POLICY NOTE

THE CARER'S ALLOWANCE UP-RATING (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2022

SSI 2022/28

The above instrument will be made in exercise of the powers conferred under sections 70(8), 90, 122(1) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992 ('the 1992 Act'). These powers, in UK legislation, are exercised by the Scottish Government through their executive competence. The instrument is subject to the negative resolution procedure and will come into force on 11 April 2022. For the purposes of this note, the instrument will be referred to as 'the 2022 Regulations'.

Purpose of the instrument.
These Regulations increase the amount which a person eligible for payment of Carer's Allowance from the Scottish Ministers can earn in a given week without being considered to be gainfully employed and, therefore, not entitled to receive Carer's Allowance. They also increase the amount which the partner of a person receiving Carer's Allowance can earn each week without the person receiving the Carer's Allowance losing any entitlement to an additional payment in the form of Child Dependency Increase. Child Dependency Increase is payable where a person receiving Carer's Allowance is entitled to receive Child Benefit. Child Dependency Increase was abolished in 2003 but saved for transitional cases which affects a small number of recipients.

Policy Objectives
The purpose of the 2022 Regulations is to increase the Carer's Allowance earnings threshold and the earnings threshold for Child Dependency Increase for a first child and additional amount for each subsequent child.

The functions of the Secretary of State for Work and Pensions in relation to Carer's Allowance payable to people resident in Scotland were transferred to the Scottish Ministers with effect from 3 September 2018. The result is that the Scottish Ministers are responsible for the provision of Carer's Allowance to people who usually live in Scotland. An agency agreement has been entered with the Secretary of State for Work and Pensions, exercising powers arising from the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018. This has the effect that the Secretary of State delivers Carer's Allowance on behalf of the Scottish Ministers. In terms of that agreement, the Scottish Ministers are committed to increase the Carer's Allowance earnings threshold at the same rate as the Department for Work and Pensions (DWP). It is, though, for the Scottish Ministers to make regulations to effect the increase. Given the transfer of functions, the Secretary of State for Work and Pensions has no power to make legislation in relation to Carer's Allowance payable by the Scottish Ministers.

There is no mandatory requirement in legislation to increase the Carer's Allowance earnings threshold but any increase will match the rate that the UK Government will apply to the earnings threshold in England and Wales.

A person is entitled to Carer's Allowance for any day on which that person is engaged in caring for a severely disabled person provided that, amongst other things, the person claiming Carer's Allowance is not gainfully employed. A person is only to be treated as gainfully

employed on any day in a week if their total earnings in the immediately preceding week have exceeded a prescribed amount. If they have exceeded that amount, the person will be treated as being gainfully employed on every day of the next week. The Regulations raise the prescribed amount from £128.00 to **£132.00**.

There is also an earnings threshold for entitlement to payment of Child Dependency Increase for a first child and for each subsequent child. This is an additional payment payable where a person who is receiving Carer's Allowance is entitled to receive Child Benefit. Child Dependency Increase was abolished in 2003 but saved for transitional cases. The earnings threshold relates to weekly earnings by the partner of the person who is entitled to the Child Dependency Increase. The limit in relation to the first child is increased from £245.00 to **£255.00** and for each subsequent child is increased from £33.00 to **£34.00**. These figures match the rate that the UK Government will apply to the earnings threshold for Child Dependency Increase in England and Wales. There is again no mandatory requirement in legislation to increase the earnings threshold for Child Dependency Increase each year.

The increases will take effect on 11 April 2022 and forecasts show an estimate of 88,000[1] recipients of Carer's Allowance in Scotland in 2022/23.

The Cabinet Secretary for Finance announced the proposed rates of Carer's Allowance for 2022/23 to the Scottish Parliament during the Scottish Budget on 9 December 2021.

Consultation

There is no statutory requirement to consult on this instrument. However, a comprehensive report[2], including analytical evidence, on the measures that could be used to uprate devolved social security assistance provided under the Social Security (Scotland) Act 2018 was provided to the Social Security Committee and the Scottish Commission on Social Security(SCoSS) in 2019 to allow them to engage on the proposed uprating policy. The analytical report was prepared to provide a detailed review of relevant inflation measures to inform the options available to uprate devolved social security assistance. The Policy Paper set out the Scottish Government's proposed approach to uprating and recommended the use of the September CPI with the payment rounded to the nearest multiple of 5 pence. The paper also noted that, during any period when a benefit is delivered by DWP on behalf of Scottish Ministers under an agency agreement, Scottish Ministers will be obliged to uprate on the same basis as DWP. The SCoSS was supportive of the Scottish Government's uprating policy in the short term and the Social Security Committee noted the Scottish Government's position and had no further views to report beyond the discussion at the Committee on 10 October 2019[3].

Impact Assessments

The full range of impact assessments were considered and completed where necessary for the Social Security (Scotland) Bill (which included provision for the Carer's Allowance Supplement) and will take place for each of the devolved benefits e.g. impact assessments have been published, for Best Start Grant[4], Funeral Expense Assistance[5], Young Carer Grant[6],

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[1] Scotland's Economic and Fiscal Forecasts – December 2021 | Scottish Fiscal Commission

[2]https://www.parliament.scot/S5_Social_Security/General%20Documents/20190902_CabSecSSOP_to_Convener_uprating_measures.pdf

[3] http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12322&mode=pdf

[4] https://beta.gov.scot/publications/early-years-assistance-consultation-best-start-grant-regulations/pages/9/

[5] https://www.gov.scot/publications/consultation-funeral-expense-assistance-regulations/pages/8/

[6] https://www.gov.scot/publications/consultation-young-carer-grant-regulations/pages/8/

Child Winter Heating Assistance[7], Scottish Child Payment[8], Child Disability Payment[9] and Adult Disability Payment[10]. Impact assessments for any new Scottish assistance will be undertaken at the point where policy is being developed and regulations are being drafted.

Financial Effects

A Financial Memorandum[11] was completed prior to introduction of the Social Security (Scotland) Bill.

The Financial Memorandum considers the costs of uprating and recognises that the methodology of uprating of benefits for inflation is a source of financial risk as any future policy differentials between Scotland and the UK for uprating could result in additional pressures on the Scottish Budget.

However, as this uprate to Carer's Allowance earnings thresholds for recipients in Scotland is the same as to recipients in England and Wales this means there will be no impact on the Scottish Budget. The block grant adjustment methodology detailed in the "Agreement between the Scottish Government and the UK Government on the Scottish Government's fiscal framework" published on 23 February 2016, continues to link adjustments to the Scottish block grant in respect of welfare to spending on equivalent policy areas in England and Wales. This means the Scottish Government is funded to provide the same level of benefits as in England and Wales.

Scottish Government
Social Security Directorate
January 2022

[7] The Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020 (legislation.gov.uk)
[8] The Scottish Child Payment Regulations 2020 (legislation.gov.uk)
[9] The Disability Assistance for Children and Young People (Scotland) Regulations 2021 (legislation.gov.uk)
[10] The Disability Assistance for Working Age People (Scotland) Regulations 2022 (legislation.gov.uk)
[11] http://www.parliament.scot/S5_Bills/Social%20Security%20(Scotland)%20Bill/SPBill18FMS052017.pdf