Scottish Commission on Social Security

Scrutiny report on draft Regulations:

The Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2023

Submitted to the Scottish Government and the Scottish Parliament's Social Security Committee on 20 January 2023.

SCoSS/2023/01

Contents

About the Scottish Commission on Social Security

The Scottish Commission on Social Security (SCoSS) plays an essential role in the development and delivery of a Scottish Social Security system based on fairness, dignity and respect.

We provide independent scrutiny of the Scottish social security system and our full functions are set out in section 22 of the Social Security (Scotland) Act 2018.[1]

We provide detailed analysis of proposed social security regulations which are referred to us by Ministers, making recommendations for improvement where necessary.

Our role is also to scrutinise the Scottish Government's delivery of the commitments set out in the Social Security Charter.[2]

We are separate from the Scottish Government, and we carry out our work independently of both Scottish Ministers and the Scottish Parliament.

The Scottish social security principles

SCoSS takes the Scottish social security principles, as laid out in the Social Security (Scotland) Act 2018, into consideration when scrutinising proposed social security legislation and regulations. The Scottish social security principles are:

(a) social security is an investment in the people of Scotland,

(b) social security is itself a human right and essential to the realisation of other human rights,

(c) the delivery of social security is a public service,

(d) respect for the dignity of individuals is to be at the heart of the Scottish social security system,

(e) the Scottish social security system is to contribute to reducing poverty in Scotland,

(f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,

[1] Social Security (Scotland) Act 2018 (legislation.gov.uk)
[2] Social Security Scotland - Our Charter

(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,

(h) the Scottish social security system is to be efficient and deliver value for money.

Report outline

This report details our views on the up-rating of Scottish social security payments as per the Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2023. All of the Scottish social security principles are important to successful delivery of social security in Scotland, and in relation to up-rating SCoSS identified principles (a), (b), (e), (f) and (g) as key in guiding our scrutiny.

Principal findings

Up-rating of social security payments takes place in April each year and is based on the Consumer Prices Index (CPI) inflation rate recorded in the previous September. This year the September CPI rate was 10.1%.[3] Scottish Child Payment has already been increased from £20 to £25; all other Scottish social security payments will be up-rated in April 2023 by the September CPI rate. The regulations do not appear to be controversial and we recognise and welcome the increase to Scottish Child Payment in November 2022 though we make recommendations and observations on key implications of having increased the value of a benefit earlier in the year.

[3] Office for National Statistics, Consumer price inflation, UK: October 2022

Summary of recommendations and observations

Recommendation 1: In view of the current and projected high level of inflation and the time taken between the up-rating decision and when an up-rated benefit is received we invite the Scottish Government to set out any actions that might be taken to maintain the value of recipients' social security payments or otherwise help people manage rising costs between annual up-rating exercises.

Recommendation 2: Given the Scottish Government used its discretion this year to up-rate Scottish Child Payment beyond the rate of the Consumer Prices Index, we invite the Scottish Government to clarify the rationale for the £5 increase.

Recommendation 3: Where a rate of assistance is increased in-year, outwith the usual up-rating process, the Scottish Government should make clear at that time whether or not that increase represents early up-rating in fulfilment of its duty under section 86B. Where it does, the reasons behind its decision to use its discretion to bring the up-rating forward in that case should be made clear.

Recommendation 4: Provisions for the up-rating of the transitional rate of Adult Disability Payment should be included in the proposed up-rating regulations.

Observation 1: We welcome the Scottish Government's approach to human rights and equality budgeting within the wider Budget process which we believe resonates with the social security principles. In particular we welcome the recognition that policies should be assessed throughout their development, implementation and execution and look forward to supporting the Scottish Government's commitment to the three key principles of transparency, participation and accountability.

Observation 2: We welcome the measures the Scottish Government took in 2022 in response to the very high levels of inflation. The Scottish Government

may consider that a review of the different responses to high inflation would be timely and helpful in supporting planning for the next and future years. This could include consideration of the net effect of the levels of inflation in the 2022-23 financial year, planned up-rating and the additional cost of living payments.

Observation 3: In view of the levels of inflation of prices for basic necessities such as food and fuel, re-examining the earnings thresholds for devolved social security payments may be an area for the Scottish Government to consider going forward.

Executive summary

Introduction

In 2019 the Scottish Government published its strategic approach to up-rating. This confirmed it would use the Consumer Prices Index (CPI) September rate of inflation to maintain the purchasing power of certain forms of assistance, in line with statutory requirements. Where there is no statutory duty, the Scottish Government can exercise discretion to up-rate other forms of assistance. In addition to up-rating, it can (various constraints permitting) choose to increase amounts by more than inflation. Every year it has used these annual regulations to make changes additional to just up-rating.

This year the September CPI rate was 10.1%. Scottish Child Payment has already been increased from £20 to £25; all other Scottish social security payments will be up-rated in April 2023 by the September CPI rate. Amendments to earnings limits used to determine entitlement to Carer's Allowance and to child dependency increases payable to some Carer's Allowance recipients are made in these regulations. As per the Agency Agreement between the Department for Work and Pensions and the Scottish Government, the Carer's Allowance earnings limit increase replicates the changes made by the Department for Work and Pensions.[4]

Assessing uprating Regulations through the lenses of the social security principles and applicable human rights obligations is not always 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.

Inflation

SCoSS sees no reason at the current time to change from using the September CPI rate as the standard measure though we agree with the Scottish Government that alternatives should be kept under review. However, in October the CPI rate had risen

---

[4] Benefit and pension rates 2023 to 2024, UK Government

to 11.1%,[5] dropping to 10.5% in December.[6] There is a risk that up-rating by 10.1% could mean a reduction in value by April 2023.

Scottish Child Payment

We welcome the increase to £25 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.[7] There is also some ambiguity regarding what is the appropriate 'relevant figure' for the purposes of the up-rating report in regards to the Scottish Child Payment.

Earnings thresholds

In its consumer price inflation reports the Office for National Statistics (ONS) has noted that costs of essentials including food and heating fuel have increased at higher rates than the CPI. The ONS has also reported that average wages across the UK have not risen at the same pace as the CPI.[8] Although earnings thresholds for social security payments are increased as part of this up-rating process, this may not be at levels sufficient to avoid excluding individuals in need of support due to the disparity between wage increases and price inflation, particularly price inflation of essentials like food and heating fuel.

---

[5] Office for National Statistics, Consumer price inflation, UK: October 2022
[6] Office for National Statistics, Consumer price inflation, UK: December 2022
[7] This issue is discussed at length in SCoSS's The Scottish Child Payment Regulations 2020 scrutiny report.
[8] Are wages keeping up with high inflation in the UK? (www.ons.gov.uk)

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 2023 (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[9] (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 or Section 79 of the Act.[10] The draft Regulations are made under powers conferred by sections within this part and chapter and, for some payments, the Social Security Act 1988[11] and the Social Security Contributions and Benefits Act 1992.[12] Whilst SCoSS is not obliged under the Social Security (Scotland) Act 2018 to set out observations and recommendations regarding changes to regulations made under these specific powers, SCoSS may consider it appropriate to ask for more information on areas which might help inform its broader scrutiny.

The Scottish Government published its overall strategic approach to up-rating in 2019,[13] having consulted SCoSS on the appropriate inflation measure.[14] The strategy remains an important point of reference against which to assess variations, bearing in mind the powers and constraints on Scottish Government to set strategy and take action (for further details of powers and constraints see **Annex A**).

Each year, the Scottish Government up-rates certain forms of devolved assistance in line with the Consumer Prices Index (CPI) inflation rate for September; this year the CPI inflation rate for September was 10.1% which, at the time, was a forty-year high. Despite the UK Government's energy price guarantee (EPG) limiting households'

---

[9] Social Security (Scotland) Act 2018 (legislation.gov.uk)
[10] Other than in relation to regulations made only for the purpose of the consolidation of earlier regulations (section 97(11)).
[11] Social Security Act 1988 (www.legislation.gov.uk)
[12] Social Security Contributions and Benefits Act 1992
[13] Scottish Government (September 2019) – Uprating policy paper and analytical report
[14] Letter from Cabinet Secretary, 2 September 2019: Scottish Commission on Social Security letters: uprating 2019 (www.gov.scot)

annual energy bill, CPI continued to rise to a peak rate in October of 11.1%. The combined impact of escalating fuel and heating costs and price rises across food and other basic necessities has been significant, particularly on households with low incomes.

The Scottish Government is statutorily obliged to up-rate some forms of assistance if in their opinion it is materially below its inflation-adjusted figure. It can also, if it chooses (constraints permitting), up-rate others. Alongside the draft regulations a 'section 86A report'[15] is published setting out the basis for up-rating 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 up-rating does not represent a change in policy.[16] Impact assessments are, however, carried out as part of the Budget process and the Scottish Government has committed to embed a human rights approach to budgeting.[17]

Observation 1: We welcome the Scottish Government's approach to human rights and equality budgeting within the wider Budget process which we believe resonates with the social security principles. In particular we welcome the recognition that policies should be assessed throughout their development, implementation and execution and look forward to supporting the Scottish Government's commitment to the three key principles of transparency, participation and accountability.

This year, in line with statutory requirements and the previously agreed measure of inflation of the Consumer Prices Index (CPI) inflation rate for September, Scottish Ministers propose to up-rate all Scottish social security payments by 10.1%, including all those where up-rating is discretionary; the exception is Scottish Child Payment, whose value has already been increased for 2023-24, to £25 per week. The significant level of inflation has had an impact on the wider economic

---

[15] 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).
[16] 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 (www.gov.scot)]
[17] [Scottish Budget 2023-24: equality and Fairer Scotland statement (www.gov.scot)]

environment and we welcome the Scottish Government's decision to up-rate all payments where up-rating is discretionary.

For further information on the contents of the draft regulations see the Policy Note[18] and section 86A report.[19]

The regulations in themselves do not appear to be controversial and SCoSS welcomes the actions 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 up-rating in line with the 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 contribute to poverty reduction, and when, therefore, additional supporting data, assessment of impact on equality, and stakeholder engagement may be helpful.[20]

1.2 Human rights and principles

As required by the Act, our scrutiny was undertaken with regard to the Scottish social security principles[21] and relevant provisions of human rights law.

The Section 86A report highlights the relevance of principles (a), (b), (e) and (g),[22] about which further information can be found in SCoSS's Up-rating Policy Paper and Analytical Report.[23] Action to maintain value by increasing amounts of award in line with a robust measure of inflation is aligned with those principles, since if benefits were not up-rated in line with inflation then over time they would make less of a

---

[18] Policy Note, Social Security (Up-rating) (Miscellaneous Amendment) (Scotland) Regulations 2023 (socialsecuritycommission.scot)
[19] Draft S86A Report, Social Security (Scotland) Act (2018) (socialsecuritycommission.scot)
[20] In its response to recommendation 4 in our February 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 (www.gov.scot)
[21] Social Security (Scotland) Act 2018 asp 9 s 1.
[22] The relevant principles are as follows: (a) 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; (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
[23] Draft Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2019: policy paper and analytical report (socialsecuritycommission.scot)

contribution to poverty reduction and realisation of the rights to social security and an adequate standard of living than they had previously.[24]

However, what is required to maintain or increase support for an adequate standard of living[25] and contribute to reducing poverty can be significantly affected by factors that cannot be neatly captured by an average measure of price inflation.[26] These include changes in the external environment (like Covid-19, the war in Ukraine) 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 averaged measure of inflation masks areas where price inflation is a lot higher. These can intersect with the particular needs of groups protected under the Equality Act 2010[27] 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 recognises the current cost of living crisis and recession, and cites the impact of price rises outpacing rises in wages.[28] Such factors strengthen the case for additional action in those areas.

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,[29] 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

---

[24] 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). Principle (g) applies more obviously to improvements beyond maintaining the status quo.
[25] Human right to an adequate standard of living (art 11 ICESCR).
[26] CPI measures the average change in prices over time that consumers pay for a basket of goods and services.
[27] Equality Act 2010, S.4 (www.legislation.gov.uk)
[28] The Social Security (Up-rating) (Miscellaneous Amendment) (Scotland) Regulations 2023 (socialsecuritycommission.scot) s.3.7
[29] 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 (www.gov.scot)

the child poverty delivery plan,[30] 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 up-rating in line with previously agreed policy more closely equates to maintaining value, where action is obviously an improvement or merely minor technical tweaks, the case for stakeholder engagement is weaker.

Regarding the evidence base, the section 86A report is obviously a key source. 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, drawn from stakeholder organisation commentary and published government reports. 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.[31]

Up-rating in line with CPI is a means of maintaining devolved social security's place as an investment in the people of Scotland (principle (a)) and a contribution towards reducing poverty (principle (e)). Principle (b) states that "social security is itself a human right and essential to the realisation of other human rights." Up-rating in line with CPI remains important to the maintenance of devolved social security's contribution to this realisation and if a particular benefit were not up-rated for an ongoing period then, over time, it is likely that it would make less and less of a contribution to this realisation. By extension the contribution to the right to social security[32] might similarly dwindle.

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

[30] Every child, every chance: tackling child poverty delivery plan 2018-2022, Scottish Government, March 2018
[31] Response to recommendation 7, February 2021 report: Scottish Commission on Social Security - scrutiny report: Scottish Government response (www.gov.scot)
[32] Art 9 ICESCR.

up-rating report[33] while acknowledging that CPI could potentially be improved upon in time. Section 3 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 [34] 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 Impact of inflation

SCoSS recognise the challenge the Scottish Government faces in identifying a suitable measure for an annual up-rating of social security payments, and that in periods of high volatility and/or sustained high inflation the process of annually up-rating payments may not keep pace with price increases.

In March 2022, the Scottish Government made provisions to uprate certain devolved forms of social security assistance by 6%, rather than the September CPI rate of 3.1%. This was in response to the significant increase in the cost of living reflected by the February 2022 CPI figure of 6.2%.[35] Inflation continued to increase in the months after February 2022. By the time the up-rating came into effect (April 2022), however, the CPI 12-month rate had reached 9.0%. By September 2022 the CPI rate was 10.1% and has since reached 10.5% in the 12 months to December 2022 from a peak of 11.1% in October 2022 (latest figures at the time of writing).[36]

This means that, during the period between April 2022 and April 2023, recipients of those social security payments which were up-rated[37] faced increases in prices

---

[33] SCoSS, Uprating Policy Paper and Analytical Report, 2019

[34] 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.

[35] Further response to Scottish Government (www.socialsecuritycommission.scot)

[36] Consumer price inflation, UK (Office for National Statistics)

[37] A number of other social security payments received no up-rating whatsoever.

month on month which far outpaced the up-rating those payments received[38], and this risked a reduction in support for an adequate standard of living and contribution towards reducing poverty (principle (e)).

Both the UK and Scottish Governments responded to the high inflation rate with a range of measures, including a number of Cost of Living payments[39] and doubling the value of the December Scottish Child Payment Bridging Payment.[40] However, people receiving social security payments had already been facing the effects of high inflation for some months prior to the introduction of those measures.

The Treasury publishes forecasts for the UK economy which summarise published views of various forecasting organisations. Although CPI is projected to fall in 2023, this is from a forty-year high and the OBR's projected 7.4% 2023 calendar year inflation rate will continue to have a significant impact on the value of all incomes in real terms.

Observation 2: We welcome the measures the Scottish Government took in 2022 in response to the very high levels of inflation. The Scottish Government may consider that a review of the different responses to high inflation would be timely and helpful in supporting planning for the next and future years. This could include consideration of the net effect of the levels of inflation in the 2022-23 financial year, planned up-rating and the additional cost of living payments.

Third sector organisations have raised questions about the overall value of social security payments to recipients against the expected ongoing price rises throughout the coming year. The proposed up-ratings have been welcomed as a minimum required action but there have been calls for payments to be increased further in

[38] The Office for National Statistics provides a CPI Index each month, changes in which reflect inflation (the CPI Rate). When the April 2022 up-rating amount was decided (September 2021), the index was at 112.4, and it had reached 120.0 by the April it was introduced.
[39] [Cost of Living Payment (www.gov.uk)]
[40] [Cost of living crisis (www.gov.scot)]

order to address the cost inflation of particular pressure points such as fuel and food.[41]

Recommendation 1: In view of the current and projected high level of inflation and the time taken between the up-rating decision and when an up-rated benefit is received we invite the Scottish Government to set out any actions that might be taken to maintain the value of recipients' social security payments or otherwise help people manage rising costs between annual up-rating exercises.

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 the future.[42] Again, it is helpful to acknowledge the constraints on action that might apply (annex A).

3. Scottish Child Payment

SCoSS welcomes the Scottish Government's decision to increase the Scottish Child Payment (SCP) from £20 to by £25 per week in November 2022 as part of its strategy to tackle child poverty and notes that this above-inflation increase is in keeping with the progressive realisation principle, increasing its contribution to realisation of the rights to social security and an adequate standard of living. This exceeds the figure that would have been arrived at had the April 2022 rate of SCP simply been up-rated by 10.1% which would be £22.02. This means that, from April 2022 to April 2023, the overall value of SCP will have increased in real terms.

SCoSS notes that the Section 86A report calculates an inflation adjusted figure for Scottish Child Payment using £20 as the 'relevant figure' in the calculation required by section 86A(4), rather than using the £25 rate that had been introduced in November 2022. Section 86A(3)(b) does not allow the use in the up-rating

[41] See for example Women and the Cost of Living: A Crisis of Deepening Inequality, Engender, October 2022, Joseph Rowntree Foundation statement, among others.
[42] Scottish Government response to recommendation 4, report 2019: Uprating 2019: SG response to report (www.gov.scot)

calculation of ‘a figure which is so prescribed to apply only in respect of periods that have ended, or events that occurred, before a particular date’. In response to a question raised by SCoSS about the decision-making process on SCP up-rating, officials noted that at the time that the relevant up-rating decisions were made, the current figure for SCP was £20, and that the payment had been up-rated in advance of other payments alongside its extension to children under 16. There is therefore a certain ambiguity regarding what is the appropriate ‘relevant figure’ for the purposes of the up-rating report, so that, when comparing November 2022 with April 2023, the decision not to further up-rate the £25 rate of payment can be interpreted as a real-terms reduction in its value. Had the increase to SCP been implemented earlier in the year prior to up-rating decisions having been made, it may not have been appropriate to describe the increase as an early up-rating.

“The Finance Secretary stated that a key priority for this budget was tackling child poverty and it is therefore disappointing that the budget failed to uprate the Scottish Child Payment in line with other Scottish benefits. This will mean a real term cut in the value of the payment at a time when families on low incomes need more support to stay afloat.”

Poverty Alliance

The rationale used to determine the specific £5 increase is not presented, so it would be helpful to understand why this figure was chosen and how this increase sits within the wider context of up-rating of social security payments. For example, some third sector organisations have called on the Scottish Government to go further and increase the Scottish Child Payment to £40 per week in recognition of “the fiscal context we now find ourselves” in.[43]

The increase in SCP was included as an action within the Scottish Government’s Tackling Child Poverty Delivery Plan 2022-26, which was published on 24 March

[43] Women and the Cost of Living: A Crisis of Deepening Inequality, Engender, October 2022

2022.[44] It is not clear how any predicted September 2022 CPI rate was taken into account when this amount of increase was decided. Further information on the decision-making process in relation to these points would be helpful both to SCoSS and interested third-sector organisations.

Recommendation 2: Given the Scottish Government used its discretion this year to up-rate Scottish Child Payment beyond the rate of the Consumer Prices Index, we invite the Scottish Government to clarify the rationale for the £5 increase.

Recommendation 3: Where a rate of assistance is increased in-year, outwith the usual up-rating process, the Scottish Government should make clear at that time whether or not that increase represents early up-rating in fulfilment of its duty under section 86B. Where it does, the reasons behind its decision to use its discretion to bring the up-rating forward in that case should be made clear.

4. Adult Disability Payment

In questions sent to officials on 22 December 2022, SCoSS noted that The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 included transitional rates of Adult Disability Payment for people transferring from Disability Living Allowance to Adult Disability Payment. The up-rating regulations as submitted for scrutiny did not include provisions for the up-rating of the transitional rate of Adult Disability Payment. In response officials noted that this omission was an error. Amendments to the draft regulations will be required to address this and we understand that officials are taking action accordingly.

Recommendation 4: Provisions for the up-rating of the transitional rate of Adult Disability Payment should be included in the proposed up-rating regulations.

---

[44] Tackling Child Poverty Delivery Plan 2022-26 (www.gov.scot)

5. Earning thresholds

As noted previously, the percentage by which social security payments are up-rated is based on the September CPI rate; however the costs of basic necessities such as food and heating fuel have increased by a significantly higher rate (see Annex B for details). With price increases in such key areas, there is increasing financial pressure not only on those already receiving social security payments, but also on those whose earnings have suffered significant loss of purchasing power in relation to these basic necessities, but nevertheless remain beyond qualifying thresholds. The ONS has also reported that average wages across the UK have not risen at the same pace.[45]

This is reflected in reports from stakeholders; the Poverty & Inequality Commission, for example, have noted that organisations and groups they have spoken to have described increases in the numbers of people contacting them for advice or assistance who were "experiencing in-work poverty and whose income was just marginally above the level where they would be eligible for benefits".[46]

"People who are on the financial margins and working poor is what we are seeing more of. Those whose income might be just £10 above the benefits levels. They are the ones we are seeing more of."

Community Organisation[47]

We note that the regulations increase earnings thresholds for some social security payments by around 10%; we discuss two particular exceptions below. The disparity between increases in earning thresholds and decreases in relative spending power, particularly with respect to vital purchases such as food and heat, risks leaving people who now find themselves under greater financial pressure than their incomes can accommodate excluded from social security support.

[45] Are wages keeping up with high inflation in the UK? (www.ons.gov.uk)
[46] Poverty & Inequality Commission Cost of Living Project
[47] Poverty & Inequality Commission Cost of Living Project

Observation 3: In view of the levels of inflation of prices for basic necessities such as food and fuel, re-examining the earnings thresholds for devolved social security payments may be an area for the Scottish Government to consider going forward.

5.1 Carer's Allowance

SCoSS notes that the measure of "circumstances in which a person is or is not to be treated as gainfully employed" has been raised by 5.5%, from £132 to £139 per week. Through its Agency Agreement with the Department for Work and Pensions the Scottish Government is required to replicate changes to the earnings limit made by the Department for Work and Pensions. SCoSS intends to consider earnings limits for the new Scottish Carer's Assistance in more detail during its consideration of draft regulations for Scottish Carer's Assistance, which are expected to be received later in 2023.

5.2 Best Start Foods

We welcome the Scottish Government's plans to remove income thresholds from qualifying benefits for best start foods[48] as contributing towards the reduction of in-work poverty and may contribute to the efficient delivery of the benefit in line with principles (e) and (h),[49] and note that this is expected to come into effect mid-2023-24.[50]

6. Approach to scrutiny

In keeping with our role to scrutinise social security regulations, this report provides commentary in connection with human rights and the social security principles set out in Section 1 of the Social Security (Scotland) Act 2018,[51] as operationalised via Our Charter.[52]

---

[48] Annex D: Detailed Analysis of Equalities and Fairer Scotland Issues by Portfolio (www.gov.scot) p. 175
[49] The relevant principles are as follows: (e) social security as a contribution towards reducing poverty; (h) the Scottish social security system is to be efficient and deliver value for money.
[50] Scotland's Economic and Fiscal Forecasts – December 2022 | Scottish Fiscal Commission p. 84
[51] Social Security (Scotland) Act 2018 (www.legislation.gov.uk)
[52] Social Security Scotland - Our Charter

The Minister for Social Security and Local Government referred the draft regulations to SCoSS,[53] along with the section 86A report[54] and Policy Note,[55] on 19 December 2022. We were given a deadline for reporting of 20 January 2023. Given the interdependencies between up-rating, the Scottish Budget, the Westminster budget, and the need to introduce changes by the start of the financial year, there is little flexibility possible in timescales for reporting and limited scope to consult stakeholders, should it be felt helpful.

The speed with which these Regulations were required to be considered by SCoSS, as a result of the later than usual Scottish Government budget process, had direct implications for our approach to scrutiny. SCoSS was unable to conduct detailed stakeholder engagement in relation to up-rating due to the short timeframe available for scrutiny. SCoSS undertook some limited desk-based research to identify public commentary on the budget and the impact of the cost of living crisis. Relevant commentary has been reflected throughout this report. We are grateful for the efforts made by officials to keep us appraised of developments.

[53] Referral – The Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2023 (socialsecuritycommission.scot)
[54] Draft S86A Report, Social Security (Scotland) Act (2018) (socialsecuritycommission.scot)
[55] Policy Note, Social Security (Up-rating) (Miscellaneous Amendment) (Scotland) Regulations 2023 (socialsecuritycommission.scot)

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 up-rate 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 ‘up-rating’ 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.
- Whether to up-rate from April or earlier in the year.

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: Inflation of food and fuel costs

In contrast to the September 2022 CPI rate of 10.1%, food and non- alcoholic beverage prices rose by 14.5% in the 12 months to September 2022, whilst housing and household services (including electricity, gas and other fuels) prices rose 20.2% in the same period.[56]

The ONS noted that "[i]n October 2022, households are paying, on average, 88.9% more for their electricity, gas, and other fuels than they were paying a year ago. Domestic gas prices have seen the largest increase, with prices in October 2022 being more than double the price a year earlier. The prices for liquid fuels and for electricity have risen by 70.0% and 65.7%, respectively, in the year to October 2022".[57]

Inflation of food and non-alcoholic beverage prices had reached 16.4% in the 12 months to November 2022, marking 16 consecutive months of increases in inflation in that category, with inflation of housing and household services prices reaching 26.6%.[58]

---

[56] Consumer price inflation, UK: September 2022 (www.ons.gov.uk)
[57] Consumer price inflation, UK: October 2022 (www.ons.gov.uk)
[58] Consumer price inflation, UK: November 2022 (www.ons.gov.uk)

Annex C: Scrutiny timeline

15 December 2022	Scottish budget announced.
19 December 2022	Draft Up-rating Regulations and Section 86A report (formerly Section 77 report) formally referred to SCoSS by the Minister for Social Security and Local Government.
19 December 2022	Informal briefing held between SCoSS Secretariat and Scottish Government's Senior Policy Officer.
21 December 2022	Ad hoc SCoSS Board held.
13 January 2023	Provide Scottish Government with advance notice of SCoSS recommendations.
20 January 2023	SCoSS report signed off and laid.
TBC	Up-rating Regulations laid in Parliament.
TBC	Up-rating Regulations into force