



Scottish
Commission
on Social
Security

Scottish Commission on Social Security
c/o Secretariat
Area 1C South (Mail Point 6)
Victoria Quay
Edinburgh
EH6 6QQ

info@socialsecuritycommission.scot

22 March 2024

Collette Stevenson MSP
Convener
Social Justice and Social Security Committee
Scottish Parliament

By email only

Draft Carer Assistance (Carer Support Payment) Amendment Regulations 2024

Dear Convener,

We are pleased to provide a copy of the Scottish Commission on Social Security's scrutiny report on the draft Carer Assistance (Carer Support Payment) Amendment Regulations 2024.

The draft regulations provide for a phased roll out of Carer Support Payment (CSP) including a new transitional backdating provision for newly qualifying student carers and others qualifying due to different 'past presence' rules to Carer's Allowance, bring forward the commencement date of the existing provision for entitlement of some 16 to 19-year-old students and make some clarifying amendments to the principal regulations.

In summary, SCoSS welcomes the aims of the draft regulations while noting that further consideration could be given to detailed communications with people who may be eligible for backdated support and solutions-focused monitoring of any issues caused by backdating during the transition period. SCoSS also notes the significant number of full-time student carers expected to become eligible for Carer Support Payment in the final phase of the roll out and the resource implications this may create.

Detailed consideration, recommendations and observations related to the draft regulations are included in **Annex 1** of this letter.

Yours sincerely,

Judith Paterson
Interim Co-Chair
Scottish Commission
on Social Security

Dr Mark Simpson
Interim Co-Chair
Scottish Commission
on Social Security



Scottish
Commission
on Social
Security

Scottish Commission on Social Security

Scrutiny report on draft Regulations:

Draft Carer Assistance (Carer Support Payment) Amendment Regulations 2024

Submitted to the Scottish Government and the Scottish Parliament's Social Security Committee on 22 March 2024.

SCoSS/2024/02

Summary of recommendations and observations

Recommendation 1: The Scottish Government should communicate its approach to phased roll out of Carer Support Payment and engage with a wide group of carers and carer organisations with a view to having an early alert to any issues which could arise with roll out.

Recommendation 2: The Scottish Government should produce a detailed communications plan outlining the impact of a claim for other benefits and the rules on backdating. This plan should aim to reach carers in education, people who may become entitled to Carer Support Payment in the future and existing Carer's Allowance recipients who may be considering their future education options.

Recommendation 3: The Scottish Government should address a minor drafting error in Part 1A, of Schedule 1, paragraph 2A, Table 1 to clarify that the relevant dates that refers to 20 January 2024 for the purpose of backdating should refer to 20 January 2025.

Observation 1: A significant number of full-time student carers are expected to become eligible for Carer Support Payment in the final phase of the roll out. This will likely require Social Security Scotland to ensure resources are available to deal with a significant volume of backdating applications at this point in the process.

Observation 2: The new backdating provisions will add complexity during the transitional period, particularly for carers aged 16 to 19. The Scottish Government and Social Security Scotland will need to work closely with the Department for Work and Pensions to consider how they can proactively monitor and solve any resulting issues caused by backdating during the transition period, with particular attention paid to exceptions in the 16-19 year old age category.

Observation 3: SCoSS supports the proposed approach to treat situations where a carer is in legal detention as a temporary break in care where this meets the criteria.

Introduction

The Scottish Commission on Social Security (SCoSS) is pleased to present its report on the draft Carer Assistance (Carer Support Payment) Amendment Regulations 2024. [hereafter ‘the draft Regulations’]. The Scottish Commission on Social Security (SCoSS) reported on the Carer Assistance (Carer Support Payment) Regulations 2023, in June 2023 [hereafter ‘the principal Regulations’].

The draft regulations provide for a phased roll out of Carer Support Payment (CSP) including a new transitional backdating provision for newly qualifying student carers and others qualifying due to different ‘past presence’ rules to Carer’s Allowance, bring forward the commencement date of the existing provision for entitlement of some 16 to 19-year-old students and to make some clarifying amendments to the principal regulations.

The development of CSP has been characterised by significant levels of stakeholder engagement and this approach is to be welcomed as representative of social security principle (f) “the Scottish social security system is to be designed with the people of Scotland on the basis of evidence”. Bringing forward access to CSP for the group of 16 to 19 year olds in exceptional circumstances can be seen as meeting the commitment in Our Charter to using social security to help people participate in society and also as contributing to CSP being an investment in the people of Scotland (principle (a)). At the same time aspects of the draft regulations may add complexity thus posing challenges to communicating with carers so as to meet commitments regarding improving take up. SCoSS has, therefore, recommended the production of a detailed communications plan outlining the impact of a claim for other benefits and the rules on backdating.

To understand the views of stakeholders in relation to the draft regulations, SCoSS shared a targeted call for evidence with organisations representing carers, further education and relevant academics. Their feedback is represented throughout our response. We would like to publicly recognise the stakeholders’ contributions as invaluable to informing our position on the draft regulations.

Phased rollout of Carer Support Payment

The draft regulations provide for CSP to be made available for those making new applications in the following local authority areas through a phased approach from the following dates:

- Angus, North Lanarkshire and South Lanarkshire on 24 June 2024
- Aberdeen City, Aberdeenshire, East Ayrshire, Fife, Moray, North Ayrshire and South Ayrshire on 19 August 2024
- All 19 remaining local authority areas in Scotland on 21 October 2024.

While these provisions do not require formal SCoSS scrutiny, SCoSS initially noted that approach to roll out of the benefit should be evidence based and avoid any detrimental impact for carers in different parts of Scotland wherever possible.

In response to questions from SCoSS, officials clarified that the phased rollout has been developed by “working closely with the Department for Work and Pensions, to ensure a safe and secure delivery that maintains these links with wider benefits and services so that carers can continue to get all of the support they are entitled to.” Officials clarified that an area-based approach to the pilot and national roll out was chosen following “detailed analysis... and the initial pilot areas were chosen as they provided a mix of different areas in terms of rural/urban classifications and island communities... that would allow us to properly assess how well the benefit was working and consider improvements.”¹

SCoSS welcomes this clarification and acknowledges the work that has been undertaken by officials. We understand that this has focussed on data concerning the age and gender of Carer’s Allowance recipients. We note, however, that currently, a lack of data about existing clients means there could be unknown inequalities in the roll out, for example, affecting claimants with other protected characteristics under the Equality Act, and socio-economic disadvantage under the Fairer Scotland duty.² We encourage the Scottish Government to do all it can to effectively communicate its approach to phased roll out with a wide group of carers to prevent any detrimental impact.

Recommendation 1: The Scottish Government should communicate its approach to phased roll out of Carer Support Payment and engage with a wide group of carers and carer organisations with a view to having an early alert to any issues which could arise with roll out.

Exceptions for carers aged 16-19 in non-advanced education

The draft regulations bring forward commencement of the extension of eligibility currently within the regulations to a further group of students aged 16 to 19 with certain exceptional circumstances (e.g. who do not have access to support from parents or guardians). As noted in our scrutiny report on the principal regulations, SCoSS welcomes the widening of access to students who will now be able to access CSP when they would previously have faced a choice of either accessing Carer’s Allowance or taking up opportunities for full-time study.

We note draft regulation 2(2) brings this change forward to 24 June 2024, rather than October 2024 as previously stated. We welcome this change and agree with the view expressed by stakeholders that the circumstances of student carers can differ from other students in that they are often unable to take on employment opportunities outside of term time.

“A lot of student support ceases over the summer months and we hear from unpaid carers that many services for their cared-for person also reduces over this period, resulting in many unpaid carers taking on more intensive caring roles over the summer months... employment opportunities may not be possible for them.” **Carers Trust Scotland**³

¹ Scottish Government response to SCoSS question (response received 11 March 2024)

² Scottish Government, Fairer Scotland Duty: guidance for public bodies, <https://www.gov.scot/publications/fairer-scotland-duty-guidance-public-bodies/documents/>

³ Carers Trust Scotland response to SCoSS call for evidence, March 2024

The Scottish Funding Council noted, in evidence to SCoSS, that caring is “disproportionately experienced by young people living in communities with higher levels of deprivation, and in households with lower incomes.”⁴ We would anticipate, therefore, that the extra financial support for this group from Summer 2024 will be well received and welcome this change of approach and its contribution towards achieving social security principle (e) contributing to reducing poverty.⁵

Two of the exceptional circumstances where 16 to 19-year-olds are eligible for CSP refer to couples where a) the claimant’s partner is not a student, and b) where the claimant’s partner is a student but one of the other exceptions applies to that partner. Carers Trust Scotland noted that how this is communicated can be confusing, e.g. when it is not spelled out that the exception only applies to couples who live together. Further consideration could be given to how the exceptions are communicated with carers as part of the Scottish Government’s communication plans.

Backdating rules

To support the roll out, draft regulation 2(4) introduces additional provisions around ‘backdating’ which intend to allow carers to receive payments of CSP for periods before the date they make their application. In response to questions from SCoSS, Scottish Government officials noted that they “would expect this would affect full-time students eligible under CSP rules but not Carer’s Allowance rules in particular.”⁶

The draft regulations provide that carers who were not eligible for Carer’s Allowance because of the different rules on full time education and the past presence test will be able to backdate applications as far as 19 November 2023 (the first date at which CSP became available in Scotland in the Phase 1 pilot area) if they apply within 13 weeks of the benefit being available in their local authority area, or later if they have a good reason for not applying within the 13 weeks.

In response to questions from SCoSS, Scottish Government officials noted that around 53% of the caseload of Carer Support Payment applicants are expected to be living in areas in phase 4, the final phase, of the roll out and around 800 carers may require a backdated award as a result of their full time education status.⁷ While the Scottish Government has clarified that “the special backdating rules are therefore designed to mitigate the effects of the roll out”, SCoSS observes that this could cause significant challenges in processing.

Observation 1: A significant number of full-time student carers are expected to become eligible for Carer Support Payment in the final phase of the roll out. This will likely require Social Security Scotland to ensure resources are available to deal with a significant volume of backdating applications at this point in the process.

⁴ Scottish Funding Council response to SCoSS call for evidence, March 2024

⁵ Social Security (Scotland) Act 2018, Part 1, 1 (e) “the Scottish social security system is to contribute to reducing poverty in Scotland”

⁶ Scottish Government response to SCoSS question (response received 11 March 2024)

⁷ Scottish Government response to SCoSS question (response received 11 March 2024)

Stakeholders expressed concern that receipt of a lump sum of CSP could have a detrimental effect on entitlement to other benefits.

“Scottish Government must ensure any backdating payment will not impact existing entitlement for unpaid carers receiving support in any other part of the devolved or reserved social security system, in circumstances where they would be entitled to such support if receiving a regular payment of Carer Support Payment.” **Carers Trust Scotland**⁸

In response to a question from SCoSS, the Scottish Government noted that backdated CSP awards would affect any Universal Credit a carer receives in the same way as an ongoing award.⁹ Backdating will, however, also give eligibility to passported entitlements and Carers Allowance Supplement.

SCoSS acknowledges the balance the Scottish Government must strike between fairness between carers who are in receipt of CSP in the earlier phases, those in receipt of Carer’s Allowance who will transfer to CSP and those who will be receiving support for the first time. In circumstances where a backdated CSP award would lead to an overpayment of Universal Credit, the Scottish Government notes that a carer will be better off overall.

On this basis, we support the proposed approach by the Scottish Government but note that carers will be advised to inform the Department for Work and Pensions (DWP) where they receive Universal Credit (and this information is also provided to DWP by Social Security Scotland). We propose that this is both closely monitored to ensure carers do not experience detrimental impacts on their caring role and well communicated through carers organisations and further and higher education institutions.

Observation 2: The new backdating provisions will add complexity during the transitional period, particularly for carers aged 16 to 19. The Scottish Government and Social Security Scotland will need to work closely with the Department for Work and Pensions to consider how they can proactively monitor and solve any resulting issues caused by backdating during the transition period, with particular attention paid to exceptions in the 16-19 year old age category.

It is clear from feedback received from stakeholders that further reassurance of the impact of this backdating is required.

“The (backdating) process should be accessible and easy to navigate, recognising that young carers are time-poor due to their caring responsibilities, and that this backdate could be a lifeline payment to help ease the financial pressures of affording household necessities such as food and energy bills.” **Scottish Funding Council**¹⁰

Recommendation 2: The Scottish Government should produce a detailed communications plan outlining the impact of a claim for other benefits and the

⁸ Carers Trust Scotland response to SCoSS call for evidence, March 2024

⁹ Scottish Government response to SCoSS question (response received 11 March 2024)

¹⁰ Scottish Funding Council response to SCoSS call for evidence, March 2024

rules on backdating. This plan should aim to reach carers in education, people who may become entitled to Carer Support Payment in the future and existing Carer's Allowance recipients who may be considering their future education options.

SCoSS welcomes the provisions also made in draft regulation 2(4) related to backdated awards for those who are eligible for Carer Support Payment but who were unable to apply for Carer's Allowance as they did not meet rules around 'past presence'.

There is a minor drafting error in Part 1A of Schedule 1, paragraph 2A, Table 1 which refers to 20 January 2024 as the "relevant date" for Argyll and Bute, Clackmannanshire, Dumfries and Galloway, East Dunbartonshire, East Lothian, East Renfrewshire, City of Edinburgh, Falkirk, Glasgow City, Highlands, Inverclyde, Midlothian, Orkney Islands, Renfrewshire, Scottish Borders, Shetland Islands, South Lanarkshire, Stirling, West Dunbartonshire or West Lothian. We assume that this should read 20 January 2025.

Recommendation 3: The Scottish Government should address a minor drafting error in Part 1A, of Schedule 1, paragraph 2A, Table 1 to clarify that the relevant dates that refers to 20 January 2024 for the purpose of backdating should refer to 20 January 2025.

Eligibility for Carer Support Payment while in legal detention

Draft regulation 2(3) amends the principal CSP regulations to provide that where a carer is in legal detention, this may be treated as a temporary break in care where it meets the criteria. The Scottish Government notes that this change intends to have the effect of allowing payment to continue for up to four weeks where there is a break in care due to a carer being in legal detention and for the award to be reinstated without application in situations where the carer becomes entitled again within 26 weeks of an award which is ended due to legal detention.

In response to our call for evidence Carers Trust Scotland, in particular, noted that this change had the potential to "break down barriers" for carers in these situations as it would avoid any additional administrative burden that would come from completing a new application and awaiting processing of a claim.

Observation 3: SCoSS supports the proposed approach to treat situations where a carer is in legal detention as a temporary break in care where this meets the criteria.

Impact assessments

The draft policy note highlighted that a review of the existing impact assessments, undertaken ahead of the principal regulations, indicated that there were no significant equalities or rights impacts that require further consideration. However, officials have indicated to SCoSS that, as part of reviewing impact assessments for the purpose of these regulations, decisions such as phasing by authority area and backdating were to mitigate potential risks of differential treatment identified by

reviewing the impact assessments of the original regulations. We understand that a summary of these considerations will be included in an updated policy note.

In addition, the Scottish Government indicated that, due to data limitations, it had considered age and gender information in its impact assessment and found that while “the proportions of carers by age group and gender in each phase were similar to the proportion of carers by age group and gender across Scotland overall” people over State Pension age “are marginally more likely to be living in the final phase”. As those over State Pension age are less likely to be affected by the changes being made to full-time education and ‘past presence’ rules, however, that this would not have any significant impact.

SCoSS welcomes these clarifications but notes the continuing lack of information around CSP claimants. The approach to data collection about CSP clients in future should allow for improved insights into the protected characteristics of these groups to allow for a stronger consideration of equality matters in planning future changes to CSP and carer support.