



Scottish
Commission
on Social
Security

Scottish Commission on Social Security

Scrutiny report on draft Regulations:

The Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2024

Submitted to the Scottish Government and the Scottish Parliament's Social Security Committee on 19 January 2024.

SCoSS/2024/01

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Summary of recommendations and observations

Recommendation 1: In the Explanatory Note to the draft Regulations the Scottish Government should refer to 'increases in the amount of' social security payments rather than referring to an increase in their value.

Recommendation 2: To inform policy following the completion of case transfer, the Scottish Government should consider different measures for up-rating earnings thresholds and consider the merits of making annual up-rating of earnings thresholds a requirement.

Recommendation 3: The Scottish Government should conduct a further Multi Criteria Decision Analysis to inform its approach to the up-rating of social security payments following the completion of case transfer.

Recommendation 4: The Scottish Government should engage stakeholders with a range of expertise (including, but not necessarily limited to, the economy, social security, equality and poverty) to inform decisions on aspects of the next up-rating Multi Criteria Decision Analysis such as criteria, weighting and options to be considered.

Observation: Given the links with the Budget, future potential changes to inflation measures or to up-rating policy should involve equality considerations. SCoSS would welcome being kept informed about the progress of the programme of improvement to equality impact assessments and its relationship with the Budget and up-rating process.

Executive summary

Introduction

Every year, the Scottish Government is required to calculate and report on what the amount of each social security payment would be with an adjustment for annual inflation. It has a duty to up-rate the amount of some payments and a discretion to up-rate other payments. An important distinction can be drawn between the amount of a social security payment and its value. The purpose of the annual up-rating exercise is to ensure that the value of social security payments is maintained by increasing their amounts in line with rises in relevant prices.

By maintaining the value of payments as prices rise, up-rating contributes to social security principles. However, a contribution towards reducing poverty cannot be neatly captured by an average measure of price inflation, and changes in the external environment can affect costs and needs. There may be situations where equality and human rights considerations are needed in relation to up-rating specifically. The Scottish Commission on Social Security welcomes statements in the Equality and Fairer Scotland Budget Statement recognising the intersection between people with different protected characteristics and disadvantages, which can compound structural inequality.

Up-rating Scottish social security for 2024/25

This year the Scottish Government has decided to up-rate all social security payments by the September 2023 Consumer Prices Index (CPI) 12-month rate, 6.7%.

At a time when there are significant pressures on Scottish Government budgets, this commitment to maintaining the value of all social security payments is welcome.

Earnings thresholds

There is no current requirement to up-rate earnings thresholds for social security payments, and no standard way of increasing the earnings thresholds year on year. There is a risk that the value of earnings thresholds would fall, just as the value of social security payments would fall if their amounts were not increased in line with the increase in prices.

As with up-rating the amounts of social security payments, which involves choices about different inflation measures, there are likely to be a range of options for an appropriate measure for the up-rating of earnings thresholds. Stakeholder engagement on this matter would be in keeping with principle (f), “the Scottish social security system is to be designed with the people of Scotland on the basis of evidence”.

Evaluation of potential methods of up-rating

The draft Section 86A report for this year’s up-rating exercise refers to a Multi Criteria Decision Analysis (MCDA) analytical report undertaken by the Scottish Government to evaluate potential methods of up-rating using various measures of inflation and different reference periods. This exercise led to a Scottish Government recommendation that September CPI remains the most appropriate method for up-rating.

External stakeholder engagement in the MCDA process was not undertaken. In line with principle (f), stakeholder engagement as part of an MCDA process can be beneficial in ensuring that multiple perspectives are included from the outset and should be included in future considerations of up-rating policy and processes.

1. Introduction

1.1 Overview

The Scottish Commission on Social Security (SCoSS) is pleased to present its report on the draft Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2024 (henceforth referred to as the ‘draft Regulations’).

The Scottish Government published its overall strategic approach to up-rating in 2019,¹ having consulted SCoSS on the appropriate inflation measure.² 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 B).

1.2 Human rights and social security principles

Our scrutiny was undertaken with regard to the Scottish social security principles³ and relevant provisions of human rights law.

The Scottish Government’s overall approach to up-rating (2019), and the draft Section 86A report accompanying this year’s up-rating regulations, refer to specific social security principles that up-rating is intended to reinforce. These are:

- Social security is an investment in the people of Scotland (principle (a));
- Social security itself is a human right and essential to the realisation of other human rights (principle (b));
- The Scottish social security system is to contribute to reducing poverty in Scotland (principle (e)); and
- Opportunities are sought to continuously improve the Scottish social security system in ways in which i) put the needs of those who require assistance first, and ii) advance equality and non-discrimination (principle (g)).

Up-rating contributes to these principles by maintaining the value of social security payments as prices rise. An important distinction can be drawn here between the amount of a social security payment and its value. The purpose of the annual up-rating exercise is to ensure that the value of social security payments is maintained.

As stated in the draft Multi Criteria Decision Analysis report,

“Up-rating approaches are not intended to either save Government money or maximise benefit income for clients, but to maintain the true value of payments as prices rise in the economy.”⁴

The Act provides that the amount of the payment must be increased such that it does not fall “materially below” what might broadly be understood to be the general cost of living.

¹ [Scottish Government \(September 2019\) - Uprating policy paper and analytical report \(www.gov.scot\)](https://www.gov.scot/publications/2019/09/01/uptating-policy-paper-and-analytical-report/)

² Letter from Cabinet Secretary, 2 September 2019: [Scottish Commission on Social Security letters: uprating 2019 \(www.gov.scot\)](https://www.gov.scot/publications/2019/09/02/uptating-2019/)

³ [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/11/section/86A) asp 9 s 1

⁴ [Multi-Criteria-Decision-Analysis-of-Approach-to-Up-rating-Devolved-Social-Security-Assistance-January-2024.pdf \(socialsecuritycommission.scot\)](https://www.socialsecuritycommission.scot/publications/2024/01/01/multi-criteria-decision-analysis-of-approach-to-up-rating-devolved-social-security-assistance-january-2024.pdf), paragraph 45

The current measure the Scottish Government uses to determine the change in the cost of living is the 12-month rate of inflation of the Consumer Prices Index (CPI), as calculated in September by the Office for National Statistics (ONS). For the up-rating which takes effect from April 2024, the rate of inflation is based on the 12-month CPI rate for September 2023. The foreword to the Scottish Government's draft Section 86A report this year also emphasises up-rating as part of reducing inequality and tackling poverty.

However, as SCOSS noted in its 2023 up-rating scrutiny report,⁵ a contribution towards reducing poverty cannot be neatly captured by an average measure of price inflation, and changes in the external environment can affect costs and needs (inflation is also discussed in section 4 below). These factors can also have an impact on groups of people with protected characteristics under the Equality Act 2010, thus also invoking principle (g) (also discussed in section 1.3 below).

1.3 Equality and human rights budgeting considerations

The Scottish Government has previously stated that it does not carry out equality impact assessments for annual up-rating as up-rating makes no changes to the regulations on which such assessments have already been made.⁶ Officials have told SCoSS that the up-rating process can be understood as administration, rather than policy.

However, a distinction can be made between social security payments where there is a statutory duty to up-rate and those for which up-rating is discretionary, which involves more explicit policy choices (although within the constraints noted in Annex B), also discussed in section 2 below.

There may be situations where equality and human rights considerations are needed in relation to up-rating specifically. For example, it is possible that the annual up-rating exercise may serve as a prompt for revising impact assessments on social security payments where there has been no recent assessment of equality considerations. Also, a new Equality Impact Assessment is likely to be required if there is any change to up-rating policy.⁷ In addition, the approach to up-rating is also part of wider considerations in the context of the Scottish Budget processes. The Scottish Government's commitment to the human rights principles of transparency, participation and accountability was also reiterated in this year's Equality and Fairer Scotland Budget Statement.⁸ SCoSS has previously welcomed the Government's approach to these principles.⁹

SCoSS also welcomes statements in the Equality and Fairer Scotland Budget Statement recognising the intersection between people with different protected

⁵ [Scrutiny report – The Social Security \(Up-rating\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(socialsecuritycommission.scot\)](#)

⁶ [Scrutiny report – The Social Security \(Uprating\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2019 \(socialsecuritycommission.scot\)](#)

⁷ As undertaken by the Department for Work and Pensions in 2011 when the measure of inflation changed from RPI/Rossi to CPI, [Equality impact assessment: Social security benefits uprating 2011 \(gov.uk\)](#)

⁸ [Scottish Budget 2024 to 2025: equality and fairer Scotland statement \(www.gov.scot\)](#), Annex A, page 6/7

⁹ See e.g. Observation 1 from [Scrutiny report – The Social Security \(Up-rating\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(socialsecuritycommission.scot\)](#)

characteristics and disadvantages, which can compound structural inequality¹⁰ and of a programme to drive overall improvement in the impact assessments.¹¹

Observation: Given the links with the Budget, future potential changes to inflation measures or to up-rating policy should involve equality considerations. SCoSS would welcome being kept informed about the progress of the programme of improvement to equality impact assessments and its relationship with the Budget and up-rating process.

2. Up-rating Scottish social security for 2024/25

There is a statutory duty to up-rate the forms of assistance which are covered by section 86B of the Act, but the up-rating of other devolved social security payments is discretionary (see table below).

Statutory ¹²	Discretionary
Child Disability Payment	Best Start Grants
Adult Disability Payment	Best Start Foods
Carer Support Payment	Child Winter Heating Payment
Young Carer Grant	Winter Heating Payment
Funeral Support Payment	Job Start Payment
Scottish Child Payment	

The draft Regulations appear straightforward: this year the Scottish Government has again decided to up-rate all Scottish social security payments, including those for which up-rating is discretionary, by the September 2023 CPI 12-month rate, 6.7%. The Scottish Government is responsible for up-rating benefits delivered for them by the DWP, e.g. Personal Independence Payment, and by agreement maintains parity with DWP rates of benefit.¹³ From April 2024, these benefits are also up-rated by 6.7%, through a separate Order which is not subject to scrutiny by SCoSS.¹⁴

As noted above, a distinction can be made between maintaining the value of social security payments through up-rating, and increasing the value of social security payments to meet other policy objectives.¹⁵ Maintaining the value of social security payments through up-rating can be regarded as ‘administrative’ whereas an increase over and above that is more likely to involve specific policy objectives.

The Explanatory Note to the draft Regulations refers to each regulation as an ‘increase in the value’ of certain forms of assistance. As the purpose of up-rating is to maintain the value of social security payments in the face of rising prices, a distinction can be made between up-rating and situations outwith the annual up-rating process which may increase the value of a social security payment for other

¹⁰ [Scottish Budget 2024 to 2025: equality and fairer Scotland statement \(www.gov.scot\)](http://www.gov.scot), page 13

¹¹ [Scottish Budget 2024 to 2025: equality and fairer Scotland statement \(www.gov.scot\)](http://www.gov.scot), Annex A, page 3

¹² The Scottish Government also has a statutory duty to up-rate Employment Injury Assistance (EIA) and Pension Age Disability Payment (PADP); EIA has not yet been devolved to the Scottish Government, PADP has not yet come into force.

¹³ For example para 5,7 of the [Personal independence Payment in Scotland: Agency Agreement](http://www.gov.scot)

¹⁴ [Draft-86A-Report-Up-rating-2024-25-SCoSS.pdf \(socialsecuritycommission.scot\)](http://www.gov.scot), paragraph 5.4

¹⁵ See e.g. points made in [Scrutiny report – The Social Security \(Up-rating\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(socialsecuritycommission.scot\)](http://www.gov.scot)

policy purposes. It would aid clarity if the Explanatory Note referred to ‘increases the amount of’ social security payments rather than referring to their value.

Recommendation 1: In the Explanatory Note to the draft Regulations the Scottish Government should refer to ‘increases in the amount of’ social security payments rather than referring to an increase in their value.

2.1 Rationale for discretionary up-ratings

The Scottish Government’s 2019 policy paper makes a (broad) distinction between regular payments where there is a duty to up-rate and the one-off grants where there is no such duty.¹⁶ This year Ministers decided to up-rate discretionary social security payments by 6.7% in line with the annual rate of September 2023 CPI.

SCoSS understands that the rationale for this up-rating particularly relates to the objective of tackling child poverty, which also invokes social security principle (e) and contributes to equality in Scotland. Officials informed SCoSS that:

“During the current cost of living crisis, it is vital that the real-terms value of these payments are maintained for clients. After taking into consideration the effects of inflation, this will be achieved by increasing these payments by 6.7%. These social security payments support those on the lowest incomes in Scotland, strengthen our collective action on child poverty, in particular for some of the six priority families such as families with a child under one, and provide support for people with protected characteristics, such as disability.”

The up-rating of all social security payments for which up-rating is discretionary is forecasted to cost the Scottish Government £4.6m next year.¹⁷ At a time when there are significant pressures on Scottish Government budgets, this commitment to maintaining the value of all Scottish social security payments is welcome.

3. Earnings thresholds

In general terms, an earnings threshold for a social security payment is an amount of income above which a person’s eligibility for that social security payment is affected. A person receiving an income above the threshold for a given social security payment might receive a reduced rate for that payment, or might be ineligible for that payment altogether, depending on the rules for that specific payment.

The only Scottish social security payment currently with an earnings threshold is Carer Support Payment (CSP).

Officials confirmed that the earnings threshold for CSP will be raised by 8.5%. Although the figures for this increase are included in the draft Regulations, the rate is not made explicit in the draft Section 86A report.

Although the Scottish Government is required to up-rate the amounts of social security payments in line with increased prices, there is no requirement to up-rate earnings thresholds. There is also no standard way of increasing earnings thresholds year on year.

¹⁶ [Scottish Government Policy Paper - Annual Uprating of Devolved Social Security Assistance \(www.gov.scot\)](https://www.gov.scot/publications/policy-papers/pages/annual-uprating-of-devolved-social-security-assistance.aspx)

¹⁷ Figures supplied by Scottish Government officials.

Officials stated there are no concrete plans to look at how earnings thresholds will be up-rated in the future, e.g. following completion of case transfer from Carer's Allowance to Carer Support Payment when up-rating no longer has to follow the UK Government's approach.

Without an annual up-rating exercise there is a risk that the value of earnings thresholds would fall, just as the value of social security payments would fall if their amounts were not increased in line with costs of living.

As with up-rating the amounts of social security payments, which involves choices about different inflation measures, there are likely to be a range of options for an appropriate measure for the up-rating of earnings thresholds.¹⁸ Stakeholder engagement on this matter would be in keeping with principle (f).¹⁹

Recommendation 2: To inform policy following the completion of case transfer, the Scottish Government should consider different measures for up-rating earnings thresholds and consider the merits of making annual up-rating of earnings thresholds a requirement.

4. Evaluation of potential methods of up-rating

The impact of inflation, and specific inflation measures, was also covered in SCoSS's 2023 up-rating scrutiny report.²⁰ This year, SCoSS notes that the average CPI of 6.7% masks a higher rate for food inflation²¹ and that low-income households spend a greater proportion of their income on essentials.²²

SCoSS has previously recommended that the Scottish Government considers whether an alternative to the September annual CPI rate would provide better outcomes relating to the annual up-rating of social security payments.²³

The draft Section 86A report for this year's up-rating exercise refers to a Multi Criteria Decision Analysis (MCDA) analytical report undertaken by the Scottish Government to evaluate potential methods of up-rating using various measures of inflation and different reference periods. A draft of the MCDA analytical report was provided to SCoSS as part of the referral of the draft Regulations.²⁴ The broad methodology followed was based on HM Treasury's Green Book.²⁵ This exercise led to a recommendation that September CPI remains the most appropriate method for up-rating.

SCoSS understands that this analysis was prompted by the high and volatile inflation of recent years in order to consider whether the best measure was being used.

¹⁸ Some examples, amongst others, include: September 12-month CPI rate; UK National Minimum Wage; UK National Living Wage; ONS Average Weekly Earnings (AWE).

¹⁹ "The Scottish social security system is to be designed with the people of Scotland on the basis of evidence."

²⁰ [Scrutiny report – The Social Security \(Up-rating\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(socialsecuritycommission.scot\)](#)

²¹ [Consumer price inflation, September 2023 \(www.ons.gov.uk\)](#)

²² [Household Costs Indices for UK household groups: January 2022 to September 2023 \(www.ons.gov.uk\)](#)

²³ [Scrutiny report – The Social Security \(Up-rating\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2019 \(socialsecuritycommission.scot\)](#)

²⁴ [Multi Criteria Decision Analysis of Approach to Up-rating Devolved Social Security Assistance January 2024 \(socialsecuritycommission.scot\)](#)

²⁵ [The Green Book: appraisal and evaluation in central government \(www.gov.uk\)](#)

Officials have informed SCoSS that such an analysis is unlikely to be conducted on a frequent or regular basis, but rather only when considered particularly relevant. SCoSS understands that there are currently no concrete plans for revisiting the MCDA process in the future, though up-rating policy is kept under review, and alternatives would be considered if there is a material change to inflation measures.²⁶

SCoSS understands from officials that some internal stakeholder engagement was undertaken but, in light of the tight timescales involved in up-rating decisions, external stakeholder engagement in the MCDA process was not undertaken. Stakeholders would have sight of this documentation once this is published following the Budget. Nonetheless, SCoSS believes that stakeholder engagement as part of the MCDA process can be beneficial in ensuring that multiple perspectives are included from the outset,²⁷ and would be consistent with social security principle (f).²⁸ MCDA with stakeholder participation has been carried out in other contexts by the Scottish Government including during the development of Carer Support Payment, so may be a model for future MCDA reviews to follow.²⁹

Recommendation 3: The Scottish Government should conduct a further Multi Criteria Decision Analysis to inform its approach to the up-rating of social security payments following the completion of case transfer.

Principle (f) states that “the Scottish social security system is to be designed with the people of Scotland on the basis of evidence”. This principle is consistent with human rights and equality principles also considered within the wider Budget process and should be included in future considerations of up-rating policy and processes.

Recommendation 4: The Scottish Government should engage stakeholders with a range of expertise (including, but not necessarily limited to, the economy, social security, equality and poverty) to inform decisions on aspects of the next up-rating Multi Criteria Decision Analysis such as criteria, weighting and options to be considered.

5. 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 2018,³⁰ as operationalised via Our Charter.³¹

The Cabinet Secretary for Social Justice referred the draft Regulations to SCoSS,³² along with the draft Section 86A report³³ and draft Multi Criteria Decision Analysis

²⁶ [Draft S86A Report 2024-25 \(socialsecuritycommission.scot\)](#) page 8

²⁷ [Green Book supplementary guidance: multi-criteria decision analysis](#)

²⁸ “The Scottish social security system is to be designed with the people of Scotland on the basis of evidence.”

²⁹ [Multi Criteria Analysis - More information on the process used to develop options for future changes to Scottish Carer's Assistance eligibility \(www.gov.scot\)](#)

³⁰ [Social Security \(Scotland\) Act 2018 \(www.legislation.gov.uk\)](#)

³¹ [Social Security Scotland - Our Charter](#)

³² [The Social Security \(Up-rating\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2024 \(socialsecuritycommission.scot\)](#)

³³ [Draft S86A Report 2024-25 \(socialsecuritycommission.scot\)](#)

report,³⁴ on 9 January 2024. We were given a deadline for reporting of 19 January 2024. 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 Scottish Government budget process, had direct implications for our approach to scrutiny. SCoSS was unable to conduct stakeholder engagement in relation to up-rating due to the short timeframe available for scrutiny. We are grateful for the efforts made by officials to keep us apprised of developments.

³⁴ [Multi Criteria Decision Analysis of Approach to Up-rating Devolved Social Security Assistance January 2024 \(socialsecuritycommission.scot\)](https://socialsecuritycommission.scot.gov.uk/multi-criteria-decision-analysis-of-approach-to-up-rating-devolved-social-security-assistance-january-2024)

Annex A: 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 2018.³⁵

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.³⁶

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,
- (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.

³⁵ [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

³⁶ [Social Security Scotland - Our Charter](#)

Annex B: 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 social security payment unless “in their opinion” it is “materially below its inflation-adjusted figure” (section 86(1)). In our 2019 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 social security payments or whether it can also mean increasing their value
- What circumstances would justify increasing the value of payments beyond inflation as part of the up-rating exercise
- Whether to up-rate from April or earlier in the year

Constraints on the exercise of discretion include:

- Whether the social security payment is devolved from a benefit which is subject to an agency agreement with the Department for Work and Pensions (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 C: Scrutiny timeline

19 December 2023	Scottish budget announced
20 December 2024	Scottish Government officials take questions from SCoSS Board
9 January 2024	Draft Regulations and draft Section 86A report (formerly Section 77 report) formally referred to SCoSS by the Cabinet Secretary for Social Justice
11 January 2024	Ad hoc SCoSS Board held
15 January 2024	Scottish Government provided with advance notice of SCoSS recommendations
19 January 2024	SCoSS report signed off and laid