

POLICY NOTE

THE FUNERAL EXPENSE ASSISTANCE AND YOUNG CARER GRANTS (UP-RATING) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2020

SSI 2020/XXX

The above instrument will be made in exercise of the powers conferred by section 28, 34 and 95 of the Social Security (Scotland) Act 2018 ('the 2018 Act'). The instrument is subject to the affirmative procedure. For the purposes of this note, the instrument will be referred to as the '2020 Regulations'.

Purpose of the instrument.

The Regulations fulfil the duty on the Scottish Ministers to bring forward legislation under section 78(1) of the Social Security (Scotland) Act 2018 ("the Act") to increase the amount of assistance (payable each year under Chapter 2 of the Act) to an amount which is at least as high as if the existing amount was adjusted in line with price inflation.

The Regulations increase the amount of the Young Carer Grant so that it is in line with price inflation ("*uprating* the Young Carer Grant"). The Regulations also uprate two of three amounts payable under the Funeral Expense Assistance (Scotland) Regulations 2019 so that they are in line with price inflation; namely, 1) the amount which is payable towards a fee for removing an active implantable medical device from the deceased, and 2) the amount which is payable towards other funeral costs if the deceased has a pre-paid funeral plan. The Regulations also increases 3) the standard amount of assistance that is available towards other funeral costs by more than the impact of inflation from £700 to £1,000 ("*uplifting* Funeral Expense Assistance").

The uprate and uplift come into effect on 1 April 2020 for those who make applications on or after 1 April 2020.

The Regulations make further amendments to the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019 and the Funeral Expense Assistance (Scotland) Regulations 2019.

The Young Carer Grant Regulations are amended to remove the exclusion from entitlement to the grant for young people subject to immigration control.

The Funeral Support Payment Regulations are amended to provide clarity on entitlement to a payment in circumstances where a pre-paid funeral plan is in place, as an applicant will be entitled to the flat rate contribution towards other funeral costs at the lower level of £122.05. The amendments also narrow the circumstance in which this reduced payment applies. The reduced payment no longer applies where the deceased has left in place an insurance policy, occupational pension scheme or burial club. Instead, where the deceased has in place an insurance policy, occupational pension scheme, or burial club, the individual will notionally receive the standard amount of assistance (£1,000) with the value of the scheme and any other assets in the deceased's estate then being deducted from the award.

The Regulations also provide that funds or contributions which are available from a pre-paid funeral plan are no longer deductible from an award. This is to prevent circumstances where an entitlement to the lower award of £122.05, because a pre-paid funeral plan was in place, is reduced further by also applying deductions from the same pre-paid funeral plan.

Finally, the Regulations clarify that entitlement to a lump sum under a funeral plan is to be regarded as an asset of the deceased for the purpose of determining whether the assets of the deceased are sufficient and available to meet the costs of a funeral.

Policy Objectives

Section 77 of the 2018 Act requires Scottish Ministers to calculate the inflation-adjusted level of each amount of assistance prescribed in regulations under any section in Chapter 2 and report to the Scottish Parliament, before the end of each financial year, on what they have done or intend to do as a result of the changes to prices. Section 78 of the 2018 Act requires Scottish Ministers to bring forward legislation before the end of each financial year to replace these amounts of assistance with amounts which are at least as high as the inflation-adjusted level of each amount.

It has been determined that there has been an increase in the general level of prices in the past financial year. Accordingly, the Regulations are brought forward in reliance on section 28 and 34 to uprate the relevant sums according to the September 2019 Consumer Price Index (CPI) as published on 16 October 2019, in this case **1.7%**. This is the 12-month inflation rate, which compares prices for September 2019 with the same month a year ago. There is an individual rounding convention for how new rates are calculated and the payment is rounded to the nearest multiple of 5 pence.

The Order provides for a 1.7% increase to the Young Carer Grant payment (from £300 to **£305.10**); a 1.7% increase to what Funeral Support Payment is available towards a fee for removing an active implantable medical device from the deceased (from £20 to **£20.35**) and a 1.7% Funeral Support Increase to what Funeral Support Payment is available towards funeral costs where the deceased has left in place a pre-paid funeral plan (from £120 to **£122.05**).

Instead of providing the same 1.7% increase for the standard amount of Funeral Support Payment that is available towards other funeral costs (from £700 to **£711.90**), this element of the Funeral Support Payment will be uplifted to a more generous figure of **£1,000** for all applications made on or after 1 April 2020.

The Minister for Public Finance and Digital Economy announced the proposed rates of devolved social security assistance for 2020-21 to the Scottish Parliament during the Scottish Budget on 6 February 2020. In accordance with the Social Security (Scotland) 2018 Act, a draft of these Regulations is laid before the Scottish Parliament for approval by resolution.

The 2020 Regulations allow for the removal of section 7(7) from The Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019. Section 7(7) stops young carers from applying for Young Carer Grant if subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999. Removing this exclusion allows young carers to apply for Young Carer Grant without fear of risking their immigration status. This helps ensure all young carers are treated with dignity, fairness and respect.

These regulations also amend the Funeral Expense Assistance (Scotland) Regulations 2019 to clarify when individuals are entitled to the standard rate (£1,000) or the lower flat rate (£122.05) which are payable towards other funeral expenses.

Entitlement to the other expenses standard rate (£1,000) will apply where the deceased has left in place provision within:

- an insurance policy;
- occupational pension scheme; or
- burial club.

In these circumstances deductions will be applied to the notional award from the available assets in the deceased's estate, including from the provision listed above.

Entitlement to the other expenses lower rate (£122.05) will apply where the deceased has left in place provision within:

- a funeral plan.

In these circumstance deductions will be applied to the notional award from the available assets in the deceased's estate, excluding the plan itself. The intention here is to prevent circumstances where an entitlement to the lower award of £122.05, because a pre-paid funeral plan was in place, could be reduced further by also applying deductions in respect of any available funds or contributions from the same funeral plan.

Finally, the opportunity has been taken to make a minor amendment to regulation 11 of the Funeral Support Payment Regulations (estate of the deceased) to give better effect to the original policy intent by clarifying that entitlement to a lump sum under a funeral plan is to be regarded as an asset of the deceased for the purpose of determining whether the assets of the deceased are sufficient and available to meet the costs of a funeral.

Consultation

There is no statutory requirement to consult on this instrument. However, a comprehensive report¹, including analytical evidence, on the measures that could be used to uprate devolved social security assistance was provided to the Social Security Committee and the Scottish Commission on Social Security on 2 September 2019 to allow them to engage on the uprating policy prior to the laying of this legislation. 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 5 pence. The Scottish Commission on Social Security (SCoSS) was supportive of the Scottish Government's uprating policy in the short term and

¹https://www.parliament.scot/S5_Social_Security/General%20Documents/20190902_CabSecSSOP_to_Conven_er_uprating_measures.pdf

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 2019².

Impact Assessments

The full range of impact assessments were considered and completed where necessary for the Social Security (Scotland) Bill and have been published for Funeral Expense Assistance³ and Young Carer Grant⁴. Impact assessments for any new Scottish assistance will be undertaken at the point where policy is being developed and regulations are being drafted.

As the uprating of Young Carer Grant and Funeral Support Payment ensures that the assistance people are eligible for in 2020 keeps pace with inflation, and maintains the current situation, then it is considered that there is no significant impact on the private, voluntary or public sector.

Financial Effects

A Financial Memorandum⁵ was completed prior to introduction of the Social Security (Scotland) Bill.

The Financial Memorandum states that funding for existing benefits will be transferred from the UK Government under the terms of the Fiscal Framework agreement. The Financial Memorandum also considers the costs of uprating and recognises that the methodology of uprating of benefits for inflation is a source of financial risk. This is because any future policy differentials between Scotland and the UK for the method of uprating could result in additional pressures on the Scottish Budget.

The Young Carer Grant is a new form of assistance, therefore there is no funding transfer from the UK government and the cost of this Grant and the uprate will be met from the existing Scottish Budget. The Funeral Support Payment is not uprated annually by inflation in England and Wales and therefore there will be no corresponding increase to the funding transfer from the UK Government. The uprate will be met from the existing Scottish Budget. The cost of the uprate is included in the benefit expenditure forecasts set out in the Scottish Fiscal Commission Economic and Fiscal Forecasts February 2020.

The uplift to the flat rate element of the Funeral Support Payment to a more generous figure of £1,000 will largely be met through a corresponding transfer from the UK Government as a result of the corresponding increase in the Funeral Expense Payment rate in England and Wales. However, as eligibility for the Funeral Support Payment in Scotland was expanded by around 40% this creates a funding difference which will be met from the existing Scottish Budget.

Scottish Government
Social Security Directorate
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² <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12322&mode=pdf>

³ <https://www.gov.scot/publications/consultation-funeral-expense-assistance-regulations/pages/8/>

⁴ <https://www.gov.scot/publications/consultation-young-carer-grant-regulations/pages/8/>

⁵ [http://www.parliament.scot/S5_Bills/Social%20Security%20\(Scotland\)%20Bill/SPBill18FMS052017.pdf](http://www.parliament.scot/S5_Bills/Social%20Security%20(Scotland)%20Bill/SPBill18FMS052017.pdf)