

Scottish Commission on Social Security

**Report, under section 22(1)(b) of the Social
Security (Scotland) Act 2018, on:**

Uprating Policy Paper and Analytical Report

**Submitted to the Scottish Government and the
Scottish Parliament Social Security Committee on
4 October 2019**

Summary of recommendations

Recommendation 1: In establishing the approach to be taken to uprating, both in the short and longer-term, the Scottish Government should explicitly consider how it conforms to the principles in the Social Security (Scotland) Act 2018 and human rights conventions. The agreed approach should be clearly, accessibly and publicly communicated.

Recommendation 2: To instil confidence in decisions, now and in the future, concerning what the most appropriate uprating index is, it would be valuable if the Scottish Government could set out the factors on which they have been based, along with any supporting evidence.

Recommendation 3: 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 4: The Scottish Government is invited to present plans to mitigate the adverse effects of volatile inflation on people receiving devolved benefits, should this occur.

Recommendation 5: The Scottish Government is asked to clarify what is meant by using CPI for the ‘foreseeable future’ and to set out any triggers that would prompt a review of its approach to uprating, whether one-off or ongoing.

Recommendation 6: We invite the Scottish Government to set out how it will define ‘materially below’ and the factors that will determine whether a figure is materially below its inflation-adjusted level.

Recommendation 7: We would welcome analysis of the possible effects on the Scottish Government’s decision-making on uprating, should the UK and Scottish economies, relevant policies, and approaches to uprating continue to diverge.

Recommendation 8: In the interests of transparency, the Scottish Government is asked to clarify the reasons why inflation-adjusted levels must be reported on for certain forms of assistance but not others, and why there is a duty to uprate some but not others.

Recommendation 9: 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).

Recommendation 10: The Scottish Government could usefully monitor – and include in section 77 reports – information on the interface between,

and values of, any top-up benefits and the UK Government's uprating decisions on the reserved benefits they top up. This would enable identification of changes to the real value of top-up benefits.

Recommendation 11: The Scottish Government is asked to clarify whether its general intention is to uprate any top-up benefits created under section 79 and, if so, to confirm the approach it will take.

Recommendation 12: We invite the Scottish Government to clarify its approach to uprating forms of assistance where there is the option, but no obligation, to do so.

Recommendation 13: We invite the Scottish Government to clarify whether it will undertake an EQIA to inform section 77 reports and decisions on whether or not to uprate forms of assistance where there is no obligation to do so.

Recommendation 14: 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.

Recommendation 15: When current constraints do not apply and when alternatives to CPI become available, we recommend that the Scottish Government conducts a thorough review of the approach to uprating and that this includes public consultation and engagement.

Recommendation 16: In reviewing its approach, the Scottish Government could usefully consult on the purpose/s and role/s of uprating.

Recommendation 17: We invite the Scottish Government to consider the qualities it would want to ensure should be reflected in whatever future approach to uprating system is adopted.

Recommendation 18: We suggest that the Scottish Government actively investigates/ pursues developments in uprating methodology, including engaging with ONS, that may have potential to deliver improvements to approaches to uprating.

Introduction

The Scottish Commission on Social Security (SCoSS) welcomes the opportunity to comment on the Uprating Policy Paper and Analytical report (both referred to henceforth as ‘the uprating measures report’) which was sent to us on 2 September by the Cabinet Secretary¹. We note that this is the first occasion on which the SCoSS has been asked to prepare a report under section 22 of the Social Security (Scotland) Act 2018² (‘the 2018 Act’).

In developing this report, the SCoSS Board first received a general briefing on uprating from lead Scottish Government officials at our meeting on 14 August. We then met again with officials at our meeting on 10 September to raise questions arising from our scrutiny of the uprating measures report. The relevant sections of the 2018 Act on uprating, and associated Scottish Government correspondence, give rise to some complex discussions, such as exactly which forms of devolved assistance are and are not covered, and why. We therefore asked the Scottish Government to provide a table containing information that could inform our scrutiny. We are grateful to the Scottish Government for its timeous response. Our edited version of the table is contained in Annex A of this report.

This report has been prepared in advance of the Social Security Committee’s evidence session on uprating scheduled for 10 October 2019 so that it is available, if helpful, to support and inform this. We may revise this report subsequently or write a further report, to address new issues raised or evidence received, with a view to submitting this by the end of October 2019.

In due course, SCoSS will be charged with scrutinising draft regulations on uprating under the super-affirmative procedure. We therefore felt it appropriate to consider the uprating measures report through the lens of the social security principles within the 2018 Act and human rights conventions, as required when scrutinising regulations. We made use of our scrutiny framework devised for that purpose³.

¹ All correspondence from the Cabinet Secretary on uprating, including the uprating measures report, is available on the SCoSS’s website at <https://www.gov.scot/publications/scottish-commission-on-social-security-letters-uprating-2019-2/>

² 22(1)(b) provides that one of the SCoSS’s functions is “to prepare and submit to the Scottish Ministers a report on any matter, relevant to social security, that the Ministers request the Commission to report on”. 22(1)(c) provides that it is a function of the SCoSS similarly “to prepare and submit to the Scottish Parliament a report on any matter, relevant to social security, that the Commission is requested to report on by the Parliament after the Parliament has resolved that the request should be made”.

³ See annex B to the SCoSS report on Young Carer Grant regulations:

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

It is important to note that the SCoSS board members were appointed on the basis of expertise in social security matters. We are not economists. Therefore, we are not well-placed to comment in depth on the more technical issues covered in the uprating measures report, particularly in the section entitled 'The formula effect'. However, it is clear that the choice of technical approach to be adopted can have a direct bearing on the realisation of the social security principles and on human rights. If the use of different indices result in different amounts of benefit being paid, it is not feasible neatly to separate technical questions about which index to use from questions about adequacy. Moreover, as set out below, choices about the approach to uprating extend beyond the question of which index to use.

Our response is in three parts:

- **Part 1** considers the significance of the approach taken to uprating, with reference to the social security principles in the 2018 Act and human rights conventions.
- **Part 2** provides our views on specific issues raised by the uprating measures report concerning the shorter-term approach to uprating, given that certain constraints apply.
- **Part 3** takes a wider, longer-term view; exploring options for developing improved approaches to uprating.

Part 1: Significance of principles and human rights

Several social security principles and human rights conventions have a direct bearing on the approach to uprating.

1.1 Principle (a): Social Security is an investment in the people of Scotland

Failure to maintain the real value of any form of devolved benefit would represent a reduction in the value of investment in the people of Scotland, unless money saved is redirected into other forms of support. In that event, it would be necessary to carry out an Equality Impact Assessment to ensure that redistributing funds did not result in any detriment to groups with protected characteristics.

1.2 Principle (b): Social security is itself a human right and essential to the realisation of other human rights

As social security is itself a human right, it is necessary to establish how human rights apply to the approach taken to uprating benefits. The requirement to work towards the progressive realisation of human rights, particularly rights to social security and an adequate standard of living, to avoid discrimination in the enjoyment of rights and the implied non-retrogression principle, are all of direct significance.⁴

Failure to uprate social security assistance to reflect increases in inflation would, over time, bring about a reduction in its real value. This would risk the retrogression in Scottish people's enjoyment of the right to social security. The Scottish Government would be required to justify any such trend by demonstrating that this allowed it to make better use of resources for the realisation of the full suite of social rights protected by the Covenant.

Benefits serve different purposes⁵. All play roles in meeting the right to an adequate standard of living. Other human rights will be relevant to some forms of assistance that are particularly targeted at protected characteristic groups⁶. In the first instance, compliance with these rights requires the setting of an appropriate rate of social security assistance, or all uprating would achieve is the maintenance of an inadequate level. However, a sustained fall in the real value of payments would eventually raise questions about compliance.

1.3 Principle (e): The Scottish social security system is to contribute to reducing poverty in Scotland

Regardless of the primary purpose of a given form of assistance, failure to uprate any form of benefit could have an impact on poverty levels, as could the nature of the index used for uprating. Means-tested benefits are generally

⁴ [The International Covenant on Economic, Social and Cultural Rights](#) further requires that states work towards the progressive realisation of the various rights in the Covenant (Article 2(1)), including the right to social security (Article 9) and the right to an adequate standard of living (Article 11). States are also required to avoid discrimination in the enjoyment of the rights protected by the Covenant (Article 2(2)). Article 2(1) includes an implied non-retrogression principle, that is, states should not normally take measures that diminish people's enjoyment of social rights, including the rights to social security and an adequate standard of living.

⁵ For example, income maintenance/ replacement; help equalise the incomes/ living standards of groups who incur extra costs; contribute towards particular forms of common ongoing or one-off expenditure; the relief of poverty; the prevention of poverty.

⁶ For example, UN Convention on the Rights of Persons with Disabilities Article 19 (Living Independently and Being Included in the Community); Article 28 (Adequate Standard of Living and Social Protection): <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html> ; UN Convention on the Rights of the Child Article 26 (social security); Article 27 (adequate standard of living): <https://www.unicef.org/child-rights-convention/convention-text>

considered the main benefits for directly relieving poverty and key ones are currently reserved. However, devolved benefits clearly have important roles to play too. If payments rise at a slower rate than average incomes, relative income poverty will be higher. If payments rise at a slower rate than prices, material deprivation can be expected to increase. This would have implications for the achievement of the targets in the Child Poverty (Scotland) Act 2017 as well as conformity with this principle.

**1.4 Principle (g): Opportunities are to be sought to continuously improve the Scottish social security system in ways which—
(i) put the needs of those who require assistance first, and
(ii) advance equality and non-discrimination,**

This principle overlaps considerably with Article 2 of the Covenant, which includes a non-discrimination provision alongside the progressive realisation provision. A fall in the real value of benefits raises questions about conformity with Article 2, or with Article 19 CRPD, and would raise the same questions in respect of this principle.

Recommendation 1: In establishing the approach to be taken to uprating, both in the short and longer-term, the Scottish Government should explicitly consider how it conforms to the principles in the Social Security (Scotland) Act 2018 and human rights conventions. The agreed approach should be clearly, accessibly and publicly communicated.

Part 2: Short-term

Over the next few years, there are a number of constraints that apply to the choice over some – but not all – key elements of the approach to uprating.

2. Uprating indices and amounts

2.1 Overview

Evidence shows that using different indices to uprate benefits in line with inflation can affect the amount of money people receive. According to the uprating measures report, in July 2019, the Consumer Price Index (CPI) calculated inflation at 2.1%, the Consumer Price Index Owner Occupiers' Housing Costs (CPIH) put it at 2.00% and the Retail Price Index at 2.8%.⁷

⁷ See also Figure 1: CPI, CPIH and RPI quarterly rate in that report.

Historically it appears that CPIH has been generally lower than the other two indices.

Thus, while the aim of uprating may be to have a neutral impact on the value of benefits, and there are complex technical debates to be had about the best way to achieve this, the impact of different indices on the amount of money people receive is far from neutral. Given that many are likely to be on low incomes, even a small difference can be significant. There must therefore be confidence, and supporting evidence, about the basis on which decisions on the appropriate uprating index are taken, to help alleviate any concern that decisions are just based on the desire to cut costs.

Recommendation 2: To instil confidence in decisions, now and in the future, concerning what the most appropriate uprating index is, it would be valuable if the Scottish Government could set out the factors on which they have been based, along with any supporting evidence.

2.2 The proposed adoption of CPI

We note the Scottish Government's intention to adopt the Consumer Price Index (CPI) as its measure of inflation and understand that this is based on a number of factors. These include that this is the measure currently used by the Bank of England and the media, and by the UK Government for uprating social security benefits. It also meets international standards.

The Scottish Government has confirmed that its priority, reflecting the views of people using social security, is for the safe transfer of benefits. This requires Agency Agreements with DWP.

The uprating measures report states that, if a different uprating measure was agreed in the Scottish Parliament for existing claims that are administered by the DWP, this would be in breach of the Agency Agreement and would put in jeopardy the safe and secure transfer of benefits (see annex A for details of benefits covered by an Agency Agreement). The Agreement states that the Scottish Ministers cannot request changes to the DWP 'business as usual' procedures and processes. Therefore it seems that to deliver the priority of safe transfer, it will be necessary to adopt CPI until transfer is completed.

Perhaps the strongest argument for adopting CPI is that the alternatives of CPIH and RPI do not appear to be viable at the moment. While CPIH has been accepted by the ONS as the headline measure of inflation, it has an

insufficient track record and there are no official forecasts available for it. Moreover, given that CPIH has tended to be lower than other indices, for the Scottish Government to adopt this while the UK Government retained CPI risks leading to lower awards in Scotland for comparable benefits in the UK.

The uprating measures report notes the Scottish Government's view that RPI in its current form is not robust and has ceased to meet the required standards for designation as a national statistic. This does not seem to be disputed by Paul Johnson⁸ or the House of Lords Economic Affairs Committee⁹. We note that they take different views¹⁰ about whether RPI could and should be adapted to make it fit for purpose. However, it appears that choices of a robust inflation measure to use for Scottish social security are limited at least for now, given the need to have a measure that meets technical standards.

Thus, while there are pragmatic reasons to adopt CPI for now, none of this is to say that CPI is the only or the best option in the longer-term. To understand even the short-term impact of doing so, it would be helpful to see forward, comparative projections in the form of an options appraisal to fully understand the potential costs of adopting each of the three uprating measures discussed. By 'costs', we mean the total cost of uprating all relevant benefits; the costs of uprating individual benefits; and the potential value of each relevant benefit to claimants. Calculating such costs may help to demonstrate whether adopting a particular measure would result in a loss to claimants, which is relevant to the social security principle on poverty reduction and to human rights on standards of living (discussed above).

Recommendation 3: 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.

2.3 Inflation reference period

The uprating measures report discusses options for adopting 'forward-looking' or 'backward-looking' approaches to indexation. The Scottish Government proposes to adopt the September CPI rate - a backward-looking approach.

⁸ Paul Johnson led an independent review of consumer price statistics, published in 2015: https://www.statisticsauthority.gov.uk/wp-content/uploads/2015/12/images-ukconsumerpricestatisticsarevie_tcm97-44345.pdf

⁹ <https://publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/246/246.pdf>

¹⁰ Paul Johnson argued that RPI should only be used as a 'legacy measure' whereas the House of Lords Economic Affairs Committees felt that with improvements RPI could be a suitable uprating index.

The report notes the risks associated with adopting either forward- or backward-looking approaches. For example, where inflation becomes more volatile, there is a risk that a backward-looking measure on its own could fail to protect people at risk of poverty. A forward-looking approach could be very uncertain. With the question of the UK's exit from the EU on the horizon, effects on the economy may be particularly hard to predict. Given such risks, it would be useful to understand whether the Scottish Government has undertaken contingency planning in the event that inflation levels become highly volatile in-year and, the September figure transpires to be significantly lower than the level a few months later. It would also be useful to understand whether the 2018 Act's requirement to review inflation annually precludes an earlier review being undertaken should that be required.

Recommendation 4: The Scottish Government is invited to present plans to mitigate the adverse effects of volatile inflation on people receiving devolved benefits, should this occur.

2.4 Triggers for review

The uprating measures report states that the Scottish Government is proposing to use CPI as the measure of inflation “for the foreseeable future”¹¹. However, even in the relatively short term, there are clearly a number of possible developments that might suggest the need for a review of the Scottish Government's approach. It is therefore important that these be actively monitored and publicly reported on.

Such potential developments include:

- Learning as CPIH gathers more of a track record and robust forecasts become possible and available.
- The ending of Agency agreements.
- Any change to the UK Government's approach to uprating, such as a change of index or freeze of relevant reserved benefits, which may have direct and indirect implications for devolved benefits.
- Unforeseen and significant increases in the rate of inflation.

Recommendation 5: The Scottish Government is asked to clarify what is meant by using CPI for the ‘foreseeable future’ and to set out any triggers that would prompt a review of its approach to uprating, whether one-off or ongoing.

¹¹ Uprating measures report, page 6.

2.5 Meaning of ‘materially below’

Section 78(1) of the 2018 Act provides that:

“the Scottish Ministers must bring forward legislation to replace any relevant figure prescribed in those regulations which is, in their opinion, materially below its inflation-adjusted level with a figure of at least that level (subject to any rounding they think appropriate).”¹²

We are not clear what is meant by ‘materially below’. While it is up to Ministers to determine the relevant figure, there is merit in the basis for their ‘opinion’ and consequent decision-making being transparent and consistent, and in making clear any implications for the reduction of poverty.

Recommendation 6: We invite the Scottish Government to set out how it will define ‘materially below’ and the factors that will determine whether a figure is materially below its inflation-adjusted level.

2.6 Interface between UK and Scottish Government benefits and approaches

Although the Scottish Government appears to be obliged to adopt the UK Government’s measure of inflation for now, there are some clear divergences in devolved and reserved social security policy and in other policy areas that may affect the income of benefit recipients. There is also scope for divergences in the Scottish and wider UK economies which might have a bearing on prices used to calculate inflation. It is not clear whether and how such policy divergences between the Scottish and UK Governments could influence the choice about which inflation measure to adopt, or perhaps even influence the content of the basket of goods that is used to calculate inflation. Longer term, were the Scottish Government to adopt a different approach to uprating, the interface between devolved and reserved benefits would need to be carefully monitored. This would be particularly important where it concerns benefits created using top-up powers, to ensure no unintended consequences arose and that the value of the top-up was maintained. It would be helpful to know whether longer-term planning and forecasting has been done, on different scenarios.

Recommendation 7: We would welcome analysis of the possible effects on the Scottish Government’s decision-making on uprating, should the

¹² <http://www.legislation.gov.uk/asp/2018/9/enacted>

UK and Scottish economies, relevant policies, and approaches to uprating continue to diverge.

3. Forms of assistance where no duty to uprate

3.1 Overview

There are complex arrangements concerning the duty to report on the inflation-adjusted level of each relevant figure, which forms of devolved assistance there is an option to uprate, and which there is a duty to uprate. For some forms of devolved assistance there is a duty to do both, for some there is just a duty to report and for others there is no duty to do either (please refer to the table in Annex A). It would be helpful to set out the rationale for this. Moreover, it is worth noting that the Social Security Charter contains a commitment to review the payment levels of Scottish benefits every year¹³. It does not restrict this to certain benefits.

Recommendation 8: In the interests of transparency, the Scottish Government is asked to clarify the reasons why inflation-adjusted levels must be reported on for certain forms of assistance but not others, and why there is a duty to uprate some but not others.

3.2 Report under section 77

Section 77 of the 2018 Act requires that Scottish Ministers must publish, before the end of each financial year, a report stating what they have most recently calculated to be ‘the inflation-adjusted level of each relevant figure’, how they have done so, what (if anything) Ministers have done, or intend to do, in light of their calculations and their reasons for that decision. They must do this for assistance provided under Chapter 2 of Part 2 of the 2018 Act. This means they do not have to do so for top-up benefits created under Part 3, section 79, or discretionary housing payments.

Recommendation 9: 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).

¹³ Part 4 ‘A Better Future’, commitment 9., page 12.

3.3 Top-up benefits

While Scottish Child Payment (SCP) is being created using section 79 top-up powers, and so there is no duty to uprate it under section 78 it or provide information on inflation-adjusted levels in section 77 reports, we understand that Scottish Ministers are committed to uprating it in the forthcoming SCP regulations. This is welcome news. Failure to uprate SCP would erode real value over time and disproportionately impact on low income households, thereby working against the Scottish Government's child poverty targets, the social security principle on contributing to poverty and human rights requirements on standards of living.

It is unclear whether the commitment to uprating SCP (the only top-up benefit to have been created to date under section 78) is indicative of the intention to uprate any or all future top-up benefits or whether it is an exceptional case, despite the fact this is not required under the 2018 Act.

It is worth noting that if reserved benefits are uprated but the top-up amount is not, then the real value of the latter will diminish over time¹⁴. Secondly, if information on the inflation-adjusted level of top-ups is not published, it will be hard to gauge the extent of real-terms reduction in their value.

Recommendation 10: The Scottish Government could usefully monitor – and include in section 77 reports – information on the interface between, and values of, any top-up benefits and the UK Government's uprating decisions on the reserved benefits they top up. This would enable identification of changes to the real value of top-up benefits.

Recommendation 11: The Scottish Government is asked to clarify whether its general intention is to uprate any top-up benefits created under section 79 and, if so, to confirm the approach it will take.

3.4 Option to uprate

Given that the Scottish Government apparently has the option to uprate certain forms of assistance where it is not compelled to do so, in the interests of transparency and consistency it becomes helpful to clarify the basis on which decisions to uprate or not to uprate will be taken. For example, would they be driven by the size of the inflationary increase and thus the size of

¹⁴ The Scottish Child Payment will top up the following reserved benefits: Child Tax Credit; Universal Credit; Income Support; Pension Credit; Working Tax Credit; Income-based Jobseeker's Allowance and Income-related Employment and Support Allowance.

impact on recipients if not uprated, commitments in related strategies (e.g. on child poverty), the purpose of the assistance and degree of importance ascribed to it, or cost considerations?

Key questions include:

- Whether Scottish Government proposes to make clear the factors or criteria on which it will base decisions on whether or not to uprate.
- If the Scottish Ministers decide to uprate one or more forms of assistance where there is no obligation to do so, whether it would be necessary to do so using the same index as used for uprating those forms that Ministers are obliged to uprate. Or, whether, in theory, there could be greater freedom here, e.g. to establish 'relevant prices' that are specific to the purpose of the assistance or the level of inflation experienced households receiving it.
- If, how, when and by whom the above decisions would be subjected to scrutiny.

We understand that the annual uprating regulations to be referred to SCoSS are likely to be minimal – merely details of new figures for benefits where there is an obligation to uprate. We are grateful to the Scottish Government for confirming to us that, while there is no statutory duty to seek SCoSS's input on uprating other forms of assistance beyond those laid out in Section 78 of the Act, the views of SCoSS (and, presumably, the Social Security Committee) will be welcomed by the Scottish Ministers. Information relating to the uprating of other forms of assistance will be shared with SCoSS to allow this to be undertaken.

Recommendation 12: We invite the Scottish Government to clarify its approach to uprating forms of assistance where there is the option, but no obligation, to do so.

3.5 Equality Impact Assessments

An Equality Impact Assessment (EQIA) was not prepared for the uprating measures report. We understand from Scottish Government officials that it is regarded as sufficient that EQIAs were undertaken to inform the Bill and will be used to inform the development of individual benefits. There is felt to be no need to undertake a separate EQIA for draft uprating regulations as these only concern maintaining rates of assistance relative to inflation.

We note, however, evidence that inflation can impact differently on different households. The uprating measures report states, "lower income households

may experience higher price increases than higher income households”.¹⁵ Moreover, people with certain protected characteristics may disproportionately rely on certain forms of assistance. Groups such as disabled or older people may disproportionately rely on assistance with fuel costs, and they could be disproportionately adversely affected if the value of related support were not maintained. Similarly, women, for example, may rely disproportionately on early years support. There may also be regional variations in the impact of inflation.

In short, while there may be a case for not carrying out an EQIA on forms of assistance where there is a duty to uprate, where there are choices on whether or not to uprate other forms of assistance there is a case for carrying out EQIAs to identify the impact of not doing so on protected characteristic groups who disproportionately depend on those forms of assistance. Under a human rights lens, failure to do this could also create discrimination in the enjoyment of the rights protected by the Covenant (Article 2(2)).

Recommendation 13: We invite the Scottish Government to clarify whether it will undertake an EQIA to inform section 77 reports and decisions on whether or not to uprate forms of assistance where there is no obligation to do so.

3.6 Cumulative totals for non-uprated benefits

If a benefit is not uprated for a number of years there will be a cumulative effect on its value. Section 77 reports could therefore usefully describe what the cumulative total value of a benefit would have been had it been uprated annually. This would enable a comparison with the actual value. The impact on poverty of freezing payment levels can be significant, as evidenced by the consequences of the UK Government’s decision to introduce a 4-year freeze from 2016¹⁶.

Provision of cumulative total values may also be relevant to monitoring the relevant social security principle on contribution to poverty reduction and human rights concerning standards of living. Significant falls in value may indicate that, far from contributing towards poverty reduction, poverty is being exacerbated for those who rely on those forms of assistance. Falls in value

¹⁵ Uprating measures report, page 18.

¹⁶ See, for example: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2017/inquiry19/>; <https://www.jrf.org.uk/report/end-benefit-freeze-stop-people-being-swept-poverty>

might also run contrary to principle a) - social security is an investment in the people of Scotland.

Recommendation 14: 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.

Part 2: Longer-term

4.1 Overview

The parliamentary and wider scrutiny of the Social Security (Scotland) Bill made clear the desire for a new approach to social security, one that delivers as effectively as possible for people of Scotland. In view of this, along with SCoSS's duty to scrutinise regulations (including on uprating) through the lens of the 2018 Act's principles and human rights conventions, it is pertinent to consider whether there is scope, in the longer term, for a fresh approach to uprating that would better align with those principles and conventions. Indeed, to do so would be consistent with social security principle (g)¹⁷ and human rights to progressive realisation¹⁸.

Given SCoSS's duty to scrutinise regulations (including on uprating) through the lens of the 2018 Act's principles and human rights conventions, it is pertinent to consider whether there is scope, in the longer term, for a fresh approach to uprating that would better align with those principles and conventions. Indeed, to do so would be consistent with social security principle (g)¹⁹ and human rights to progressive realisation²⁰.

¹⁷ Section 1(g) of the 2018 Act provides that "opportunities are to be sought to continuously improve the Scottish social security system in ways which—

- (i) put the needs of those who require assistance first, and
- (ii) advance equality and non-discrimination"

¹⁸ The International Covenant on Economic, Social and Cultural Rights requires that states work towards the progressive realisation of the various rights in the Covenant (art 2(1)), including the right to social security (art 9) and the right to an adequate standard of living (art 11).

¹⁹ Section 1(g) of the 2018 Act provides that "opportunities are to be sought to continuously improve the Scottish social security system in ways which—

- (iii) put the needs of those who require assistance first, and
- (iv) advance equality and non-discrimination"

²⁰ The International Covenant on Economic, Social and Cultural Rights requires that states work towards the progressive realisation of the various rights in the Covenant (art 2(1)), including the right to social security (art 9) and the right to an adequate standard of living (art 11).

In a few years' time it is reasonable to expect that current constraints on the choice of uprating measure will no longer apply. There may be other viable indices available. CPIH should have a longer track record. There may have been work to reform RPI that makes it robust. Work currently underway by the Office for National Statistics (ONS) to explore more targeted approaches to measure inflation may have borne fruit. Benefits will have been transferred and the restrictions imposed by Agency Agreements should presumably cease to exist. There should also be considerable learning from uprating devolved benefits, concerning the areas and issues set out above.

Aside from consulting with SCoSS and the Social Security Committee at the current time, which we welcome, as far as we are aware the Scottish Government has not undertaken wider public consultation on the uprating measures report. While there may be no real choice at the moment about the index to be used, and it is pointless and disingenuous to consult if realistic alternatives do not exist, there are other features of the shorter-term system that perhaps could have been consulted on – and SCoSS may well have done so with more time. However, once current constraints no longer apply, there is a strong case for public consultation and engagement, in line with social security principle (f) that the social security system should be designed with the people of Scotland on the basis of evidence²¹.

Recommendation 15: When current constraints do not apply and when alternatives to CPI become available, we recommend that the Scottish Government conducts a thorough review of the approach to uprating and that this includes public consultation and engagement.

4.2 The purpose/s of uprating

One area that may be worth reviewing is the purpose of uprating.

While the Scottish Government is clear that it is not the purpose of uprating to increase the value of benefits, the uprating measures report suggests that uprating benefits can seek to meet similar, though different, policy objectives. For example, these include to maintain a certain standard of living or to protect the value of the benefit from eroding when prices are rising.

We raised with Scottish Government officials whether there could, even in theory, be a possibility of using uprating to make incremental improvements to

²¹ See also Social Security Charter commitment, part 4 'A Better Future', page 12: "involve people with diverse lived experiences of social security in developing policy."

the overall value of benefits, rather than just maintain value. In a situation where the income to achieve a standard of living free from poverty has been defined, and where the starting-point level of benefits falls below this, one way of achieving 'progressive realisation' could (in theory, even if it presented challenges in practice) be to use annual uprating as a means of incrementally increasing the value of benefits. However, Scottish Government officials have confirmed that increasing the value of assistance is a separate matter to uprating. If Scottish Ministers wished to increase the value of assistance in light of evidence of its inadequacy, this would be done by bringing forward amending regulations to adjust the rates of assistance in the relevant regulations. That being so, if original amounts are inadequate to achieve a standard of living that is not free from poverty, the most uprating could achieve would be not to entrench poverty further.

Recommendation 16: In reviewing its approach, the Scottish Government could usefully consult on the purpose/s and role/s of uprating.

4.3 The qualities of an approach to uprating

Aside from adherence to the social security principles and human rights, it may be helpful to identify a number of qualities or design principles that it would be desirable to reflect in any approach to uprating, regardless of the specific purpose/s envisaged for uprating and whatever methodological approaches were taken to achieve this. For example, it might be considered always desirable if that approach was:

- Technically robust.
- Capable of inspiring public confidence.
- Transparent – capable of being widely understood and of being scrutinised.
- Best able to maintain household incomes.
- Sufficiently stable to enable meaningful forecasting/ projections.

There is a debate to be had concerning the right balance between the simplicity of using one index for uprating all forms of assistance and the greater complexity that would accompany using different indices that permitted greater precision, given evidence of the differential impact of inflation on different socio-economic groups and regions.

Recommendation 17: We invite the Scottish Government to consider the qualities it would want to ensure should be reflected in whatever future approach to uprating system is adopted.

4.4 Choices on uprating methods

Subject to precise views on the purpose/s of uprating and of particular benefits, different approaches may, in theory, be taken to the approach to uprating and selection of indices. For example, it would seem fitting to uprate a benefit that has the purpose of addressing the extra costs for a particular group (such as Disability Assistance) or concerning a particular cost (such as towards funeral costs or cold weather payments), in line with relevant prices. There may be a case to uprate a benefit whose purpose is income replacement (such as the replacement to Carer's Allowance) in line with average earnings rather than prices. Alternatively, a combination of methods such as the 'triple lock' may be desirable²².

The uprating measures report notes "emerging inflation measures that are household and region specific that could prove more suitable in a Scottish context".²³ It flags a number of initiatives to develop new approaches to uprating that might address some of the flaws of existing methods and better reflect the impact of inflation on different groups of people and/ or regions. These are being considered by the Office for National Statistics (ONS). This might lead to the development of different uprating indices that would be applied to assistance for different groups or regions, leading to a more targeted approach. That might facilitate a narrowing of inequalities between groups and regions, in line with social security principle (g)²⁴. But this requires more debate to ensure such an approach did not reinforce divisions between groups/ regions or lead to unworkable and undesirable complexities.

Another approach to uprating that may be worthy of consideration concerns where particular forms of assistance address particular costs. For example, it might be possible and desirable for Funeral Expense Assistance to be uprated in accordance with inflation occurring specifically relevant to funeral prices. The same approach might be applied to inflation regarding housing costs and energy costs and their application to uprating associated forms of assistance.

Without passing judgement on whether new approaches will ultimately prove worthwhile, there seems to be merit in being proactive in encouraging exploration of approaches to uprating that might lead to improved outcomes for people receiving devolved assistance.

²² The State Pension is increased by the 'triple lock' which is the highest of earnings growth, price inflation or 2.5% a year.

²³ Uprating measures report, page 6.

²⁴ On the advancement of equality and non-discrimination.

Recommendation 18: We suggest that the Scottish Government actively investigates/ pursues developments in uprating methodology, including engaging with ONS, that may have potential to deliver improvements to approaches to uprating.

Annex A: Reporting and uprating requirements

The table shows whether or not each form of devolved assistance is:

- covered by section 77 of the 2018 Act.
- covered by section 78 of the 2018 Act.
- covered by an agency agreement.

Form of assistance	Covered by duty to report under section 77?	Covered by duty to uprate under section 78?	Covered by an Agency Agreement now or in the future?
Carer's Assistance <i>(Carer's Assistance, Carer's Additional Child Payment, Young Carer Grant)</i>	YES	YES	YES (Carer's Allowance)
Disability Assistance <i>(Disability Assistance for Children and Young People, Disability Assistance for Working Age People, Disability Assistance for Older People, Disability Living Assistance 65+, Severe Disablement Allowance,)</i>	YES	YES	YES (Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Severe Disablement Allowance)
Employment Injury Assistance	YES	YES	YES (Industrial Injuries Scheme)
Funeral Expense Assistance*	YES	YES	NO
Cold Spell Heating Assistance	YES	NO	NO
Winter Heating Assistance	YES	NO	NO
Early Years Assistance	YES	NO	NO

(Best Start Grant Pregnancy and Baby Payment, Best Start Grant Early Learning Payment, Best Start Grant School Age Payment)			
Housing Assistance	YES	NO	NO
Short-term Assistance	YES	NO	NO
Top-ups to be created under section 79	NO	NO	NO
Scottish Child Payment	NO	NO – But Scottish Government is committed to uprating	NO
Discretionary Housing Payments	NO	NO	NO
Carer's Allowance Supplement	NO	NO – but uprated under Section 81	NO

*The Scottish Government is committed to uprating this benefit but the UK Government is not (Funeral Expense Payment).