

SOCIAL SECURITY (SCOTLAND) ACT 2018

EXPLANATORY NOTES

OVERVIEW

Part 3 (Supplementing Assistance under Other Enactments)

Top up of reserved benefits

115. **Sections 79 and 80** enable regulations to provide for top up payments to a person who is entitled to any reserved benefit. The definition of “reserved benefit” matches that in exception 10 in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998. Loosely, it means a benefit provided by the UK Government for which the Scottish Parliament does not have competence to legislate. The recipient of any top-up payment must appear to the Scottish Ministers to need the additional assistance for a purpose for which the reserved benefit is provided.
116. The detail of any top-up payments would be set out in regulations under section 79. The section further provides for regulations to set out how entitlement to top-up assistance is to be determined, the amount of assistance, the process by which assistance is sought and determined, and what happens if assistance is given incorrectly.
117. These sections (i.e. 79 and 80) reflect the legislative competence given to the Scottish Parliament by section 24 of the Scotland Act 2016 to legislate for top-up payments. Section 80 states restrictions on what regulations can do, which repeat restrictions on the Parliament’s competence. These include that top-up assistance cannot be given to help meet housing costs, nor can a top-up payment be provided where, for example, the need arises solely as a result of a sanction because of non-compliance with a work-related requirement in a reserved benefit.