

Social Justice and Social Security Committee

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

Subordinate Legislation Cover Note

Title of Instrument:	Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2023
Laid Date:	31 January 2023
Reporting deadline:	20/03/2023
Type of instrument:	Affirmative
Motion to approve:	S6M-07737

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), the Regulations uprate the following benefits by 10.1%:
 - Adult Disability Payment
 - Child Disability Payment
 - Child Winter Heating Assistance
 - Winter Heating Payment

- Funeral Support Payment
 - Young Carers Grant
 - Best Start Foods
 - Best Start Grant
7. The Scottish Government notes that the Regulations fulfil the duty on the Scottish Government to consider the effects of inflation on the above assistance and bring forward legislation to adjust their amount in line with price inflation.
 8. The Scottish Government adds it has also made amendments to the Social Security (Invalid Care Allowance) Regulations 1976 and the Social Security Benefit (Dependency) Regulations 1977. These amendments make changes to earnings limits used to determine entitlement to carer's allowance and to additional payments payable to carer's allowance recipients.
 9. The regulations also include amendments to the Best Start Foods earnings limits.

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) (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2023

SSI 2023/XXX

The above instrument will be made in exercise of the powers conferred by section 28(2), 30(2), 31(2), 32(2), 34(2) and 95 of the Social Security (Scotland) Act 2018 ('the 2018 Act'), sections 70(8), 90, 122(1) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992 and section 13 of the Social Security Benefits Act 1988. Some of the amendments made by this instrument can be made under the negative procedure and others require to be made under the affirmative procedure, so the instrument is subject to the affirmative procedure. For the purposes of this note, the instrument will be referred to as the '2023 Regulations'.

Purpose of the instrument

The 2023 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, 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, Best Start Foods, Child Winter Heating Assistance and Winter Heating Payment are also increased by 10.1%.

After considering the effects of inflation, the Scottish Ministers have decided to increase Funeral Support Payment, Young Carer Grant, Best Start Grant, Best Start Foods, Child Winter Heating Assistance and Winter Heating Payment by 10.1%, which is the September 2022 Consumer Price Index (CPI) rate. Adult Disability Payment and Child Disability Payment are also increased by 10.1%, in line with benefits still administered by DWP under agency agreement to avoid creating a two-tier system. Scottish Child Payment has been increased to £25 per week in November 2022, which is an above-inflation increase of 25%. The 2023 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 of Best Start Grant 1) Pregnancy and Baby Payment (1st Child Payment), 2) Pregnancy and Baby Payment (Subsequent Child Payment & Extra Payment for Twins/Triplets), 3) Early Learning Payment and 4) School Age Payment payable under the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018,
- The amount of Best Start Foods payable under the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019,
- the Child Winter Heating Assistance payable under the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020, and
- The Winter Heating Payment, for which Regulations will come into force on 25 January 2023, are made under section 30 of the Social Security (Scotland) Act 2018 ('the 2018 Act').

The increases to Young Carers Grant, Funeral Support Payment, Best Start Grants, Best Start Foods, Child Winter Heating Assistance and Winter Heating Payment come into effect on 1 April 2023. The increases to Child Disability Payment and Adult Disability Payment come into effect on 10 April 2023.

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.

Lastly, the opportunity has also been taken through these regulations to make amendments to the Social Security (Invalid Care Allowance) Regulations 1976 and the Social Security Benefit (Dependency) Regulations 1977. These amendments are made by exercising the Scottish Ministers executive competence and make changes to earnings limits used to determine entitlement to carer's allowance and to additional payments payable to carer's allowance recipients, so far as payment is the responsibility of the Scottish Ministers.

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, Child Winter Heating Assistance and Winter Heating Payment, and explain their decision in the report as required under section 86A. This year, Best Start Foods is also included for completeness.

It has been determined that there has been an increase in the general level of prices in the past financial year. Accordingly, the 2023 Regulations are brought forward in reliance on section 31 to increase the relevant sums for Adult Disability Payment and Child Disability Payment by 10.1% with the payment rounded to the nearest

multiple of 5 pence. Young Carers Grant, Funeral Support Payment, Best Start Grant, Child Winter Heating Assistance and Winter Heating Payment are also increased by 10.1%, through the Regulations brought forward in reliance on section 28, 30, 32 and 34. Best Start Foods and Carer's Allowance Supplement are also increased by 10.1%.

The 2023 Regulations provide for a 10.1% increase to the Young Carer Grant payment (from £326.65 to **£359.65**); a 10.1% increase to the Funeral Support Payment of the standard amount that is available towards other funeral costs (from £1,070.60 to **£1,178.75**), a 10.1% 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 £130.65 to **£143.85**) and a 10.1% increase to the Funeral Support Payment of the fee for removing an active implantable medical device from the deceased (from £21.55 to **£23.75**); a 10.1% increase to Child Winter Heating Assistance (from £214.10 to **£235.70**); a 10.1% increase to Winter Heating Payment (from £50.00 to **£55.05**); a 10.1% increase to Best Start Grant Pregnancy and Baby Payment (1st Child Payment) (from £642.35 to **£707.25**), Best Start Grant Pregnancy and Baby Payment (Subsequent Child Payment & Extra Payment for Twins/Triples) (from £321.20 to **£353.65**), Best Start Grant Early Learning Payment (from £267.65 to **£294.70**) and Best Start Grant School Age Payment (from £267.65 to **£294.70**); a 10.1% increase to Best Start Foods (higher rate from £9.00 to **£9.90** and lower rate from £4.50 to **£4.95**); a 10.1% increase to Child Disability Payment mobility component (higher rate from £64.50 to **£71.00** and lower rate from £24.45 to **£26.90**) and care components (highest rate from £92.40 to **£101.75**, middle rate from £61.85 to **£68.10** and lowest rate from £24.45 to **£26.90**); a 10.1% increase to Adult Disability Payment Daily Living Component (standard rate from £61.85 to **£68.10**, enhanced rate from £92.40 to **£101.75**) and Mobility Component (standard rate from £24.45 to **£26.90** and enhanced rate from £64.50 to **£71.00**).

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.

Lastly, the opportunity has also been taken through these regulations to make amendments to the Social Security (Invalid Care Allowance) Regulations 1976 and the Social Security Benefit (Dependency) Regulations 1977. These amendments are made by exercising the Scottish Ministers executive competence and make changes to earnings limits used to determine entitlement to carer's allowance and to additional payments payable to carer's allowance recipients, so far as payment is the responsibility of the Scottish Ministers.

The Deputy First Minister announced the proposed rates of devolved social security assistance for 2023-24 to the Scottish Parliament during the Scottish Budget on 15 December 2022. 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.

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, Scottish Child Payment⁵, Child Winter Heating Assistance⁶ and Winter Heating Payment⁷. 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 2023-23 at least keeps pace with inflation, then it is considered that there is no significant impact on the private, voluntary or public sector.

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 Memorandum⁸ 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 equivalents of 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 10.1% and the £25 weekly amount for Scottish Child Payment when producing their forecasts of benefits expenditure which are set out in their Economic and Fiscal Forecasts December 2022⁹.

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.

Scottish Government Social Security Directorate

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 2023 (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)

⁷ <https://www.gov.scot/publications/winter-heating-payment-low-income-scotland-equality-impact-assessment/>

⁸ [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)

⁹ www.fiscalcommission.scot/publication-categories/scotlands-economic-and-fiscal-forecasts/

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for an increase in various values of forms of assistance payable by virtue of regulations made under the Social Security (Scotland) Act 2018 and make amendments to the Social Security (Invalid Care Allowance) Regulations 1976, the Social Security Benefit (Dependency) Regulations 1977 and the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019. The Regulations come into force on 1 April 2023, with the exception of regulations 2, 3, 6, 7 and 9, which come into force on 10 April 2022 and regulation 4 which comes into force on 3 April 2023.

Regulation 2 increases the value of Adult Disability Payment payable under the Disability Assistance for Working Age People (Scotland) Regulations 2022. Paragraph 1 of the schedule makes saving provision so that the previous value of this assistance is still payable in certain circumstances.

Regulation 3 increases the value of a transitional rate of Adult Disability Payment payable under the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022. Paragraph 2 of the schedule makes saving provision so that the previous value of this assistance is still payable in certain circumstances.

Regulation 4 increases the income thresholds in the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019. This regulation also increases the amounts of the various values at which Best Start Food benefits are paid.

Regulation 5 increases the value of the three grants payable under the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 (the pregnancy and baby grant, the early learning grant, and the school-age grant). Paragraph 4 of the schedule makes saving provision so that the previous value of this assistance is still payable in certain circumstances.

Regulation 6 amends regulation 8 of the Social Security (Invalid Care Allowance) Regulations 1976 (“the 1976 Regulations”) which increases the amount which a person eligible for payment of carer’s allowance from the Scottish Ministers can earn in a given week without being deemed to be gainfully employed and, therefore, losing their entitlement to carer’s allowance. The Social Security Amendment (Carer’s Allowance) Regulations 2002 (S.I. 2002/2497) replaces references to “Invalid Care Allowance” with references to “Carer’s Allowance” in certain legislative provisions, but “Invalid Care Allowance” remains part of the title of the 1976 Regulations for statutory purposes.

Regulation 7 increases the value of Child Disability Payment payable under the Disability Assistance for Children and Young People (Scotland) Regulations 2021. Paragraph 5 of the schedule makes saving provision so that the previous value of this assistance is still payable in certain circumstances.

Regulation 8 increases the amount of child winter heating assistance payable under the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020.

Paragraph 6 of the schedule makes saving provision so that the previous value of this assistance is still payable in certain circumstances.

Regulation 9 amends schedule 2 of the Social Security Benefit (Dependency) Regulations 1977. The effect is to increase the amount which the partner of a person eligible for payment of carer's allowance from the Scottish Ministers can earn in a given week without the person receiving carer's allowance losing any entitlement to what is payable by way of an additional payment where a recipient is entitled to receive child benefit in relation to a child or children. This addition is known as "child dependency increase" and 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 (c. 21) but saved for transitional cases by article 3 of the Tax Credits Act 2002 (Commencement No. 3 and Transitional Provisions and Savings) Order 2003 (S.I. 2003/938).

Regulation 10 increases the amounts of funeral expense assistance payable under the Funeral Expense Assistance (Scotland) Regulations 2019. Paragraph 7 of the schedule makes saving provision so that the previous values of this assistance are still payable in certain circumstances.

Regulation 11 increases the amount of winter heating payment payable under the Winter Heating Assistance (Low Income) (Scotland) Regulations 2023. Paragraph 8 of the schedule makes saving provision so that the previous value of this assistance is still payable in certain circumstances.

Regulation 12 increases the value of Young Carer Grant payable under the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019. Paragraph 9 of the schedule makes saving provision so that the previous value of this grant is still payable in certain circumstances.