations and observations

Observation 1: It may be worth considering whether there might be a case to explicitly reposition these annual regulations as an opportunity to make minor, straightforward adjustments of various kinds.

Observation 2: SCoSS notes that what constitutes maintenance or improvement in support for an adequate standard of living and contribution towards reducing poverty is affected by factors other than uprating in line with September CPI or additional increases. These include external events that increase or create new needs and hence income needs, changes to one form of provision that offset increases or reductions in another, and different inflation rates within the basket of goods comprising CPI, and these may impact disproportionately on particular equality groups.

Observation 3: SCoSS notes that the less stable the environment and the more that regulations go beyond uprating in line with CPI the stronger the case is likely to be for stakeholder engagement and additional supporting data, including financial modelling and assessment of the impact on equality groups.

Recommendation 1: In view of the rapid and substantial rise in inflation since September 2021, and the possibility that by April 2022 a 3.1% increase could fall well short of CPI, we invite the Scottish Government to set out its thoughts on the need for mitigating action and its strategic approach to adjustments in light of inflation volatility.

Recommendation 2: The Scottish Government is requested to clarify if they intend to double or uprate the Scottish Child Payment bridging payment for children over 6 years.

Recommendation 3: SCoSS invites the Scottish Government to clarify whether the increase in income threshold for Best Start Foods takes account of the increase in the National Living Wage and confirm that eligibility has not been inadvertently tightened.

Observation 4: SCoSS welcomes the uprating of CWHA, given that additional heating costs are something that many disabled people experience, and the extent to which disabled people (and children) are disproportionately likely to suffer from poverty.

Recommendation 4: In view of the impact of the pandemic on unpaid carers, SCoSS invites the Scottish Government to set out its thoughts on the case for continuing to pay the Coronavirus Carers Allowance Supplement beyond 31 March 2022.

Executive Summary

Introduction

In 2019 the Scottish Government published its strategic approach to uprating, confirming it would use the September Consumer Price Index (CPI) to maintain the purchasing power of certain forms of assistance, in line with statutory requirements. It can exercise discretion to uprate other forms. In addition to uprating, it can (various constraints permitting) choose to increase amounts by more. Every year it has used these annual regulations to make changes additional to just uprating – unsurprisingly given the impact of the pandemic.

This year September CPI was 3.1%. Additional action in these regulations includes increasing Scottish Child Payment from £10 to £20 and increasing Child Winter Heating Assistance by 5%. The regulations are not controversial and we welcome the additional action, though we make recommendations and observations on key implications.

Although these regulations align with human rights and relevant social security principles, assessing them through those lenses is not straightforward because what is required to maintain or make improvements to support for an adequate standard of living and contribution to reducing poverty cannot be neatly captured by an average measure of price inflation. Other factors include environmental changes like Covid-19 that increase or create new needs, thus income needs, changes to related provision that offset increases in another, and the masking of areas where inflation rates are higher than the average inflation measure. These can impact disproportionately on particular equality groups. Stakeholder engagement (time permitting) and additional data may be helpful to understanding their impact.

Inflation

SCoSS sees no reason at the current time to change from using September CPI as the standard measure though we agree with the Scottish Government that developments in possibly better alternatives should be kept under review. However, in November CPI had risen to 5.1%. There is a risk that uprating by 3.1% could mean a reduction in value by April 2022.

Scottish Child Payment

We welcome the increase to £20 per week, while noting the 'cliff-edge' implications should earnings increase just enough to disentitle a person from Universal Credit, causing SCP to be lost. However we note there is no proposal to uprate or increase the Scottish Child Payment Bridging Payment and recommend that the Scottish Government clarifies its intentions.

Best Start

The Scottish Government does not propose to uprate Best Start Grant, though we note it was increased by twice the inflation rate last year and it is helpful to set this decision in the wider context of action to increase the contribution to reduction of poverty in order to understand cumulative impact and offsets. The value of Best Start Foods was increased by more than 3.1% in August 2021. The regulations aim, though we are not completely sure they achieve it, to maintain eligibility thresholds so no one loses out because of increases in the National Living Wage, Working Tax Credit and Child Tax Credit.

Child Winter Heating Assistance

SCoSS welcomes the above-inflation increase while noting that it may still fall short of energy cost inflation.

Coronavirus Carer's Allowance Supplement

This additional payment was made in June 2020 and in December 2021. Given the ongoing impact of the pandemic on unpaid carers, we feel there could be a case for continuing it.

1. Introduction

1.1 Overview

The Scottish Commission on Social Security (SCoSS) is pleased to present its report on the Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2022 (henceforth referred to as the 'draft Regulations'. This 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 2018[1] (henceforth referred to as 'the Act). 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 Act[2]. The draft Regulations are made under powers conferred by sections within this part and chapter.

The Scottish Government published its overall strategic approach to uprating in 2019[3], having consulted SCoSS on the appropriate inflation measure[4]. It would be surprising, with the arrival of the Covid-19 pandemic, if the Scottish Government had not departed from it somewhat. Nonetheless, the strategy remains an important point of reference against which to assess variations, bearing in mind the powers and constraints on the Scottish Government to set strategy and take action (for further details of powers and constraints see Annex A).

Each year, the Scottish Government uprates certain forms of devolved assistance in line with the Consumer Price Index (CPI) for September; this year 3.1%. It is statutorily obliged to uprate some forms of assistance if in their opinion it is materially below its inflation-adjusted figure. It can also, if it chooses (constraints permitting), uprate others.

[1] http://www.legislation.gov.uk/asp/2018/9/enacted
[2] Other than in relation to regulations made only for the purpose of the consolidation of earlier regulations (section 97(11)).
[3] Scottish Government (September 2019) – Uprating policy paper and analytical report
[4] Letter from Cabinet Secretary, 2 September 2019: Scottish Commission on Social Security letters: uprating 2019 - gov.scot (www.gov.scot)

Alongside the draft regulations a 'section 86A report[5]' is published setting out the basis for uprating and associated figures. The Scottish Government also provides a Policy Note, but does not carry out equality or other impact assessments on the basis that uprating does not represent a change in policy.[6]

The Scottish Government has been clear that the purpose of uprating is to maintain the value or purchasing power of assistance, rather than increase it.[7] That said, the Scottish Government annual uprating regulations to date have included additional measures, whether to increase the value of some forms of assistance above inflation or make other adjustments. This may be a sensible, pragmatic approach although it was not initially expected to be a regular occurrence.[8] Given the possibility that the economic environment may remain unsettled for some time to come, this may be worth reviewing.

Observation 1: It may be worth considering whether there might be a case to explicitly reposition these annual regulations as an opportunity to make minor, straightforward adjustments of various kinds.

This year, in line with statutory requirements and the previously agreed measure of inflation of the September Consumer Price Index (CPI), Scottish Ministers propose to uprate Adult Disability Payment, Child Disability Payment, Carer's Allowance Supplement, Young Carer Grant and Funeral Support Payment by 3.1%. They propose to go beyond this for:

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[5] Compiled in fulfilment of section 86A of the Act; formerly section 77, re-numbered following amendments to the Act by Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).

[6] See Policy note and Scottish Government responses to recommendations 4 and 6 in our February 2021 report: [Scottish Commission on Social Security - scrutiny report: Scottish Government response - gov.scot (www.gov.scot)]

[7] Scottish Government response to recommendation 2, February 2021 report: [Scottish Commission on Social Security - scrutiny report: Scottish Government response - gov.scot (www.gov.scot)]

[8] Scottish Government response to recommendation 1, February 2020 report: [Funeral Expense Assistance and Young Carer Grant Regulations: response to report - gov.scot (www.gov.scot)]

- Scottish Child Payment, (where a statutory requirement to uprate also applies), will be increased by more than 3.1% to double its current rate to £20
- Child Winter Heating Assistance is to be increased by 5%
- There is also a technical change to the income threshold for Best Start Foods to keep this aligned with changes elsewhere and thus maintain eligibility.

For further information on the contents of the draft regulations see Annex B to this report, the Policy Note and section 86A report.

The regulations in themselves are not controversial and SCoSS welcomes the additional action proposed. Nonetheless, they raise a number of important issues that we discuss in this report. Our primary focus is on proposals for action additional to uprating in line with September CPI. We also flag, but do not explore fully, the role of factors other than CPI in determining what income is required to maintain or improve support for an adequate standard of living and contribution to poverty reduction, and when, therefore, additional supporting data, assessment of impact on equality, and stakeholder engagement may be helpful.[9]

1.2 Scrutiny process

The Minister for Social Security and Local Government referred the draft regulations to SCoSS, along with the section 86A report and Policy Note, on 09 December 2021. This was the same day the Scottish Government published its Scottish budget for 2022-23. We were given a deadline for reporting of 17 January 2022. Given the interdependencies between uprating, the Scottish Budget, the Westminster budget, and the need to introduce changes by the start of the financial year, there is little

[9] In its response to recommendation 4 in our Februry 2021 report, Scottish Government stated: “Whenever possible, any future consideration of increasing the generosity of an existing benefit would involve stakeholder engagement and consultation including impact assessments” : Scottish Commission on Social Security - scrutiny report: Scottish Government response - gov.scot (www.gov.scot)

flexibility possible in timescales for reporting and the feasibility of consulting stakeholders, should it be felt helpful.

Scottish Government officials helpfully provided a briefing on issues related to the draft regulations at our Board meeting of 15 December 2021. This report reflects information they provided. We also refer to the section 86A report, the Policy Note and, where directly relevant, to SCoSS's previous reports on uprating and the Scottish Government's responses.

1.3 Human rights and principles

As required by the Act, our scrutiny was undertaken with regard to the Scottish social security principles[10] and relevant provisions of human rights law.

The Section 86A report highlights the relevance of principle (a) on social security as an investment in the people in Scotland; (b) a human right essential to realising other human rights; (e) social security as a contribution towards reducing poverty and (g) seeking opportunities to continuously improve the Scottish social security system in ways which put the needs of those who require assistance first and advance equality and non-discrimination. Action to maintain value by increasing amounts of award in line with a robust measure of inflation is indeed likely to contribute towards those principles.[11]

However, what is required to maintain or increase support for an adequate standard of living[12] and contribution to reducing poverty can be significantly affected by factors that cannot be neatly captured by an average measure of price inflation.[13] These include changes in the external environment (like Covid-19) that can increase or create new essential needs and hence income needs, changes to one form of provision that offset increases or reductions in another, and how an

[10] Social Security (Scotland) Act 2018 asp 9 s1.
[11] Principle (g) applies more obviously to improvements beyond maintaining the status quo.
[12] Human right to an adequate standard of living (art 11 ICESCR.
[13] CPI measures the average change in prices over time that consumers pay for a basket of goods and services.

averaged measure of inflation masks areas where price inflation is a lot higher. These can intersect with the particular needs of equality groups and so impact on them disproportionately (bringing principle gii into play). We welcome where the regulations and material in the section 86A report make some reference to wider factors. For example, it cites the impact of the pandemic and high inflation of energy and transport costs. Such factors strengthen the case for additional action in those areas. We discuss this below with regard to action to increase Child Winter Heating Assistance by more than CPI.

The more turbulent the environment, the less straightforward it becomes to identify what is needed to maintain or improve on the status quo, and thus the contribution of proposed action towards the principles and human rights. That is where stakeholder engagement and additional data may be helpful,[14] in line with principle (f) - designing with the people of Scotland on the basis of evidence. For example, stakeholders may shed light on the differential impact of such factors on the income needs of equality groups. We note that stakeholders have been actively engaged in the child poverty delivery plan, which is the backdrop to the increase in Scottish Child Payment (SCP). Conversely, in a stable environment, where the range of inflation rates in different areas is small and uprating in line with previously agreed policy more closely equates to maintenance, where action is obviously an improvement or merely minor technical tweaks, the case for stakeholder engagement is weak.

Regarding the evidence base, the section 86A report is obviously a key source of evidence. We have previously recommended that additional evidence, such as equality impact assessments, may be helpful where variation in inflation rates and the external environment apply. We highlight additional evidence below, where relevant. The Scottish Government has said it will look to develop the content of future reports to assist understanding as more types of assistance are delivered.[15]

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[14] In its response to recommendation 2 in our report of February 2020 Scottish Government said it will "look to develop the content and scope of future reports as more types of assistance are delivered": Funeral Expense Assistance and Young Carer Grant Regulations: response to report - gov.scot (www.gov.scot)

[15] Response to recommendation 7, February 2021 report: Scottish Commission on Social Security - scrutiny report: Scottish Government response - gov.scot (www.gov.scot)

None of this is to underplay the importance of uprating in line with CPI as a means of maintaining devolved social security's place as an investment in the people of Scotland (principle a) and others. Principle (b) states that "social security is itself a human right and essential to the realisation of other human rights." Previous SCoSS reports have noted the potential contribution of devolved social security assistance to the realisation of certain rights.[16] Casting aside the potential impact of external factors as above, uprating in line with CPI remains important to the maintenance of this contribution. If a particular benefit intended to contribute to the realisation of a particular right were not uprated for an ongoing period then, over time, it is likely that it would make less and less of a contribution to that right. By extension the contribution to the right to social security[17] might similarly dwindle. This should be relevant to consider over the longer term.

Observation 2: SCoSS notes that what constitutes maintenance or improvement in support for an adequate standard of living and contribution towards reducing poverty is affected by factors other than uprating in line with September CPI or additional increases. These include external events that increase or create new needs and hence income needs, changes to one form of provision that offset increases or reductions in another, and different inflation rates within the basket of goods comprising CPI, and these may impact disproportionately on particular equality groups.

Observation 3: SCoSS notes that the less stable the environment and the more that regulations go beyond uprating in line with CPI the stronger the case is likely to be for stakeholder engagement and additional supporting data, including financial modelling and assessment of the impact on equality groups.

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[16] For example, this might concern the human right to an adequate standard of living (art 11 ICESCR), or to respect for family life (art 8 ECHR), or to independent living and social inclusion (art 19 CRPD).
[17] Art 9 ICESCR.

2. Inflation

2.1 Index of inflation

The Scottish Government previously committed to using CPI for the 'foreseeable future'. SCoSS accepted this when it reported to the Scottish Government in its 2019 uprating report while acknowledging that CPI could potentially be improved upon. Section 4 of the Section 86A report sets out the Scottish Government's policy position and current information on possible alternative indices. Having further discussed this with officials[18] we can see no grounds to change from CPI currently and recognise that constraints such as agency agreements with DWP may apply (see Annex A), but agree with the Scottish Government that this should remain actively under review in light of developments concerning other indices.

2.2 Volatility of inflation

In September 2020 the CPI inflation rate was 0.5%. This had increased to 3.1% in September 2021. The CPI measure of inflation has since reached 5.1% in the 12 months to November 2021 (latest figures at the time of writing), up from 4.2% in October.[19]

Such a steep rise is concerning, particularly should this trajectory continue. It could mean that, by April 2022 the uprated value of assistance falls well below actual costs, representing a reduction in support for an adequate standard of living and contribution towards reducing poverty (principle e). In response to a previous SCoSS recommendation that the Scottish Government present plans to mitigate the adverse effects of volatile inflation on people receiving devolved benefits, should this occur the Scottish Government said it would consider how this could best be achieved if inflation became volatile in

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[18] During SCoSS' discussion with Scottish Government policy officials at its Board meeting held on 15 December 2021 it was explained by officials that the UK Statistics Authority was investigating amending the methodology for indices, but due to the links between CPI and UK Government Bonds this would unlikely be further investigated by the UK Government until 2030 when the current issue of Government Bonds expire, whereby more regionalised indices may also be investigated.

[19] Consumer price inflation, UK - Office for National Statistics

the future.[20] Again, it is helpful to acknowledge the constraints on action that might apply (Annex A).

Recommendation 1: In view of the rapid and substantial rise in inflation since September 2021, and the possibility that by April 2022 a 3.1% increase could fall well short of CPI, we invite the Scottish Government to set out its thoughts on the need for mitigating action and its strategic approach to adjustments in light of inflation volatility.

3. Scottish Child Payment

SCoSS welcomes the Scottish Government's decision to increase the Scottish Child Payment (SCP) from £10 to by £20 per week as part of its strategy to tackle child poverty. This considerably exceeds the uprating of SCP by 3.1% which would be £10.31. It is particularly welcome in the context of the UK Government's decision not to continue its £20 Covid-19 related uplift to Universal Credit (UC).

SCP is a good way to get money to families with children on Universal Credit or other qualifying benefit, although if earnings increase to the point where eligibility for them is lost, the additional loss of SCP creates a cliff-edge (this is a point we have raised before).[21]

Scottish Child Payment Bridging Payments

SCP is currently only available for children under the age of 6 years old. Children over the age of 6 years who get free school meals because of low income[22] receive '[Bridging Payments](#)', combining Covid-19 hardship payments and the Family Pandemic Payment into one payment of £130 made 4 times a year for each eligible child. These will be paid during 2022. The payments are administered by Local

[20] Scottish Government response to recommendation 4, report 2019: Uprating 2019: SG response to report - gov.scot (www.gov.scot)

[21] See 3.1: The Scottish Child Payment Regulations 2020: scrutiny report on draft regulations - gov.scot (www.gov.scot)

[22] You may also get it if experiencing financial hardship (see Scottish Child Payment Bridging Payments - mygov.scot)

Authorities. Bridging Payments are not a form of social security assistance and no estimates on eligibility and/or take-up are produced by the Scottish Fiscal Commission.

The section 86A report flags the intention to roll out SCP to older children this year, although this is contingent on DWP furnishing the necessary data. The Scottish Government is under no obligation to uprate Bridging Payments and the section 86A report does not mention them. Officials confirmed that there is to be no change to the rate of payment in 2022. We feel there is a case to explore this.

Recommendation 2: The Scottish Government is requested to clarify if they intend to double or uprate the Scottish Child Payment bridging payment for children over 6 years.

4. Best Start

4.1 Best Start Grant (BSG)

There are three Best Start Grants, which take the form of one-off payments:

- Best Start Grant Pregnancy and Baby Payment (1st Child Payment)
- Best Start Grant Pregnancy and Baby Payment (Subsequent Child Payment & Extra Payment for Twins/Triplets)
- Best Start Grant Early Learning Payment and School Age Payment

The Scottish Government is not obliged to uprate these and this year has chosen not to do so. However, last year it chose to increase the amounts by 1%, double the 0.5% September CPI. The Section 86A report refers to the generosity of the scheme in comparison to similar schemes elsewhere in the UK.

It is also helpful to set the decision not to uprate BSG in the wider context of action to increase the contribution to reduction of poverty in order to understand cumulative impact and offsets. This is an example of where it may be helpful to include information on offsets and overall impact in section 86A reports.

4.2 Best Start Foods (BSF)

BSF is a prepaid card that can be used to buy healthy foods in shops or online[23]. The Scottish Government is under no obligation to uprate it. However, increasing the amount of BSF was one of the commitments made by the SNP for the first 100 days of the new Government. In August 2021 the amount went up from £4.25 to £4.50 per week and that is the reason given for not exercising discretionary power to uprate it now. Had the £4.25 amount been uprated by 3.1%, it would have risen to £4.38, so a 25p increase is above inflation.

That could have been impacted, had the opportunity not been taken (as explained in the section 86A report) to use these regulations to amend income thresholds for eligibility for Best Start Foods[24], to maintain eligibility, ensuring no one loses out because of increases in the National Living Wage and the increased levels of Working Tax Credit and Child Tax Credit. However, it is clearly important to ensure that the amendment to income thresholds achieves the policy intention. We have not had time to investigate this thoroughly, but our initial calculations suggest this is not as straightforward as it may at first appear. We would welcome confirmation that the approach taken fully achieves the policy goal.

Recommendation 3: SCoSS invites the Scottish Government to clarify whether the increase in income threshold for Best Start Foods takes account of the increase in the National Living Wage and confirm that eligibility has not been inadvertently tightened.

[23] Best Start Grant and Best Start Foods - mygov.scot
[24] An amendment to The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019

5. Child Winter Heating Assistance (CWHA)

CWHA[25] provides children, young people and their families with an annual winter payment to assist them in financially mitigating the increased costs they incur in heating their homes as a result of having a disability or long-term condition.

SCoSS welcomes that CWHA is to be increased by 5%, 1.9% over the CPI rate of 3.1%. The evidence in support of this additional measure is set out in the section 86A report. This highlights how "…the energy sector has contributed to the inflationary pressures after [the] Office of Gas and Electricity Markets' (Ofgem) 9% increase of the tariff cap in April 2021".[26] This has resulted in domestic gas bills rising by 28.1% and electricity by 18.8%.[27]

What the section 86A report does not explicitly draw attention to is the case for this additional increase on equalities grounds (principle gii becomes relevant here). As disabled people disproportionately have additional heating needs and hence extra heating costs, high inflation in energy costs will disproportionately impact on them. Households with a disabled family member are disproportionately likely to experience fuel poverty[28]. This is an example of where an equalities impact perspective can be helpful.

The inflation rate for such costs thus vastly exceeds the CPI September figure of 3.1%, and there is currently no sign that inflation will not continue to rise. In fact, while the increase to 5% is certainly welcome, it is possible it will still fall short of maintaining value and hence its contribution to reducing poverty[29]. It is not clear what financial modelling and constraints, including affordability, gave rise to the decision to increase by 5%, though these may well exist. Ultimately such decisions come down to Ministerial judgement.

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[25] The Winter Heating Assistance for Children and Young People (Scotland) Draft Regulations (2021)

[26] The Office of Gas and Electricity Markets (February 2021) – Default tariff cap level
[27] Inflation: UK prices soar at fastest rate for almost ten years - BBC News
[28] See for example: ttps://www.york.ac.uk/media/spsw/documents/research-and-publications/Snell-Bevan-Thomson-EAGA-Charitable-Trust-Fuel-Poverty-And-Disabled-People-Summary.pdf
[29] Citizens Advice warns of perfect storm of energy bill rises and Universal Credit cut - Citizens Advice Citizens Advice warns of perfect storm of energy bill rises and Universal Credit cut - Citizens Advice

Observation 4: SCoSS welcomes the uprating of CWHA, given that additional heating costs are something that many disabled people experience, and the extent to which disabled people (and children) are disproportionately likely to suffer from poverty.

6. Coronavirus Carer's Allowance Supplement (CCAS)

The Scottish Government originally introduced Carer's Allowance Supplement (CAS) in the Act, as a twice yearly top-up to Carers Allowance to keep it level-pegging with Jobseeker's Allowance until such time as the Scottish Government took on its delivery.

This was achieved by a complex formula set out in the Act, which has recently been amended to enable the Scottish Government to increase CAS beyond that amount[30]. This year CAS is to be uprated by 3.1%. In addition, through provisions in the Carer's Allowance Supplement (Scotland) Act, in December 2021 an extra payment of Coronavirus Carer's Allowance Supplement will be made to Carer's Allowance recipients, on top of the normal Carer's Allowance Supplement (section 86A report, 5.2, see also Social Security Scotland information[31]). This one-off additional payment of £230.10, giving a total that represented a doubling of CAS at the time, was previously paid in June 2020. In December 2021, eligible carers received a double payment of CAS (currently worth £231.40) of £462.80.

Given that the new Omicron variant of Covid-19 is still placing exceptionally high demands on unpaid carers and this shows no sign of lessening as protections against the spread of infection are weakened or removed, SCoSS suggests it would be helpful to understand more on the Scottish Government's thinking regarding future payments of CCAS in 2022-23.

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[30] https://www.legislation.gov.uk/asp/2021/20/enacted

[31] Social Security Scotland - Double payment for Carer's Allowance Supplement to be paid on 15th December

Recommendation 4: In view of the impact of the pandemic on unpaid carers, SCoSS invites the Scottish Government to set out its thoughts on the case for continuing to pay the Coronavirus Carer's Allowance Supplement beyond 31 March 2022.

Annex A: Overview – powers and constraints

Areas where Scottish Government has powers to exercise discretion include:

- What index/ indices to use as the measure of inflation.
- Not to uprate any forms of assistance unless "in their opinion" it is "materially below its inflation-adjusted figure" (section 78(1)). In our 2020 report we asked the Scottish Government how it would define 'materially below', at which point we were told that policy was still under development.
- Whether 'uprating' is taken to mean solely maintaining the value of benefits or whether it can also mean increasing their value 'in exceptional circumstances'.
- What they regard as 'exceptional circumstances' that would justify taking a different approach to the one set out.
- Whether only to report annually on inflation-adjusted figures for assistance covered in Part 2 Chapter 2 of the Act, or to maintain or increase their value.

Constraints on the exercise of discretion include:

- Whether the form of assistance if subject to an agency agreement with DWP who continue to administer it for the time being.
- The need to find funds from elsewhere, where funding for additional action is not included in the UK Government block grant.
- Which measures of inflation have the status of national statistics.
- DWP policy changes.

Annex B: Summary of key provisions in the draft regulations

- The CPI rate in September has been agreed as the measure of price-inflation. The rate in September 2021 was 3.1%. However, the Scottish Government has uplifted the value of certain forms of assistance beyond that.

- The Scottish Government has a statutory requirement to uprate (if deemed materially below the inflation-adjusted level):

  - Young Carer's Grant - Provides eligible young carers aged 16, 17 and 18 with an annual payment of £308.15. This will be uprated to £317.70.

  - Funeral Support Payment – A one-off payment to help meet the costs of a funeral. The flat rate is £1010.00. This will be uprated to £1041.30.

  - Child Disability Payment – Provides support for the extra costs that a disabled child may have and is available to children and young people from the age of 3 months to 18 years old who have care and/or mobility needs. There are two components to this assistance; a care component and a mobility component. Claimants may be eligible for either or both, paid either four weekly in arrears, or for terminally ill children weekly. The care component has three rates; £23.70 to be uprated to £24.45, £60.00 to be uprated to £61.85) or £89.60 to be uprated to £92.40). The mobility component has two rates; £23.70 (if the child is aged 5 or over) to be uprated to £24.45 and £62.55 (if the child is aged 3 or over) to be uprated to £64.50.

  - Adult Disability Payment - Will provide financial assistance to help meet the additional costs of living with a disability or health condition, replacing Personal Independence Payment (PIP) for those aged between 16 and (subject to some exceptions) state pension age who are making an application for disability assistance. ADP will consist of two components; the daily living component and mobility component. The daily living component will assist claimants who face barriers to carrying out daily living activities as a result of physical or mental health condition(s) and/or disability with two rates £60.00 (standard) to be uprated to £61.85 and £89.60 (enhanced) to be uprated to £92.40. The mobility component similarly provides two levels of assistance for individuals who face increased barriers to carrying out mobility activities as a result of physical or mental health condition(s) and/or disability. There are two rates; £23.70 (standard) to be uprated to £24.45 and £62.55 (enhanced) to be uprated to £64.50.

- Scottish Child Payment - Provides assistance towards the costs of supporting a family and is paid as a top up of certain qualifying reserved assistance payments. The payment is £10 per qualifying child per week. Instead of just uprating it by 3.1%, the Scottish Government has decided to increase the rate by doubling it to £20.

- Child Winter Heating Assistance - The Scottish Government has exercised discretion to increase Child Winter Heating Assistance (CWHA) by 5% instead of uprate by 3.1%. Rates will rise from £202 to £208.25. CWHA provides an annual payment to disabled children and young people in receipt of the highest rate of the care component of Disability Living Allowance/Child Disability Payment or the enhanced rate of Personal Independence Payment. It supports households with the additional costs of winter fuel bills.

- Carer's Allowance Supplement – Provides an extra payment for claimants in receipt of Carer's Allowance. Under section 81 of the Act this is a different uprating provision, but Scottish Government are still obliged to uprate it and have done so from £8.90 to £9.15.

- The Scottish Government has not exercised discretion to uprate or increase the value of Best Start Grants (BSG), which will remain at 2021/22 levels.

- The Scottish Government has not exercised discretion to uprate or increase the value of Best Start Foods (BSF), a prepaid card with which people can buy healthy food. This was, however, increased in August 2021.

- However, the Scottish Government are using these regulations as a vehicle for increasing the income thresholds for BSF with the aim of taking account of the increases in the National Living Wage and the increased levels of Working Tax Credit and Child Tax Credit.

Annex C: Scrutiny timeline

29 November 2021	Informal briefing held between SCoSS Secretariat and Scottish Government's Senior Policy Officer.
6 December 2021	Informal draft Uprating Regulations received from Scottish Government's Senior Policy Officer.
9 December 2021	Scottish budget announced.
9 December 2021	Draft Uprating Regulations and Section 86A report (formerly Section 77 report) formally referred to SCoSS by the Minister for Social Security and Local Government.
15 December 2021	SCoSS Board held. Scottish Government Senior Policy Officer in attendance to discuss approach, timeline, recommendations and next steps.
20 December 2021 - 10 January 2022	Period spanning leave arrangements of SCoSS members and Secretariat
13 January 2022	Provide Scottish Government with advance notice of SCoSS recommendations.
17 January 2022	SCoSS report signed off and laid.
End of January 2022	Uprating Regulations laid in Parliament.
April 2022	Uprating Regulations into force.