

T: 0300 244 4000  
E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

Judith Paterson and Dr Mark Simpson  
Scottish Commission on Social Security  
c/o Secretariat  
Victoria Quay  
Edinburgh  
EH6 6QQ

By email to: [info@socialsecuritycommission.scot](mailto:info@socialsecuritycommission.scot)

03 March 2023

Dear Mark and Judith,

I am pleased to provide you with the draft Carer's Assistance (Carer Support Payment)(Scotland) Regulations 2013, made under section 96(2) of the Social Security (Scotland) Act 2018, for scrutiny.

Introducing Carer Support Payment is an important milestone in the devolution of carer benefits and improving support for Scotland's unpaid carers, following the introduction of Carer's Allowance Supplement, Young Carer Grant, and the extra coronavirus payments made in 2020 and 2021. Social security is a key part of the work to deliver on the Scottish Government's vision to support carers in a meaningful and sustainable way, so they are able to work, engage in education and have full lives away from caring, if that is their wish.

On introduction, Carer Support Payment will provide an improved, more accessible service to carers, joining up with other services to help carers access information on the wide range of support available to them. Entitlement will broadly mirror Carer's Allowance to allow us to safely and securely transfer the awards of people in Scotland receiving Carer's Allowance from the Department for Work and Pensions to Social Security Scotland and on to Carer Support Payment. This will avoid a 'two tier system' where carers on the two benefits would be treated differently for a period.

Carer's Allowance is the most complex benefit we are replacing in terms of the links it has with other support, including support that will remain reserved to the UK Government. We are working closely with the Department for Work and Pensions in particular, and with other UK Government departments, on the design and development of Carer Support Payment so we can deliver this in a way which protects any linked support that carers rely on.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)

## Public consultation

We consulted from February to May 2022 on proposals for how our replacement for Carer's Allowance should work on launch. Proposals were developed following a range of work and research with carers, support organisations, our Carer Benefits Advisory Group, and advice from the Disability and Carer Benefits Expert Advisory Group. Around 200 responses were received, and the independent analysis of these, published in November 2022, showed the proposals were broadly supported by a majority of respondents. Research with our Experience Panels was carried out alongside the consultation, with 242 members responding to a survey, and 16 follow up interviews undertaken.

People responding to both the consultation and Experience Panels research were positive about the proposals set out, and felt in general these reflected a more flexible and person-centred approach to support compared to the current benefit. Responses were positive about aligning the approach on residence and re-determinations with the devolved disability benefits, and about the use of 'nil rating' to prevent overpayments and the need for carers to re-apply for support following temporary gaps in entitlement.

Responses on the question of the 'past presence test' were largely in favour of a reduced requirement for past presence compared with Carer's Allowance. The draft regulations provide for this reduced test (Regulation 6) which will allow carers coming to Scotland from outside the Common Travel Area to access support sooner, and in line with the people they care for, given the test in place for our disability benefits. These regulations are included as provisional at this stage as we are considering whether this can be implemented from pilot launch.

A majority of those responding to the consultation were also in favour of changing the *education restrictions* currently in place in Carer's Allowance, which was consulted on as a potential future change to eligibility. The regulations referred today reflect the current Carer's Allowance rules but I would note that these are provisional as we are continuing to work to consider when and how we may be able to make changes to the current rules to improve access to Carer Support Payment for carers in education.

## Draft regulations

The provisions in the draft regulations ensure that eligibility and rules for Carer Support Payment will broadly align with Carer's Allowance, while providing consistency with our devolved benefits, and the principles set out in the Social Security (Scotland) Act 2018. Further background on some of the provisions is provided below, and additional information is provided in the policy note included with the regulations.

### *Earnings rules*

Rules about how much carers can earn from paid work while receiving Carer Support Payment will mirror Carer's Allowance from launch, including the calculation of earnings, and the draft regulations set out the earnings rules at a high level (Regulation 14). Detail on how earnings are calculated for Carer's Allowance is set out in separate regulations which cover other benefits. For Carer Support Payment, we intend to set out this kind of detail in the schedule but are considering the best approach to this to ensure sufficient clarity and transparency, while maintaining flexibility and ensuring alignment with how the Department for Work and Pensions regulations work in practice for Carer's Allowance. As this consideration is ongoing, I would be grateful for the Commission's flexibility in looking at the more detailed provisions in relation to the calculation of earnings at a later date.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)

**INVESTORS IN PEOPLE™**  
We invest in people Silver



## *Abatement*

Draft provisions (Regulation 17) are included to mirror the effect of the 'abatement' process used for Carer's Allowance within the Department for Work and Pensions. These are intended to address overpayments which could otherwise occur where carers are awarded Carer Support Payment while in receipt of reserved legacy benefits. These are provisional at this stage as this would be a new process for devolved benefits and work is ongoing to consider how this process could be delivered in practice between Social Security Scotland and the Department for Work and Pensions.

## *Advance applications*

Draft provisions (Regulation 18) have been included to allow carers to claim Carer Support Payment up to 13 weeks in advance if they expect to become eligible in future. This is in line with Carer's Allowance, and our intention to mirror this was set out in the consultation. In referring these regulations we would note that the ability for carers to apply in advance will not be available during the pilot. Consideration is ongoing on when advance applications will be available from. This will reduce the complexity of systems and processes initially, and is not expected to have a significant impact on clients during this short period as systems will process applications more quickly than Carer's Allowance, and it will be possible for carers to 'backdate' applications. We would be grateful if we could also confirm these timescales with the Commission at a later date.

## *Pilot*

Part 1 of the Schedule sets out our intention to provisionally implement a pilot launch of Carer Support Payment. This would be in line with previous rollouts of Child and Adult Disability Payments and would ensure a safe and secure delivery of a new service. We are working closely with local authority areas to consider potential pilot arrangements. We will confirm the arrangements to the Commission at a later date.

## *Transfer of benefits from Carer's Allowance to Carer Support Payment*

I also include provisions on the transfer of assistance from Carer's Allowance to Carer Support Payment (case transfer) in Part 2 of the Schedule. As these provisions are made under section 95 of the Social Security (Scotland) Act 2018, they are not subject to formal scrutiny by the Scottish Commission on Social Security. I am, however, happy to provide a full copy of the draft Regulations to allow the Commission to consider those parts of the Regulations you are required to scrutinise in the context.

As you are aware, case transfer is a joint programme with the Department for Work and Pensions and a complex process, made more complex in this case by the age and structure of the Carer's Allowance systems that we are transferring information from. The case transfer provisions set out our intention for the overall approach to the Carer's Allowance to Carer Support Payment case transfer process and describe the key steps to ensure this process is safe and secure. We have flagged these as provisional at this stage as confirmation of the final approach is dependent on ongoing joint delivery work with the Department for Work and Pensions.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)

**INVESTORS IN PEOPLE™**  
We invest in people Silver



## Future developments

Proposals relating to short-term assistance received strong support in the public consultation. We plan to provide short-term assistance in some situations where a Carer Support Payment decision is being challenged, and support to carers when the person they care for is getting short-term assistance. However, we will now look to introduce this after case transfer is complete, and as such provision for this is not included in the current draft regulations. This is in part because it has not been possible to agree with the Department for Work and Pensions how short-term assistance provided to carers (or support based on short-term assistance paid to a cared for person) would be treated in reserved means-tested benefits. It would make carers no better off if support we provided during challenges was to reduce support they were receiving through Universal Credit or other Department of Work and Pensions benefits. Introducing this after case transfer completes will also ensure there is no difference in treatment for carers in Scotland who are already getting Carer's Allowance.

Future regulations will also provide for further changes we will introduce after case transfer completes, in particular the extension to the 'run on' of support provided to carers after the person they care for has died, and the extra support for those caring for more than one person, known currently as 'Carer's Additional Person Payment'. We will publish our response to the consultation in the coming weeks and provide further information on these changes and the work which will continue beyond the launch of Carer Support Payment to improve support for unpaid carers.

We are also refining the impact assessments which we have been developing alongside the policy and regulations, taking into account the response to the consultation, consultation events, Experience Panels and wider research, and will provide the most recent drafts in the coming weeks.

## Conclusion

I ask that the Commission provide their scrutiny report on these regulations by 26 May 2023. If you are able to provide any recommendations at an earlier date, this would be helpful in ensuring that I have sufficient time to consider your recommendations before the regulations are laid in Parliament in September.

I have sent a copy of this letter and draft Regulations to the Social Justice and Social Security Committee, in order to notify them that our proposals have been submitted to the Commission.

Finally, I want to extend my thanks to the Commission for considering these regulations.

I recognise the Commission's vital role in scrutinising our proposals thus far and I thank you for your continued co-operation and support.

Yours sincerely,



**BEN MACPHERSON**

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)

**INVESTORS IN PEOPLE™**  
We invest in people Silver

